IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9664 OF 2021

M/s. Tata Steel Ltd.
Wire Division,
A-6/A-9 MIDC
Tarapur Industrial Area,
P.O. Boisar,
Dist. Palghar 401 506
through its Sr. Manager
Mr. Krishna Warrier ....Petitioner

V/S

1. ***Maharashtra Shramjivi General Kamgar Union***, Office at
Mafatlal Employees Union,
A-302 Krishna Plaza
Near C.K.P. Tank
Ambedkar Chowk
Thane (W) 400 602

2. ***Sonali Caterers***
Building No.6, Block No.1001,
Powai Lake Height Society
Rambaug, Powai,
Mumbai – 400 076. ....Respondents

Mr. Sudhir K. Talsania, Senior Advocate with Mr. R.V. Paranjape with Mr. T.R. Yadav *for the Petitioners.*
Mr. Yogendra Pendse with Ms. Priyanka Patkar, Ms. Shamika Dabke and Ms. Vaibhavi Zaaude *for Respondent.*

CORAM : SANDEEP V. MARNE, J.
RESERVED ON : 14 OCTOBER 2024.
PRONOUNCED ON : 22 OCTOBER 2024.

J U D G M E N T:

1) ***Rule.*** Rule is made returnable forthwith. With the consent of the learned counsel appearing for parties, the Petition is taken up for final hearing and disposal.

2) The Petition raises the usual issue of jurisdiction of Industrial Court to decide Complaint of unfair labour practices filed under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (**MRTU & PULP Act**) when existence of employer-employee relationship is under dispute. In the present case, the Complaint is filed on behalf of canteen employees working in the canteen established by Petitioner-Company seeking a declaration that they are permanent employees of the Petitioner-Company and are entitled to receive same service benefits as are extended to the permanent employees. Petitioner-Company raised objection by filing application at Exhibit-C3 to jurisdiction of Industrial Court to decide the Complaint and prayed for framing of preliminary issue about maintainability of Complaint and sought its dismissal. Petitioner-Company also sought vacation of interim order dated 29 November 2019. By impugned order dated 1 October 2021, the Industrial Court has rejected Petitioner-Company's application and has directed continuation of interim relief till further orders. Aggrieved by Industrial Court's order dated 1 October 2021, Petitioner has filed the present Petition.

3) Petitioner is a public limited company engaged in the business of manufacturing of steel wires and has a factory at Tarapur Industrial Area, Boisar, District Palghar. Earlier, manufacturing facility was maintained by Petitioner-Company at Borivali, Mumbai which was relocated at Boisar in the year 2009. Petitioner-Company has 350 permanent employees working at the factory, who are represented by recognized union viz. Shramik Utkarsh Sabha. Additionally, Petitioner-Company also has 29 employees working in staff, supervisory and officer category outside the purview of the Industrial Disputes Act, 1947. Since Petitioner-Company is employer

of more than 250 employees, it is required to maintain a statutory canteen under provisions of section 46 of the Factories Act. It is Petitioner-Company's case, however that running of canteen or doing catering service is not its business and that the statutory canteen is required to be maintained only towards obligations under the Factories Act. According to the Petitioner-Company, it has engaged M/s. Sonali Caterers-Respondent No.2 to run the canteen through its own staff and has accordingly executed various agreements/contracts. The last agreement/contract is signed with Respondent No.2 on 28 March 2018 which was valid upto 31 December 2020.

4) Respondent No.1 is a Union representing 26 workers working in the canteen maintained by Petitioner-Company. According to Respondent No.1-Union, said 26 workers are working in the canteen from various dates as more particularly detailed in Annexure-A to the Complaint. It is thus claimed by Respondent No.1-Union that some of the workers are working in the canteen since the year 2010. Respondent No.1-Union filed Complaint (ULP) No.215 of 2019 in Industrial Court, Thane, seeking a declaration that the said 26 workers are permanent employees of Petitioner-Company and claimed the benefit of permanency to them from the dates of completion of 240 days of service. The Respondent No.1-Union also filed application at Exhibit-U2 for grant of interim relief. An ad interim order came to be passed by Industrial Court on 29 November 2019 directing the Petitioner-Company to maintain *status quo* in respect of service conditions of 26 workers. After receipt of notice in the Complaint, Petitioner-Company appeared and filed objection to the maintainability of the Complaint. Petitioner-Company contended that there is no employer-employee relationship between it and the said 26 workers and that therefore Industrial Court did not have jurisdiction

to try and entertain the Complaint. Various other objections about maintainability were also raised in the said objection application. Respondent No.2- Contractor also appeared and filed Reply to the Complaint contending that the said 26 workers are its employees and not the employees of the Petitioner-Company.

5) Separately, Petitioner-Company also filed Affidavit-in-Reply to the application seeking interim relief. The Respondent-Union filed application at Exhibit-C3 by filing its reply. After hearing the parties, the Industrial Court passed order dated 1 October 2022 rejecting the application at Exhibit-C3 filed by Petitioner-Company by holding that there was subsisting employer-employee relationship between Petitioner-Company and the 26 workers before 2008 and that therefore the Complaint was maintainable. The Industrial Court has continued the interim relief till further orders as application at Exhibit-U2 has not been decided while passing order dated 1 October 2021. Petitioner is aggrieved by the order dated 1 October 2021 and has filed the present Petition.

6) Mr. Talsania, the learned Senior Advocate appearing for Petitioner-Company would submit that Respondent No.1-Union has sought a declaration in the Complaint that the contract executed with Respondent No.2 is sham and bogus and that the 26 workers are in fact direct workers of Petitioner-Company. That the Complaint proceeds on a footing that the said 26 workers are being treated as workers of contractor and that a declaration is sought for treatment of the said workers as direct workers of Petitioner-Company. Mr. Talsania would submit that Industrial Court does not have jurisdiction to issue such a declaration as has repeatedly been held by the Apex Court in catena of judgments. That in the present case,

there is no employer-employee relationship between the Petitioner-Company and the said 26 workers. That such relationship is specifically denied by Petitioner-Company in objection applications at Exhibit-C3. That once existence of employer-employee relationship is denied, Industrial Court loses jurisdiction to try and entertain the Complaint seeking declaration of contract being sham and bogus. In support Mr. Talsania would rely upon following judgments:

i) Cipla Ltd vs. Maharashtra General Kamgar Union and others[1]

ii) Sarva Shramik Sangh vs. Indian Smelting and Refining Co. Ltd. and others [2]

iii) ***Vividh Kamgar Sabha vs. Kalyani Steels Ltd. and another.***[3]

7) Mr. Talsania would further submit that the judgments of the Apex Court in ***Indian Petrochemicals Corporation Ltd. and another vs. Shramik Sena and others***[4] and ***Hindalco Industries Ltd. vs. Association of Engineering Workers***[5] cannot be read in support of an absolute proposition of law that in every case, where employer-employee relationship is under dispute and where declaration of contract being sham is sought, Industrial Court would have jurisdiction to entertain Complaint of unfair labour practice under MRTU and PULP Act. Relying on judgment of the Apex Court in ***Bhavnagar University vs. Palitana Sugar Mill (P) Ltd. and others***[6], Mr. Talsania would submit that a decision is an authority for which it is decided and not what can logically to be deduced therefrom. That the judgments in ***Indian Petrochemicals***

1 (2001) 3 SCC 101
2 (2003) 10 SCC 455
3 (2001) 2 SCC 381
4 (1999) 6 SCC 439
5 (2008) 13 SCC 441
6 (2003) 2 SCC 111

Corporation Ltd. (supra) and ***Hindalco Industries Ltd.*** (supra) are rendered in the facts of those cases which have no application to the facts of the present case.

