IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9740 OF 2018

Municipal Corporation of City of Jalgaon .. Petitioner
Mahatma Gandhi Road, Nehru Chowk,
Jalgaon, Dist. Jalgaon,
Through its Commissioner.

Versus

1. Miraj Mahila Audyogik Cooperative Society Ltd., .. Respondents
154, Baliram Peth, Jalgaon,
Dist. Jalgaon.

2. Ganesh Pachuji Sankat
[Reported to be dead]
Through LR
Smt. Durgabai Ganesh Sankat,
R/o. Shanipeth, Gurunanak Nagar,
Mamurabad Road, Jalgaon.

3. Kamlabai Atmacharan Dhandore
[Reported to be dead]
Through LR
Aatmacharan Kanhaiyalal Dhandore
R/o. Shanipeth, Gurunanak Nagar,
Mamurabad Road, Jalgaon.

4. Prasad Ramesh Sanap
Age. Major, Occ. Business
R/o. 67, Baliram Peth,
Jalgaon, Dist. Jalgaon.

5. Jalgaon Shahar Mahanagarpalika Kamgar Union,
Jalgaon, Dist. Jalgaon,
Through its General Secretary.

Mr.S.P. Brahme h/f. Mr. Mehul V. Navandar, Advocate for the petitioner.
Mr.R.G. Tupe h/f. Mr. R.O. Awasarmol, Advocate for respondent No.2.
Mr.Vinod P. Patil, Advocate for respondent No.4.
Mr.Parag Vijay Barde, Advocate for respondent No.5.

CORAM	**:**	**KISHORE C. SANT, J.**
RESERVED ON	**:**	**06.06.2023**
PRONOUNCED ON	**:**	**22.08.2023**

J U D G M E N T :-

01. Rule. Rule made returnable forthwith. The petition is heard finally by consent of the parties.

02. The petitioner in this petition is a Municipal Corporation established under the provisions of the Bombay Provincial Municipal Corporation Act, 1949. Respondent Nos.1 to 4 are labour contractors, who were engaged by the petitioner. Respondent No.5 is the Union of workers working as *Safai Kamgars* and Scavengers in petitioner-Corporation.

03. Challenge is raised to a judgment and order dated 26.09.2017 passed by the learned Industrial Tribunal, Jalgaon in Reference (IT) No.01 of 2007, wherein directions are given to the petitioner to treat 645 persons

mentioned in Schedule "B" to Memorandum of Demand as direct employees of the Corporation and to give them all the benefits of a permanent employee from the date of Reference i.e. 24.10.2007. The learned Industrial Tribunal held that there is direct relationship as employer and employee between the petitioner and the sweepers as per list Exh. U-1. It is a case of the petitioner that the Corporation had engaged labour contractors to supply labours for various services in the Corporation. The alleged employees were engaged through the labour contractors and there is no direct relationship as employer and employee between the sweepers and the Corporation.

04. The facts as stated in the petition in short are that the Municipal Corporation published a notice on 06.05.2003 for supply of '*Safai Kamgars*', when there was an Administrator appointed on the Municipal Corporation. On 05.08.2003, the Administrator approved the tenders submitted by respondent No.1 for the year 2003. The work order was confirmed and necessary sanction was given towards finance. Thereafter, again notice for re-tendering for supply of workers was issued on 19.10.2003 by the Assistant Commissioner. On 29.04.2004 respondent No.1 gave an undertaking before the Commissioner and accepted conditions of work order for supply of

workers. This document is termed as an agreement. Same was signed by the contractor and the Deputy Commissioner of the Corporation. On 18.05.2004 similar kind of agreement was executed by respondent No.2.

05. Since services were taken from the workers continuously and no benefits of permanency were granted, on 24.10.2007 the respondent Union submitted a charter of demand. It is contended that the contractors were merely mediators. In-fact the workers are directly employed by the Corporation and there is direct relationship between workers and Corporation. Though there were total 635 posts of *Safai Kamgar,* however, out of that 522 posts were lapsed as those were not filled-in in time.

06. The learned Industrial Tribunal on appreciating evidence held that the contractors were merely camouflage and were shown only to deprive the *Safai Kamgars* from their rights by its award dated 02.04.2015. The Corporation challenged the said judgment by filing petition in this Court. This Court by order dated 29.07.2016 had remanded the reference back to the Industrial Court by holding that the onus of proof was wrongly shifted on the Corporation by framing issue No.2 as under :-

"Does the second party Union prove that the Labour Contractors mentioned in the cause title (4 contractors) are a camouflage and whether the Municipal Corporation is the real employer of the 645 *Safai Kamgar* mentioned in the annexures?"