8) Mr. Talsania would further submit that the Industrial Court has erred in relying on judgment of Division Bench of this Court in ***Hindustan Coca Cola Bottlings S/W (Private), Ltd. vs. Bhartiya Kamgar Sena and others***[7] as Petitioner-Company has never accepted direct employment of the 26 workers at any point of time. That the Union has failed to plead or produce any document to suggest direct employment between Petitioner-Company and the 26 workers at any point of time. That no evidence is produced to demonstrate direct payment of salary by the Petitioner-Company to any of the said 26 workers. Mr. Talsania would accordingly pray for setting aside the impugned order of the Industrial Court and for dismissal of the Complaint.

9) The Petition is opposed by Mr. Pendse, the learned counsel appearing for Respondent No.1-Union. He would submit that the Industrial Court has rightly appreciated the law enunciated by the Apex Court in ***Indian Petrochemicals Corporation Ltd.*** (supra). He would accordingly submit that judgments of the Apex Court in ***Indian Petrochemicals Corporation Ltd.*** and ***Hindalco Industries Ltd.*** clearly recognize jurisdiction of Industrial Court to decide Complaint of unfair labour practice in respect of grant of permanency to canteen employees. He would submit that the Apex Court has held in ***Indian Petrochemicals Corporation Ltd.*** that employees of statutory canteen are required to be treated employees of the factory not only for the purpose of Factories Act but also for all other purposes. That the said principle has been followed by

7 2002 (1) L.L.N. 228

subsequent judgment in ***Hindalco Industries Ltd.*** (supra). That in the present case also the 26 workers are working in statutory canteens and are accordingly required to be treated as direct employees of the Petitioner-Company. He would submit that in ***Hindalco Industries Ltd.*** (supra) specific contention was raised about absence of jurisdiction of Industrial Court for issuance of declaration of contract as sham and bogus and that the Apex Court has negatived the said contention.

10) Mr. Pendse would rely on judgment of Division Bench of this Court in ***Hindustan Coca Cola Bottlings S/W (Private) Ltd. vs. Vhartiya Kamgar Sangh***[8] submit that Industrial Court would have jurisdiction to entertain the Complaint of unfair labour practice once existence of employer-employee relationship is demonstrated at some point of time. He would submit that Respondent No.1 has specifically pleaded in the Complaint that the 26 workers are in the employment of the Petitioner-Company. He would submit that Petitioner-Company has relied upon contract executed with Respondent No.2 effective from 1 April 2018. That no other contract is placed on record to suggest that engagement of any contract prior to 1 April 2018. That Annexure-A to the Complaint would show engagement of all 26 workers prior to 1 April 2018. He would therefore submit that existence of employer-employee relationship prior to the year 2018 is clearly established and that the Complaint is filed for the purpose of claiming existence of employer-employee relationship after entering into contract with Respondent No.2. Mr. Pendse would also rely upon judgment of this Court in ***Uni Klinger Ltd., Ahmednagar vs. Subhash Baburao Kambale and others***[9]. He would accordingly pray for dismissal of the Petition.

8 (2002) 3 Bom CR 129
9 2016(6) Mh.L.J. 543

11) Rival contentions of the parties now fall for my consideration.

12) This is yet another case where jurisdiction of Industrial Court to entertain Complaint of unfair labour practice is questioned on the ground of existence of dispute about employer-employee relationship. In fact, according to Petitioner-Company, non-existence of employer-employee relationship is an admitted fact, on which the Complaint of Respondent-Union is premised. The Complaint is filed seeking following prayers:

> "13. In the circumstances as mentioned as above the complainants pray that:-
>
> (i) This Hon'ble Court be pleased to hold and declare that the Respondents have engaged and are engage in unfair labour practices as defined under item 1(a), 4(a), 4(f) of Schedule II and 5,6,9 and 10 of the Schedule IV to the MRTU and PULP Act, 1971.and further be pleased direct the Respondent to ceased and deceased the same.
>
> (ii) This Hon'ble Court be further pleased to declare that the employees as per Annexure 'A' are the permanent employees of the Respondent No.1 Company.
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> (iii) This Hon'ble Court be further pleased to declare that the employees as per Annexure 'A' are the permanent employees of the Respondent No.1 Company. Further this Hon'ble be pleased to direct the Respondents, its Directors, Officer, Managers and/or Agents including Respondent No.2 being agent to provide the service conditions to the employees as per Annexure 'A', the service conditions as per the other permanent company to the Respondent No.1 company form the date of completion 240 day from the initial date of joining and further be pleased to direct the respondents to pay the employees as per Annexure A the arrears of wages and other benefits from such date.
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> (iv) This Hon'ble court further be pleased to direct the Respondent not to terminate the employment of the employees as per Annexure 'A' without following due process of law as a permanent employees of the respondent Company.
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> (v) This Hon'ble court be pleased to direct the Respondent the wages as per the kind of work as per with permanent employees of Respondent No. 1 Company each and every employee as per Annexure 'A' not later than 7th day of its successive month to the month for which the employees have tendered their labour, pending hearing final disposal of.
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> (vi) Ad-interim relief in terms of prayer clause (iv) & (v) above.
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> vii) Compensation of Rs. 10,000/- per employee as per Annexure 'A'

viii) Costs.

ix) Any other relief as deemed fit and proper"

13) Thus, Respondent has sought a direct declaration that the 26 workers enumerated in Annexure-A to Complaint are permanent employees of Petitioner-Company. Further prayer is sought for a declaration that the said 26 workers be declared as permanent employees for being extended service conditions applicable to permanent employees from the dates of completion of 240 days from the date of initial engagement.

14) Averments in the Complaint are aimed at establishing as to how the contract entered into between Petitioner-Company and Respondent No.2 is sham and bogus. Respondent-Union has attempted to establish the tests of supervision and control, provision of necessary materials and utensils, receipt of PF and ESI benefits, selection and appointment of workers, provisions of service quarter to canteen employees, etc. by Petitioner-Company In this regard the relevant averments in para 3(ii)(iii) of the Complaint read thus:

> "(ii) The Complainant submits that the entire working of the canteen is controlled and supervised by respondent No.1 Company and its officers. The Respondent No.1 Company has shown Respondent No.2 as contractor in the canteen of the Respondent No. I Company. The complainants say and submit that the entire supervision and control of the canteen is within the hands of the canteen committee of the company and contractor has nothing to do with the same. The accessories which are made available in the canteen are supplied by the Respondent No.1 Company. The complainant submit that the Respondent No.1 company is providing all the necessary materials, utensils, etc. by which a canteen is run. The contractor i.e. the Respondent No.2 has no supervision and control over the working of the canteen. Complainant submits that the canteen is working round a clock as per various shifts of the company. It is further stated that the employees as per Annexure 'A' getting PF and ESI of the Respondent No.1 Company.
>
> (iii) The Complainant says and submits that the entire control and

> functions of the canteen is with Respondent No.1 and the purported contractor does not have any independence in the working of the canteen as a matter of fact the employees are selected by the respondent no.1 company to work in the canteen. The Complainant say and submit that therefore the Complainants who are working in the canteen of the Respondent No.1 company being statutory obligation of the company to maintain the canteen, it is the real employer of the complainants. The Complainant submits that the employees do work as per the shifts of the Company but the Labour is extracted for 12 to 14 hour a day without over time. The wages are not paid on time. The Complainant states that no weekly off is given to many of the employees. The Respondent No.1 Company has provided for service quarter to reside for the canteen employees. It is further submitted that the Respondents are making deduction in wages for no reasons. It is also submitted that the Respondent No.1 Company reimburse the wages paid to those employees to the Contractor."

15) In the light of the above averments and prayer for declaration that 26 workers are permanent employees of Petitioner-Company, the law expounded by the Apex Court in its judgment in ***Cipla Limited*** (supra) would ordinarily apply to the present case. In ***Cipla Limited*** (supra), the Respondent-Union therein had filed Complaint of unfair labour practice under section 28 of the MRTU and PULP Act complaining that the Appellate-Company had deliberately shown the workers of the Union as contract workmen when in fact the Appellant-Company was the real employer. It was contended that the concerned workers were under direct supervision, control and relation of officers of the Appellant-Company and therefore a declaration was sought that the said workers were employees of Appellant-Company therein. The Appellant-Company denied existence of employer-employee relationship and challenged jurisdiction of the Industrial Court to decide Complaint under section 28 of the MRTU and PULP Act. The Apex Court held that object of MRTU & PULP Act is to enforce the provisions relating to unfair labour practices and that therefore undisputed or indisputable existence of employer-employee relationship is *sine qua non* for entertaining Complaint of unfair

labour practice. The Apex Court held in paragraphs 8 and 9 of the judgment as under:

> "8. But one thing is clear - if the employees are working under a contract covered by the Contract Labour (Regulation and Abolition) Act then it is clear that the Labour Court or the industrial adjudicating authorities cannot have any jurisdiction to deal with the matter as it falls within the province of an appropriate Government to abolish the same. **If the case put forth by the workmen is that they have been directly employed by the appellant Company but the contract itself is a camouflage and, therefore, needs to be adjudicated is a matter which can be gone into by appropriate Industrial Tribunal or Labour Court. Such question cannot be examined by the Labour Court or the Industrial Court constituted under the Act. The object of the enactment is, amongst other aspects, enforcing provisions relating to unfair labour practices. If that is so, unless it is undisputed or indisputable that there is employer-employee relationship between the parties, the question of unfair practice cannot be inquired into at all.** The respondent Union came to the Labour Court with a complaint that the workmen are engaged by the appellant through the contractor and though that is ostensible relationship the true relationship is one of master and servant between the appellant and the workmen in question. By this process, workmen repudiate their relationship with the contractor under whom they are employed but claim relationship of an employee under the appellant. That exercise of repudiation of the contract with one and establishment of a legal relationship with another can be done only in a regular Industrial Tribunal/Court under the ID Act.
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> 9. Shri K.K. Singhvi, the learned Senior Advocate appearing for the respondent, submitted that under Section 32 of the Act the Labour Court has the power to "decide all matters arising out of any application or complaint referred to it for decision under any of the provisions of the Act". Section 32 would not enlarge the jurisdiction of the court beyond what is conferred upon it by other provisions of the Act. If under other provisions of the Act the Industrial Tribunal or the Labour Court has no jurisdiction to deal with a particular aspect of the matter, Section 32 does not give such power to it. **In the cases at hand before us, whether a workman can be stated to be the workman of the appellant establishment or not, it must be held that the contract between the appellant and the second respondent is a camouflage or bogus and upon such a decision it can be held that the workman in question is an employee of the appellant establishment. That exercise, we are afraid, would not fall within the scope of either Section 28 or Section 7 of the Act. In cases of this nature where the provisions of the Act are summary in nature and give drastic remedies to the parties concerned elaborate consideration of the question as to relationship of employer-employee cannot be gone into. If at any time the employee concerned was indisputably an employee of the establishment and subsequently it is so disputed, such a question is an incidental question arising under Section 32 of the Act.** Even the

> case pleaded by the respondent Union itself is that the appellant establishment had never recognised the workmen mentioned in Exhibit 'A' as its employees and throughout treated these persons as the employees of the second respondent. If that dispute existed throughout, we think, the Labour Court or the Industrial Court under the Act is not the appropriate court to decide such question, as held by this Court in General Labour Union (Red Flag) v. Ahmedabad Mfg. & Calico Printing Co. Ltd. 1995 Supp (1) SCC 175 : 1995 SCC (L&S) 372, which view was reiterated by us in ***Vividh Kamgar Sabha v. Kalyani Steels Ltd.*** (2001) 2 SCC 381 : (2001) 1 Scale 82."
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> *(emphasis added)*

16) In ***Cipla Ltd.*** (supra) the Apex Court accordingly held that Labour or Industrial Court was not the appropriate Court to decide the question of the contract workers being employees of the Appellant-Company under provisions of section 32 of the MRTU & PULP Act.

17) Little before the decision in ***Cipla Ltd.*** the Apex Court had rendered judgment in ***Vividh Kamgar Sabha*** (supra) in which also the Apex Court held that provisions of MRTU & PULP Act can only be enforced by persons who admittedly are workmen. The Apex Court held in paragraph 5 as under:

> "5. The provisions of the MRTU and PULP Act can only be enforced by persons who admittedly are workmen. If there is dispute as to whether the employees are employees of the company, then that dispute must first be got resolved by raising a dispute before the appropriate forum. It is only after the status as a workmen is established in an appropriate forum that a complaint could be made under the provisions of the MRTU and PULP Act."