07. After the remand, the Industrial Tribunal passed fresh order vide its judgment and order dated 26.09.2017 and thus now the Corporation is before this Court.

08. The petitioner has approached this Court mainly contending that the labour contractors were given contract by inviting open tenders by publishing advertisement in the local newspaper. The State Government had taken a conscious decision to permit local self bodies to engage contract workers. The judgment of the Industrial Tribunal is against the law laid down in the case of **State of Karnataka Vs. Uma Devi, reported in (2006) 4 SCC 1**. The direction to give equal pay for equal work as given to the regular workers is not justified. The finding of the learned Tribunal that since there was no signature of the Commissioner on the contract, said contract cannot be treated as a valid contract, is against the law laid down in the judgment of **Steel**

Authority of India Vs. National Union Waterfront Workers (2001) 7 SCC 1.

09. The learned Advocate Mr. Brahme for the petitioner argued that the services of labours were taken through contractor. There is no bar under under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as "CLRA Act" for the sake of brevity). He further submits that the contractors i.e. respondent Nos.1 to 4 were engaged by giving advertisement and work orders were issued to the contractors asking them to provide number of labours. The agreement is executed between the Corporation and the labour contractors, wherein condition No.10 provides that it is responsibility of the contractor to comply with the conditions under the CLRA Act and the rules under the said Act. Condition No.11 provides that the employees engaged through contractor will have no right to get regular service by absorption. Under such circumstances, no statement of claim could have been filed by respondent No.5. He submits that the demand made in the statement of claim was not justified.

. The workers who were engaged through the contractor were never selected by following due process of law by the petitioner-Corporation.

The salary was paid through the contractor. The control over the labour was of the contractors and not of the Corporation. He thus submits that the learned Tribunal has totally failed to appreciate these facts and has passed the order without sufficient evidence and against the legal position. Unless the posts are sanctioned, the Corporation cannot recruit the workers/labours. There is clear record to show that the Contractors were engaged by the Corporation. The judgment is thus contrary to the record. His last submission is that if the judgment is to be implemented there will be huge financial burden upon the Corporation.

10. Though respondent Nos. 1 to 4 have been served time and again, none has turned up to make submissions before the Court. They had not participated in the proceedings before the Tribunal as well.

11. The learned Advocate for respondent No.5 vehemently opposes the petition stating that the case of the petitioner cannot be accepted mainly on the ground that so called contract does not bear signature of the Commissioner. The contract is signed by the Deputy Commissioner as an attesting witness. There is no order produced on record to show that the

power to enter into contract on behalf of the Corporation was delegated to the Deputy Commissioner. The Contract is against the provisions of sections 73, 74 and Chapter 5 of the Schedule-D of the Maharashtra Municipal Corporation Act. The Corporation has not examined any witness to prove the contract. The Government Resolution relied upon by the petitioner is not applicable to the labours, sweepers, scavengers etc. The Corporation and the Contractors both do not have license under the CLRA Act. The work of the employees is supervised, controlled and monitored by the Corporation. The work is also assigned by the Corporation only. The muster of the employees is maintained by the Corporation. Even the wages are calculated and fixed by the Corporation. The work is of continuous nature. Work of sweepers, ccavengers and *Safai Kamgars* can never be of temporary nature. On the strength of judgment in the case of **Hussainbhai Vs. The Alath Factory Tezhilali Union and Ors., reported in AIR 1978 SC 1410**, he submits that the employees are ultimately working for the Corporation and the same is having economic control over the scheme and continuous work is available. The Corporation has not laid any evidence for the period prior to 2003 and even after 2004. The witnesses have clearly admitted case of respondent No.5.

12. On the basis of submissions, this Court has to examine the judgment delivered by the learned Tribunal. For this it is now necessary to look into the evidence of the witnesses on the material aspect. The first witness on behalf of respondent No.5 stated that the work is of sweepers, scavengers, that is, the work which is continuously available with the Corporation. All the workers were working under the control of the Corporation. It is the Corporation, who used to supervise the work of the employees. The workers were coming under the Health Department of the Corporation. The conciliation process was undertaken through the Asstt. Labour Commissioner, Jalgaon, however, the same could not be successful and the report was submitted to the Government. It is the Government who referred the dispute to the Court. The reference was in respect of 645 employees. There is work available around the year. The work done by the regular employees of the Corporation and the members of the Union is the same. Work is supervised by the Sanitary Inspector and *Mukadam*. The attendance is also taken by the Sanitary Inspector and the *Mukadam*. It is clearly stated that though the Contractors are changed, the workers remain the same. The Contractors had no role in day-to-day work of these workers. The Contractors do not possess license under the CLRA Act. Even the

Corporation does not have any such license and then there is requisition about providing of the facilities by the Corporation like regular employees. He thus deposed that all the workers are entitled to get benefits of permanency.