18) The same view was earlier expressed by the Apex Court in ***General Labour Union (Red flag), Bombay vs. Ahmedabad Mfg. and Calico Printing Co. Ltd. & ors.***[10]

19) Correctness of view expressed by the Apex Court in ***General Labour Union (Red flag), Bombay*** (supra), ***Vividh Kamgar***

10 1995 Supp (1) SCC 175

Sabha (supra) and ***Cipla Limited*** (supra) was called in question in ***Sarva Shramik Sangh vs. Indian Smelting & Refining Co. Ltd. & others,*** (supra). The Apex Court formulated the issue in paragraph 2 of the judgment as under:

> 2. The appellants contend that the view which was first expressed by this Court in *General Labour Union (Red flag) v. Ahmedabad Mfg.* and *Calico Printing Co. Ltd*. subsequently echoed in many cases including *Vividh Kamgar Sabha v. Kalyani Steels Ltd.* and finally in *CIPLA Ltd. v. Maharashtra General Kamgar Union* is legally unsound and needs a fresh look.

20) The Apex Court however held that the view taken by it in ***Cipla Limited*** (supra) after following the judgments in ***General Labour Union (Red flag), Bombay*** (supra), ***Vividh Kamgar Sabha vs. Kalyani Steel Ltd.***, (supra) was in accordance with the objects sought to be achieved by MRTU & PULP Act and that there was neither any scope nor necessity to reconsider the question once again by Larger Bench. The Apex Court held in paragraphs 24 and 25 as under:

> **24.** The common thread passing through all these judgments is that the threshold question to be decided is whether the industrial dispute could be raised for abolition of the contract labour system in view of the provisions of the Maharashtra Act. What happens to an employee engaged by the contractor if the contract made is abolished, is not really involved in the dispute. There can be no quarrel with the proposition as contended by the appellants that the jurisdiction to decide a matter would essentially depend upon pleadings in the plaint. But in a case like the present one, where the fundamental fact decides the jurisdiction to entertain the complaint itself, the position would be slightly different. In order to entertain a complaint under the Maharashtra Act it has to be established that the claimant was an employee of the employer against whom complaint is made under the ID Act. When there is no dispute about such relationship, as noted in para 9 of *Cipla case* [(2001) 3 SCC 101 : 2001 SCC (L&S) 520] the Maharashtra Act would have full application. When that basic claim is disputed obviously the issue has to be adjudicated by the forum which is competent to adjudicate. The sine qua non for application of the concept of unfair labour practice is the existence of a direct relationship of employer and employee. Until that basic question is decided, the forum recedes to the background in the sense that first that question has to be got separately adjudicated. Even if it is accepted for the sake of arguments that two forums are available, the court certainly can say which is the more appropriate forum to effectively

> get it adjudicated and that is what has been precisely said in the three decisions. Once the existence of a contractor is accepted, it leads to an inevitable conclusion that a relationship exists between the contractor and the complainant. According to them, the contract was a facade and sham one which has no real effectiveness. As rightly observed in *Cipla case* [(2001) 3 SCC 101 : 2001 SCC (L&S) 520] it is the relationship existing by contractual arrangement which is sought to be abandoned and negated and in its place the complainant's claim is to the effect that there was in reality a relationship between the employer and the complainant directly. It is the establishment of the existence of such an arrangement which decides the jurisdiction. That being the position, *Cipla case* [(2001) 3 SCC 101 : 2001 SCC (L&S) 520] rightly held that an industrial dispute has to be raised before the Tribunal under the ID Act to have the issue relating to actual nature of employment sorted out. That being the position, we find that there is no scope for reconsidering *Cipla case* [(2001) 3 SCC 101 : 2001 SCC (L&S) 520] the view which really echoed the one taken about almost a decade back.
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> **25.** That apart, as held by a seven-member Constitution Bench judgment of this Court in *Keshav Mills case* [AIR 1965 SC 1636 : (1965) 2 SCR 908] though this Court has inherent jurisdiction to reconsider and revise its earlier decisions, it would at the same time be reluctant to entertain such pleas unless it is satisfied that there are compelling and substantial reasons to do so and not undertake such an exercise merely for the asking or that the alternate view pressed on the subsequent occasion is more reasonable. For the reasons stated supra, we are of the view that the decision in *Cipla case* [(2001) 3 SCC 101 : 2001 SCC (L&S) 520] was taken not only in tune with the earlier decisions of this Court in *General Labour Union (Red Flag) case* [1995 Supp (1) SCC 175 : 1995 SCC (L&S) 372] and *Vividh Kamgar Sabha case* [(2001) 2 SCC 381 : 2001 SCC (L&S) 436] but quite in accordance with the subject of the enactment and the object which the legislature had in view and the purpose sought to be achieved by the Maharashtra Act and consequently, there is no scope or necessity to reconsider the question once over again by a larger Bench.

21) It appears that another attempt was made before the Apex Court for reconsideration of the views expressed by the Apex Court in above judgments. In ***Tukaram Tanaji Mandhare v. Raymond Woollen Mills Ltd***.[11] the issue of maintainability of Complaints filed by contract employees under MRTU & PULP Act came to be referred to the Full Bench of this Court. The Full Bench, by its Judgment and Order dated 06 June 2005, answered the reference, as under:

> 19. The position, therefore, is that a person who is employed through a contractor who undertakes contracts for execution of any of the

11 (2005) 4 Mah LJ 1045

> whole of the work or any part of the work which is ordinarily work of the undertaking governed by BIR Act is an employee within the meaning of section 3(5) of the MRTU and PULP Act and a complaint of such an employee is maintainable though no direct relationship of employer-employee exists between him and the principal employer. However, if there is a dispute as to whether the contract workers were doing the work which forms part of the undertaking then the workers will have to get the dispute decided independently under the provisions of the BIR Act before approaching the Industrial Court under the MRTU and PULP Act.

22) When judgment of Full Bench of this Court was challenged before the Apex Court, a Reference made to the Larger Bench on submissions by the employees that the view taken by the Apex Court in above three judgments required reconsideration. However, the Supreme Court passed order dated 17 July 2019 in ***Raymond Ltd. Anr. vs. Tukaram Tanaji Mandhare & another***[12] that no specific question was framed for answer by the Larger Bench. The Apex Court considered Full Bench decision of this Court in ***Tukaram Tanaji Mandhare*** and held that the position of law expounded in paragraph 19 of the Full Bench Judgment lays down correct position of law.

23) The law thus appears to be fairly well settled that when declaration of contract being sham and bogus is sought, the Industrial Court would not have jurisdiction to entertain the complaint of unfair labor practice under the provisions of MRTU & PULP Act.

24) In ordinary course therefore, solution to the problem posed before Industrial Court was easy and the Court could have easily ruled absence of jurisdiction to issue declaration of 26 workers being direct employees of Petitioner-Company by dismissing the Complaint. However, a twist is added to the otherwise settled by position of law

12 (Civil Appeal No.5077 of 2006)

in above three judgments of ***Cipla Limited***, ***Vividh Kamgar Sabha*** and ***Sarva Shramik Sangh*** by Mr. Pendse by relying on two judgments of the Apex Court in ***Indian Petrochemicals Corporation Ltd.*** (supra) and ***Hindalco Industries Ltd.*** (supra). It would therefore be necessary to discuss the ratio of the said judgments.

25) In ***Indian Petrochemicals Corporation Ltd.*** the workmen therein had filed a writ petition before this Court seeking a declaration that they are regular workmen of the management and were entitled to have same pay-scales and service conditions as are applicable to regular workmen of the management. The case thus did not arise out of Complaint of unfair labour practice under MRTU & PULP Act and a direct Writ Petition was filed under Article 226 of the Constitution of India before this Court seeking a declaration of canteen workers of Indian Petrochemicals Corporation Ltd. to be the regular workmen of the Management. This is borne out from paragraph 3 of the judgment which read thus:

> "(3) The workmen referred to above, filed the above writ petition before the High Court of Bombay for a declaration that the workmen whose names are shown in Ex. A annexed to the said petition, are the regular workmen of the management and are entitled to have the same pay-scales and service conditions as are applicable to regular workmen of the management. It was further prayed that a direction be given to the management to absorb the workmen listed in the said Ex.A with effect from the actual date of their entering into the service of the canteen of the management and to pay them all consequential benefits including arrears of wages etc."

26) The Apex Court considered the provisions of section 2(1) of the Factories Act and considered its judgment in ***Parimal Chandra Raha and others vs. Life Insurance Corporation of India and others***[13] and held that workmen of statutory canteen would be the

13 (1999) 6 SCC 439

workmen of establishment for the purpose of Factories Act only and not for other purposes. The Apex Court held in paragraph 22 of the judgment as under:

> **22.** If the argument of the workmen in regard to the interpretation of *Raha case* is to be accepted then the same would run counter to the law laid down by a larger Bench of this Court in *Khan case*. On this point similar is the view of another three-Judge Bench of this Court in the case of *Reserve Bank of India* v. *Workmen*. Therefore, following the judgment of this Court in the cases of *Khan* and *R.B.I.* **we hold that the workmen of a statutory canteen would be the workmen of the establishment for the purpose of the Factories Act only and not for all other purposes.**
>
> *(emphasis added)*

27) The Apex Court thereafter went on to consider as to whether such workmen who are treated as workmen of establishment for the purpose of Factories Act could also be considered as employees of the management for all purposes, by observing in paragraph 23 as under:

> **23.** Having held that the workmen in these appeals are the respondent's workmen for the purposes of the Factories Act, we will now deal with the next question arising in this appeal as to whether from the material on record it could be held that the workmen are, in fact, the employees of the Management for all purposes.

28) The Apex Court answered the second issue by holding in paragraphs 25 and 26 as under:

> **25.** Though the canteen in the appellant's establishment is being managed by engaging a contractor, it is also an admitted fact that the canteen has been in existence from the inception of the establishment. It is also an admitted fact that all the employees who were initially employed and those inducted from time to time in the canteen have continued to work in the said canteen uninterruptedly. The employer contends that this continuity of employment of the employees, in spite of there being a change of contractors, was due to an order made by the Industrial Court, Thane, on 10-11-1994 wherein the Industrial Court held that these workmen are entitled to continuity of service in the same canteen irrespective of the change in the contractor. Consequently, a direction was issued to the Management herein to incorporate appropriate clauses in the contract that may be entered into with any outside contractor to ensure the continuity of employment of these workmen. The Management, therefore, contends that the continuous employment of these workmen is not voluntary. A perusal of the said order of the Industrial Court shows that these workmen had contended before the said Court that the Management was indulging in an unfair labour practice and in fact they were employed by the Company.

They specifically contended therein that they are entitled to continue in the employment of the Company irrespective of the change in the contractor. The Industrial Court accepted their contention as against the plea put forth by the Management herein. The employer did not think it appropriate to challenge this decision of the Industrial Court which has become final. This clearly suggests that the Management accepted as a matter of fact that the respondent workmen are permanent employees of the Management's canteen. This is a very significant fact to show the true nature of the respondents' employment. That apart, a perusal of the affidavits filed in this Court and the contract entered into between the Management and the contractor clearly establishes:

(*a*) The canteen has been there since the inception of the appellant's factory.

(*b*) The workmen have been employed for long years and despite a change of contractors the workers have continued to be employed in the canteen.

(*c*) The premises, furniture, fixture, fuel, electricity, utensils etc. have been provided for by the appellant.

(*d*) The wages of the canteen workers have to be reimbursed by the appellant.

(*e*) The supervision and control on the canteen is exercised by the appellant through its authorised officer, as can be seen from the various clauses of the contract between the appellant and the contractor.

(*f*) The contractor is nothing but an agent or a manager of the appellant, who works completely under the supervision, control and directions of the appellant.

(*g*) The workmen have the protection of continuous employment in the establishment.

26. Considering these factors cumulatively, in addition to the fact that the canteen in the establishment of the Management is a statutory canteen, we are of the opinion that in the instant case, the respondent workmen are in fact the workmen of the appellant Management.

(emphasis added)

29) Thus, considering various parameters as enumerated in paragraph 25 of the judgment, the Apex Court held that the canteen established by the management was a statutory canteen and that therefore the Respondent-workmen therein were in fact the workmen of the Appellant-Management. The Apex Court relied upon Constitution Bench Judgment in ***M.M.R. Khan vs. Union of India***[14].

14 1990 Supp SCC 191

30) Relying on the judgment in ***Indian Petrochemicals Corporation Ltd.*** (supra), Mr. Pendse has contended that employees of statutory canteen maintained by Petitioner-Company are also required to be treated as employees of the Petitioner-Management. In my view Mr. Pendse is attempting to jump to the merits of the case which is not the subject matter of determination in the present case. The limited issue that this Court is asked upon to decide in the present Petition is about jurisdiction of the Industrial Court to entertain the Complaint filed by the Respondent-Union. Coming back to the issue involved in the present Petition, Mr. Pendse has also relied upon judgment of the Apex Court in ***Hindalco Industries Ltd.*** (supra), which, according to him, conclusively rules in favour of jurisdiction of the Industrial Court to decide Complaint of unfair labour practice even when declaration of contract being sham and bogus is sought. ***Hindalco Industries Ltd.*** undoubtedly involved filing of the Complaint of unfair labour practice under Item 9 of Schedule IV of the MRTU & PULP Act and the complainant-union sought a declaration that the contract was sham and mere arrangement for purpose of avoiding permanency, wages and benefits applicable to permanent workmen of the company. This is clear from paragraphs 2 and 4 of the judgment which read thus:

> **2.** The respondent herein, namely, Association of Engineering Workers' Union (hereinafter referred to as "the Union") filed a complaint of unfair labour practice under Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the MRTU and PULP Act, 1971") against Hindalco Industries Ltd., the appellant herein (hereinafter referred to as "the Company") before the Industrial Court at Thane. According to the Union, the complainant is a trade union recognised as a representative union of the appellant Company. The Company has engaged employees in unfair labour practices on and from 1971 on a continuous basis from month to month, therefore, the period of limitation is not applicable. However, as a measure of abundant precaution, the Union has filed a separate application for condonation of delay. The Company has

> engaged about 500 workmen in the manufacture of aluminium and aluminium products. The complainant Union (the respondent herein) is a recognised Union for the establishment of the appellant Company. In terms of Section 46 of the Factories Act, 1948, the Company is duty-bound to maintain a canteen for the benefit of workmen working in an establishment. Accordingly, the Company is maintaining a canteen at its Kalwa establishment. In order to avoid giving the workmen working in the canteen, permanency and benefits which are applicable to permanent workmen of the Company, the Company is illegally treating the workmen working in the canteen as contract workmen. It is the specific case of the complainant Union that the contract is sham and is a mere arrangement made for the purpose of avoiding permanency and giving wages and benefits as are applicable to permanent workmen of the Company.
>
> **4.** The Company has engaged and is engaging in unfair labour practices by treating its own workmen as workmen on contract. The workmen are entitled for a declaration that they are the workmen of the Company. In order to comply with the technicalities that are required to be done, the Union is simultaneously making an application to the State Contract Labour Advisory Board to abolish the contract system as far as the canteen is concerned in the appellant Company. The Union is also raising a demand that all the 27 workmen should be absorbed in the Company from the initial date of their employment in the Company and pay them wages and other benefits that are applicable to permanent workmen of the Company.

31) Before the Apex Court, the Appellant in ***Hindalco Industries Ltd.*** raised specific contention of absence of jurisdiction of Industrial Court to entertain Complaint of unfair labour practice under MRTU & PULP Act, which contention is reproduced in paragraph 12 of the judgment as under:

> **12.** Coming to the main issue, according to the Union, the Company is having 500 employees working in manufacturing and other activities. It is their specific case that there is a canteen inside the campus of the manufacturing unit and it is a statutory canteen and, therefore, the employees working in the canteen numbering 27 are the employees of the Company. It is not in dispute that the provisions of the Factories Act, 1948 are applicable to the Company. Section 46(1) mandates that the State Government may make rules requiring that in any specified factory wherein more than 250 workers are ordinarily employed, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers. The presence of a canteen within the company premises and statutory provision as referred to above are not disputed. However, it is the

> case of the Company that the employees in the canteen are working through a contractor and, therefore, they are not entitled for status of permanent employees of the Company. **Mr P.P. Rao, learned Senior Counsel appearing for the appellant Company, by drawing our attention to various decisions of this Court would submit that unless relationship of employer and employee exists, the present issue/claim cannot be gone into by the Industrial Court under the provisions of the MRTU and PULP Act, 1971**.
>
> **In other words, according to him, in view of the objection/stand taken in the reply statement before the Industrial Court, the issue raised by the Union cannot be adjudicated and it is for the Union or workmen to get an order under the provisions of the ID Act and thereafter, approach the Industrial Court for necessary relief, if any**. On the other hand, Mr Deshmukh, learned counsel appearing for the respondent Union vehemently contended that in view of the object of the enactment and all other details such as existence of a canteen from several years, control and supervision by the Company, the contractor is only a name-lender and the Industrial Court has jurisdiction to go into the issue raised in the complaint. He further contended that based on the relevant acceptable materials, the Industrial Court granted relief in favour of the Union which was rightly affirmed by the High Court and the same cannot be lightly interfered under Article 136 of the Constitution of India.
>
> *(emphasis added)*

32) In ***Hindalco Industries Ltd.,*** the Apex Court considered the judgment in ***Indian Petrochemicals Corporation Ltd.*** and proceeded to hold in paragraphs 21 and 22 as under:

> **21.** Being aggrieved by the said judgment and order of the High Court, the management had preferred CA No. 1854 of 1998 and being aggrieved by the conditions imposed while directing the absorption of the employees, on behalf of the workmen CA No. 1855 of 1998 had been preferred before this Court.
>
> **22.** Para 10 of *Parimal Chandra Raha case* shows that while considering at the SLP stage for granting leave, a two-Judge Bench of this Court observed that the questions involved in these appeals are of considerable importance and it will be desirable if the same is decided by a Bench of three Judges. Consequently, both the appeals were heard by a three-Judge Bench. Similar contentions as raised in the case on hand were raised on behalf of the management and workmen. No doubt, taking note of the definition in Section 2(*l*) of the Factories Act which defines "worker", the Court did not accept the workmen's contention that employees of a statutory canteen ipso facto become the employees of the establishment for all purposes. **After considering *Parimal Chandra Raha case* and *M.M.R. Khan* v. *Union of India* and *RBI* v. *Workmen* this Court concluded that the workmen of a statutory canteen would be the workmen of the establishment for the purpose of the Factories Act only and not for all other purposes. Had the three-Judge Bench stopped**

> **therein, we have no other option except to apply the principle as stated in *General Labour Union (Red Flag) case* , *Vividh Kamgar Sabha case* , *Cipla Ltd. case* , *Sarva Shramik Sangh case* and *Oswal Petrochemicals* . However, from para 23 onwards, the three-Judge Bench discussed the main issue with which we are concerned, namely, "whether from the material on record it could be held that the workmen are, in fact, the employees of the management for all purposes".** Since the factual details that arose in *Indian Petrochemicals case* are identical to the case on hand, we reproduce the following discussion and the ultimate conclusion : (*Indian Petrochemicals Corpn. Ltd. case* …….
>
> *(emphasis added)*

33) Mr. Pendse strongly relies upon the judgment in ***Hindalco Industries Company Limited*** particularly the observation wherein the Apex Court has held that if the three Judges Bench in ***IPCL*** was to stop at deciding the first issue of the workmen being treated as workmen of Management only for the purpose of factories, the principles enunciated in ***General Labour Union (Red flag), Bombay***, ***Vividh Kamgar Sabha***, ***Cipla Limited*** and ***Sarva Shramik Sangh*** could have been applied. According to Mr. Pendse in ***Hindalco Industries Ltd.***, the Apex Court did not accept the contention about absence of jurisdiction of Industrial Court despite noticing the judgments in ***General Labour Union (Red flag), Bombay***, ***Vividh Kamgar Sabha, Cipla Limited*** and ***Sarva Shramik Sangh*** and went ahead to hold that factual details in ***Hindalco Industries Ltd.*** were similar to the one involved in ***Indian Petro Chemicals Corporation Ltd.*** and rejected the objection of jurisdiction by holding in paragraph 27 as under:

> **27.** In the light of what has been stated above and in view of abundant factual details as mentioned in para 31 of this judgment as well as the reasonings as laid down in *Indian Petrochemicals Corpn. Ltd. case* , we reject the stand taken by the appellant Company. Accordingly, the appeal fails and the same is dismissed. Inasmuch as the Industrial Court has issued directions as early as on 15-10-1998 and not implemented due to court proceedings, we direct the appellant Company to implement the same within a period of three months from the date of receipt of copy of this judgment. No costs.