13. Cross-examination of this witness shows that the questions were asked as to how many posts were sanctioned by the Government etc. Naturally those could not be answered by this witness. Thus, cross-examination is not on the material aspect. Another witness of the Union has also deposed on the same lines as the first witness. To this witness also questions in cross-examination were asked. However, nothing is brought to show that the work was not of permanent nature etc. The Corporation on its behalf also examined witness. From cross-examination of the witness of the Corporation, it is seen that he accepted that as per CLRA Act, the registration of the Corporation needs to be done. However, he could not give any details of having such registration and license. The Court on its own asked the question as to how 523 posts of *Safai Kamgars* were lapsed. The answer given by the witness of the Corporation is that since the posts were not filled-in in time, those posts have been lapsed. To the question as to why the posts were not filled in time, this witness could not answer the question stating that it to

be done by the Establishment Section. The witness happens to be a Health Officer working in the Corporation.

14. On this basis, the learned Member passed the award and held that the labour contractors are merely a camouflage and it was Municipal Corporation, who was the real employer of all 645 *Safai Kamgars*. It is held that the Union has proved that all the members are entitled for the reliefs as prayed for and allowed the reference. The Tribunal discussed the evidence. It is mainly observed that the Corporation was not a party to the contract. The signature of the Dy. Commissioner only appears as attesting witness and not as a party to the contract. From the evidence of the Health Officer it is seen that, it is the *Mukadam* and Health Inspector who used to supervise the work of the employees and it is they who used to get the work done. The attendance was also taken by the *Mukadam* and the Health Officer. No license either by the Corporation or by the Contractor is produced on record as required under the CLRA Act. Thus the Corporation is having control over the workers and the contractors had no role except to pay wages. On the sanctioned posts, it is observed that the posts were lapsed because of the inaction on the part of the Corporation and it is for this reason the posts are

said to be not available.

15. The learned Advocate for the petitioner relied upon judgment in the case of (i) **Steel Authority of India Vs. National Union Water Front Workers, AIR 2001 SC 3527.** (ii) **Balwant Rai Saluja Vs. Air India Ltd. & Ors., AIR 2015 SC 375**.

16. In the judgment of **Steel Authority of India (Supra)** the Hon'ble Apex Court has considered the provisions of the CLRA Act. The question in that case was as to whether the contract labours can be automatically absorbed in the employment. The Hon'ble Apex Court answered that when the legislature had no intention to provide direct absorption in the provisions of the Act then it cannot be done and given effect to what is not provided specifically. In the judgment of **Balwant Rai (Supra)**, the question was mainly about the contractors working and the statutory contractors. In that case it was specific case that the issues of the appointment of the workmen, their dismissal, appointment and their salary were within the control of the contractor and it was held that the workmen cannot be placed on same footing as workers of principal employer. It is on that ground it was held that

said workers were not entitled to get regularization in service.

17. The learned Advocate for respondent No.5 mainly relied upon judgment in the case of (i) **Hussainbhai Vs. The Alath Factory Tezhilali Union reported in AIR 1987 SC 1410**. (ii) **M/s. Bharat Heavy Electricals Ltd. Vs. State of U.P. and Ors., reported in 2003 AIR SCW 3469,** (iii) **International Airport Authority of India Vs. International Air Cargo Workers' Union & Anr., 2009 AIR (SCW) 4926,** (iv) **Bhilwara Dugdh Utpadak Sahakari S. Ltd. Vs. Vinod Kumar Sharma dead by LRs., 2011 AIR SCW 5288** and latest judgment in the case of (v) **State of Punjab and Ors. Vs. Jagjit Singh & Ors., AIR 2016 SC 5176**.

18. In the case of **Hussainbhai (Supra)** the Hon'ble Apex Court has laid down test as to who can be said to be workman and employer. It is held that the true test is that where a worker or group of workers, labours to produce goods or services and these goods or services are for the business of another, that other is, in-fact, the employer. If a person for any reason chokes off the worker is virtually laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship *ex*

contractu is of no consequence. In that case the work was supervised by the employee of the company. The attendance was also recorded by another employee of the company and thus it was held that there is employer employee relationship between the parties.

19. In the case of **Bhilwara (Supra)** the Hon'ble Apex Court has held that the finding of facts of Labour Court as regards holding respondents as employees of the appellant and not of the Contractor, supported by the reasons and therefore it is held that it is not proper to interfere with the said finding of fact.

20. In the judgment in the case of **State of Punjab Vs. Jagjit Singh (Supra)**, the Hon'ble Apex Court has considered the principal of equal pay for equal work . In para 42 of the said judgment the Hon'ble Apex Court held that the employees on regular basis are entitled to equal pay for equal work.