34) The issue that arises for consideration is whether the judgments in ***Indian Petrochemicals Corporation Ltd.*** and ***Hindalco Industries Ltd.*** have watered down the ratio of judgments in ***General Labour Union (Red flag), Bombay***, ***Vividh Kamgar Sabha***, ***Cipla Limited*** and ***Sarva Shramik Sangh***. The answer to my mind appears to be in the negative. In ***Indian Petrochemicals Corporation Ltd.***, the Apex Court was not concerned with the issue of jurisdiction of Industrial Court to entertain Complaint of unfair labour practice as a direct Writ Petition was filed before this Court seeking declaration of status of contract worker. Therefore, the judgment in ***Indian Petrochemicals Corporation Ltd.*** cannot be cited in support of an absolute proposition that Industrial Court can have jurisdiction to decide Complaint of unfair labour practice where a declaration is sought that the contract is sham and bogus. Coming to the judgment in ***Hindalco Industries Ltd.*** though it has taken into consideration the argument about absence of jurisdiction of Industrial Court to decide Complaint of unfair labour practice, in my view, the Apex Court found it unnecessary to deal with or decide the said issue as it found that the fact situation was identical to the one involved in the ***Indian Petrochemicals Corporation Ltd.*** case. There is no discussion by the Apex Court about the issue of jurisdiction of Industrial Court to entertain Complaint of unfair labour practice in the light of existence of dispute about employer-employee relationship. Though the argument of absence of jurisdiction made on behalf of management is noted by the Apex Court in paragraph 12 of the judgment, it has not decided the said objection, but has proceeded to decide merits of the case while holding that the concerned contract workers were direct workmen of the management. It must also be borne in mind that the judgment of the Apex Court in ***Sarva Shramik Sangh*** has specifically decided the

issue about need for reconsideration of view expressed in ***General Labour Union (Red flag), Vividh Kamgar Sabha*** and ***Cipla Limited*** and two-Judges of the Apex Court has held that the view expressed in the said judgments is correct and did not require any reconsideration. In the light of this position the judgment in ***Hindalco Industries Ltd.***, rendered in facts of that case cannot be read to mean that as if the ratio in the aforesaid three Judgments is reversed by the Bench of co-ordinate strength in ***Hindalco Industries Ltd.***.

35) In my view therefore neither the judgment in ***Indian Petrochemicals Corporation Ltd.*** nor in ***Hindalco Industries Ltd.*** can be read in support of an absolute proposition of law that the Industrial Court has jurisdiction to decide Complaint of unfair labour practice in every case where declaration is sought about contract being sham and bogus.

36) Mr. Pendse has also relied upon judgment of Division Bench of this Court in ***Hindustan Coca Cola*** (supra) in which this Court has held in paragraph 13 as under:

> **13.** It would be apparent from the above observations of the Supreme Court that if the employer-employee relationship is established by the competent forum, *viz.*, Industrial Tribunal or Labour Court under the Industrial Disputes Act or the employer-employee relationship is undisputed or indisputable then the complaint under the M.P.T.U. & P.U.L.P. Act would be maintainable. **We hasten to add that as pointed out by the Supreme Court in *Cipla, Ltd.* (vide supra), if at any time the employer-employee relationship is recognised by the employer and subsequently it is disputed such a question would be incidental question arising under S. 32 of the Act and the Labour Court or the Industrial Court as the case may be would be competent to decide such question.** However, in a case where the employer had never recognised the workmen as his employees and throughout treated these persons as employees of the contractors, the Court constituted under S. 28 of the MRTU & PULP Act will have no jurisdiction to entertain the complaint unless the

> status of relationship of employer-employee is first determined in a proceedings under the Industrial Disputes Act.
>
> *(emphasis added)*

37) In fact what is observed by Division Bench in ***Hindustan Coca Cola*** is reiteration of the ratio laid down by the Apex Court in its judgment in ***Cipla Limited***, in which also it is held that if the employee is considered at any point of time as employee of the establishment and subsequently the same is disputed, the question would be an incidental question arising under section 32 of the MRTU & PULP Act. The relevant finding by the Apex Court in ***Cipla Limited*** (supra) is as under:

> If at any time the employee concerned was indisputably an employee of the establishment and subsequently it is so disputed, such a question is an incidental question arising under Section 32 of the Act.

38) Relying on the observations of Division Bench in ***Hindustan Coca Cola***, Mr. Pendse has contended that in the present case as well, 26 workers were direct employees of the Petitioner-Company prior to execution of contract in the year 2018 and that therefore Industrial Court has jurisdiction to entertain the Complaint of unfair labour practice. Though Mr. Pendse has submitted across the bar that the 26 workers were treated as direct employees of the Petitioner-Management, the pleadings in this regard in the Complaint appears to be sketchy and there is no direct pleading to this effect. Faced with this situation, Mr. Pendse has relied upon following averments in the Complaint:

> The present Complaint is made for the Employees as per annexure 'A' in the employment of Respondents No.1 Company since last so many years more particularly as per Annexure 'A' to this complaint.

39) In my view the above averments in the Complaint cannot be read to mean that the 26 workers were in direct employment of

Petitioner-Company at any point of time. The above statement is made essentially to narrate particulars of service of the concerned workers. In the entire Complaint, there is no specific averment that any of the said 26 workers were directly engaged by Petitioner-Company at any point of time or that they were paid salaries directly by Petitioner-Company. In fact, the tenor of the Complaint is such that the workers are always treated as contract workers. To salvage this situation, Mr. Pendse has sought to rely upon copy of contract/work order issued in the name of Respondent No.2 and he has submitted that the only contract placed on record by the Petitioner is the one effective from 1 April 2018 and that therefore inference needs to be drawn that prior to 1 April 2018 there was no contractor acting as the intermediatory between the workers and Management. I am unable to accept this contention. In absence of any direct averment by the Respondent-Union about direct engagement of any of the workers by the Petitioner-Company, it was not necessary for Petitioner-Company to produce contracts prior to the year 2018. Since the Complaint is filed for seeking declaration of the direct relationship with Petitioner-Company, it has produced the last contract of Respondent No.2 to defend the Complaint. This however does not mean that there are no contracts executed prior to 1 April 2018. In order to attract the jurisdiction of the Industrial Court by relying upon the above quoted observations to the Apex Court in ***Cipla Limited*** and of Division Bench in ***Hindustan Coca Cola*** it was incumbent on part of the Respondent-Union to make a specific averment in the Complaint that prior to the year 2018 all the workers were direct employees of the Petitioner-Management. There is no such averment in the entire Complaint and therefore it is not possible for this Court to infer that there was direct employer-employee relationship between the Petitioner-Company and workers at any

point of time. The Industrial Court has palpably erred in holding that there was subsisting employer-employee relationship prior to the year 2018, in absence of any averment, much less documentary evidence. In my view therefore judgment of the Apex Court in ***Cipla Limited*** or of this Court in ***Hindustan Coca cola*** cannot be relied upon for the purpose of attracting jurisdiction of the Industrial Court to entertain Complaint of Respondent-Union.