21. This Court also had an occasion to consider as to whether mere completion of 240 days in service would make an employee entitle to claim permanency as per section 25-B of the Industrial Disputes Act. In the case of

Municipal Council, Tirora and Anr. Vs. Tulsidas Baliram Bindhade reported in 2016(6)Mh.L.J.867, a Division Bench of this Court in a reference, by considering the legal position and the judgments in the light of section 76 of the Maharashtra Municipal Corporations Act held that the Municipal Council does not have authority to create posts of officers and servants other than those specified in sub-sections (1) and (2) of section 75 of the Act. Then it is the Government who has to create the posts. This Court, therefore, held that in the cases of Municipal Councils, there cannot be automatic absorption of temporary employee as permanent employee. It is thus held that in absence of any vacant posts with the Municipal Council, a workman cannot invoke Clause 4C of the Model Standard Order and the reference was answered with mere putting continuous service of 240 days or more in 12 months, cannot invoke clause 4C of the Model Standard Order to claim either permanancy or regularization. Thus, it is clear that there cannot be direction issued for absorption of employee as permanent.

22. This Court in the case of Mukhyadhikari, Nagar Parishad, Tuljapur Vs. Vishal Vijay Amarutrao, reported in 2015(5) Mh.L.J.75 also considered the provisions of section 25-B along with provisions of the Industrial Disputes Act

and Schedule IV Item Nos. 5,6,9 and 10 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act. In the said case claim was made for permanency and service benefits by the workers working with the Municipal Council, on the ground that they had completed 240 days in continuous service. Said work was of perennial in nature. In that matter, directions were issued by the Industrial Court to the Municipal Council to submit proposal for approval and consideration for permanency. Said order was upheld by this Court to the extent of directions given to the Municipal Council to send proposal to the Government for approval. So far as direction given to grant of permanency and declaration of Unfair Labour Practice the order was set aside. Further the Municipal Council was directed to do the said exercise within two months and the State was directed to take decision on the said proposal within four months on receipt of said proposal.

23. This Court again in a group of petitions along with **Writ Petition No.1843 of 2015 in the case of Municipal Council Tuljapur Vs. Baban Hussain Dhale (Dead) through LRs. & Ors.**, had passed similar order. This Court, thus, finds that it is the proper course to be adopted.

24. Thus, considering all these submissions and the judgments, this Court finds that the learned Tribunal has rightly come to a conclusion that the work was of permanent nature. There is no license held either by the Corporation or by the contractors as required under the CLRA Act. Supervision and entire control over these workers was with the petitioner Corporation. Though the contractors were changed, the labours/workers remained the same. Though the posts were not available, however, those were lapsed because those were not filled-in in time by the Corporation. It is inaction on the part of the Corporation in filling up the posts in time. When the Corporation and contractors both do not possess license under the Act, the Corporation could not have engaged the contractors to provide labour. However, assuming that the contracts were legally entered between the parties, still from the record it is clear that the labours remained the same and they were not employed by a contractor. The judgment in the case of **Steel Authority of India (Supra)** would not be applicable to the present case as it was a case of absorption of the workers. The second judgment in the case of **Balwant Rai (Supra)** is also not applicable to the case of the petitioner. The judgment relied upon by respondent No.5 in the case of **Hussainbhai (Supra)** clearly lays down test of the worker and the employer. In view of the fact, this

Court finds that the learned Member has not committed any mistake or illegality in coming to a conclusion that the members of respondent No.5 Union were direct employees of the Corporation. Said finding is based on the evidence laid before the Tribunal and is well reasoned finding. This Court finds that no interference is required with the said finding of fact, in view of the judgment of the Supreme Court in the case of **Hussainbhai (Supra).**

25. This Court finds that the learned Presiding Officer by way of the impugned order has rightly declared that the alleged Labour Contractors mentioned in cause title are a camouflage. There exists employer-employee relationship between the first party and the sweepers enlisted with the Memorandum of Demand Exh.U-1. So far as clause (b) of the impugned order is concerned, this Court finds that it can be modified as done in the case of **Mukhyadhikari, Nagar Parishad, Tuljapur (Supra)**, by directing the petitioner to send proposal to the Government in respect of sweepers whose names are mentioned in Memorandum of Demand Exh. U-1 within two months from date of decision of this petition. The Government shall consider said proposal and decide the same within four months thereafter. Hence, following order :-

ORDER

(i) The writ petition is dismissed with costs.

(ii) Rule stands discharged.

[KISHORE C. SANT, J.]

snk/2023/JUN23/wp9740.18