40) Strenuous reliance is placed on judgment of Single Judge of this Court in ***Uni Klinger Ltd.*** (supra). The Petition before this Court was filed by the employer challenging final judgment and order of Industrial Court by which the Complaints were allowed and the employer was directed to grant status and benefits of permanency to the workers concerned. The employer had denied employer-employee relationship and had contended that the concerned workers were engaged through contractors. Both the parties had led evidence and thereafter the Complaints were allowed. The judgment is rendered by this Court after noticing that employer therein did not produce any document to show that the workers were contract labourers and that they were working as contract labourers from first date they were employed. This Court held in paragraphs 34 and 35 as under:

> **34.** It is, thus, clear that the precondition for seeking remedy under the MRTU and PULP Act, 1971 is the necessity of the existence of the Employer-Employee relationship at some point in time. So also, if there is no such relationship and if the Complainants are contract employees right from the beginning of their services, the Principal Employer as well as the Contractor can place on record the documents to prove *prima facie* that no such relationship existed or was established. This would, therefore, prove that the relationship is disputable right from the day the contract labourers were deployed in employment and then the complaint would be rendered untenable at its threshold.
>
> **35.** In the case in hand, barring the mere denials in the Written Statements of the Petitioner as well as Respondent No. 5/Contractor, for a period of 14 years of employment from 1985 to 1999, there was

> nothing placed before the Industrial Court to indicate that the Complainants were indeed contract labourers and were working as contract labourers from the first day they were deployed.

41) The judgment in ***Uni Klinger Ltd.***, in my view is rendered in the facts of that case where there was an assertion by the workers therein that they were engaged directly by the Petitioner therein. In the present case there is no averment that the 26 workers were earlier engaged directly by the Petitioner. Therefore, the judgment in ***Uni Klinger Ltd.*** cannot be read in support of a proposition of law that in every case the burden of proving non-existence of employer-employee relationship since inception, would be on the employer and that the Court can infer absence of contractual engagement from inception even in absence of pleading to that effect.

42) The judgments of the Apex Court in ***Indian Petrochemicals Corporation Ltd.*** and ***Hindalco Industries Ltd.*** will have to be read in the context in which the same are rendered. Both the judgments essentially decide merits of contentions of workmen therein and do not deal with the issue of jurisdiction of Industrial Court. In this regard, reliance by Mr. Talsania on the judgment in ***Bhavnagar University*** (supra) is apposite in which the Apex Court has held in paragraph 59 as under:

> **59. A decision, as is well known, is an authority for which it is decided and not what can logically be deduced therefrom. It is also well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.** [See *Ram Rakhi* v. *Union of India* [AIR 2002 Del 458 (FB)] , *Delhi Admn. (NCT of Delhi)* v. *Manohar Lal* [(2002) 7 SCC 222 : 2002 SCC (Cri) 1670 : AIR 2002 SC 3088] , *Haryana Financial Corpn.* v. *Jagdamba Oil Mills* [(2002) 3 SCC 496 : JT (2002) 1 SC 482] and *Nalini Mahajan (Dr)* v. *Director of Income Tax (Investigation)* [(2002) 257 ITR 123 (Del)]
>
> *(emphasis added)*

43) Though Mr. Talsania has relied upon judgment of the Apex Court in ***Haldiya Refinary Canteen Employees Union*** (supra), in my view it is not necessary to refer to the ratio of the said judgment as the same is rendered in the facts of that case where the Apex Court noticed dissimilarity in fact situation as compared to the facts in ***Indian Petrochemicals Corporation Ltd.*** (supra). Even otherwise the judgment in ***Haldiya Refinary Canteen Employees Union*** may be relevant while deciding the merits of the case of Respondent-Union and the same has no relevance for deciding the issue of jurisdiction of the Industrial Court.

44) The conspectus of the above discussion is that Petitioner-Company has clearly disputed existence of employer-employee relationship. The Complaint itself proceeds on footing that there is no employer-employee relationship and in fact seeks to establish the same. In that view of the matter, the ratio of the judgments in ***General Labour Union (Red flag), Vividh Kamgar Sabha, Cipla Limited*** and ***Sarva Shramik Sangh*** would clearly apply in the present case barring the jurisdiction of the Industrial Court to entertain the Complaint of unfair labour practice. The judgment of Division Bench in ***Hindustan Coca Cola*** does not come to the assistance of Respondent-Union as there is no averment in the Complaint that any of the workers were ever treated as direct employees of the Petitioner-Company. In my view therefore, the Industrial Court has grossly erred in holding that there is subsisting employer-employee relationship prior to the year 2018 for the purpose of assuming jurisdiction.

45) In my view therefore, the impugned order passed by the Industrial Court suffers from palpable error warranting interference

by this Court in exercise of jurisdiction under Article 227 of the Constitution of India. Writ Petition accordingly succeeds, and I proceed to pass the following Order:

(i) Order dated 1 October 2021 passed by Industrial Court is set aside.

(ii) Complaint (ULP) No.2005 of 2019 is dismissed for want of jurisdiction. Dismissal of the Complaint shall however not preclude Respondent Union from taking appropriate steps for establishing direct employer-employee relationship with the Petitioner-Company by invoking the machinery under the Industrial Disputes Act, 1947.

(iii) Nothing observed in the present judgment shall come in the way of deciding merits of any Reference, if and when made in this regard.

46) With the above directions, Writ Petition is **allowed.** Rule is made absolute. There shall be no order as to costs.

(SANDEEP V. MARNE, J.)

47) After the judgment is pronounced, Mr. Pendse would pray for continuation of services of the employees of Respondent-Union for a period of six weeks. The request is fairly not opposed by the learned counsel appearing for Petitioner-Company.

48) In that view of the matter, the services of the employees of Respondent-Union shall be continued for a period of six weeks.

(SANDEEP V. MARNE, J.)