

(1996) 01 KAR CK 0074

In the Karnataka High Court

Case No : Writ Petition No"s. 25807 to 25814 of 1992

Ananda and Others

APPELLANT

Vs

Karnataka State Electricity Board

RESPONDENT

Date of Decision : 05-01-1996

Acts Referred:

Constitution of India, 1950 — Article 38, 39, 42, 43, 43A

Citation : (1996) ILR (Kar) 2163

Hon'ble Judges : V.P. Mohan Kumar, J

Bench : Single Bench

Advocate : M.C. Narasimhan, for the Appellant; B.C. Prabhakar, for Bhoopalam Associates, for the Respondent

Judgement

V.P. Mohan Kumar, J.—The controversy to be adjudicated in these Writ Petitions relates to claim of equality prayed for by a group of workers who are working in a canteen attached to the office of the 1st respondent. The allegation runs as follows.

2. The petitioners are working in the K.E.B. Canteen established by the 1st respondent for benefit of its employees numbering around 800 working in the K.E.B. Office in Cauvery Bhavan. They claim that they are the lowest paid employees and their salary is not on par with other employees of the K.E.B. Since their numerical strength is negligible, they allege that no trade union is willing to sponsor their cause. The canteen is catering the need of nearly 800 employees working in the premises of the 1st respondent in Cauvery Bhavan in Bangalore during the office hours. The petitioners allege that they have been working since 1985-86. According to the petitioners the canteen is being run by the 2nd respondent who is appointed by the 1st respondent. The 2nd respondent consists of Officers and employees of the Karnataka Electricity Board. The petitioners allege that the committee is running the canteen under the control and guidance of the 1st respondent. The capital is furnished by the 1st respondent; the premises belongs to the 1st respondent so also the moveables

and other property belong to the 1st respondent. The accounts are audited by the 1st respondent. According to them the 1st respondent virtually controls the running of the canteen. They have alleged that there are posts similar to that of held by the petitioners namely canteen Manager, Cook-cum-Butler in the Board service. They are paid the following salary:

Canteen Manager : Rs. 1300-3535/-

Cook-cum-Butler : Rs. 1015 - 2050/-

Besides these employees are entitled to D.A. and other benefits. In contrast among the petitioners the highest salary inclusive of D.A. and other perquisites is Rs. 753.50 and the lowest is Rs. 541.80. They also submit that the lowest paid worker in K.E.B. received Rs. 2000/- besides D.A. They allege that several representations made by them to the 1st respondent have been of no avail. The employer is not paying even the minimum wages as per statute. Minimum wages payable to cleaners and such categories would be Rs. 568.60+Rs. 143.25. This shows how their claim is neglected. The petitioners have therefore prayed for the following relief.

"to call for the records of the case and to direct by mandamus a writ of mandamus, the Karnataka Electricity Board and the Managing Committee of the Canteen to revise the wages of the petitioners so as to bring it in a par with the regular employees of the Karnataka Electricity Board at the corresponding level or category."

3. Detailed statement of objection has been filed by the 1st respondent. They deny the claim of the petitioners. The principal contention is that the petitioners have not been appointed by the 1st respondent and that therefore they cannot claim wages on par with the employees of the K.E.B. The K.E.B. provides, premises, furniture, power, water and light to run the canteen free of charge as a gesture of good will. A limited amount of the seed money is also sanctioned to run the canteen which is being run by the managing committee. The 1st respondent has no responsibility or liability in respect of the management. The petitioners were appointed by the Managing Committee the 2nd respondent and therefore they cannot have any claim against the K.E.B. There are no corresponding posts in the K.E.B. There is no comparison between the canteen employees and minimum wages paid to the lowest grade official of the K.E.B. The canteen employees are paid wages in accordance with the Minimum Wages Act. Thus the main stress of the contention urged by the 1st respondent is that the canteen employees cannot look upon the K.E.B. as its employer as all of them have been appointed by the canteen committee running the canteen.

4. It is seen that the canteen was in existence since some time. There were complaints that the contractor who was running the canteen was not functioning satisfactory. The 1st respondent thereupon noticed that the employees working in the Cauvery Bhavan were going out for taking their refreshments. Hence, in order to improve this situation and to improve the efficiency of the workers an

ad hoc committee was constituted to make recommendations; the said committee recommended the running of a canteen through a Managing Committee and it suggested the formation of a Managing Committee with the Public Relation Officer of the K.E.B. as its Chairman to run the canteen. The 1st respondent thereupon issued the following order:

"PREAMBLE:

The Memorandum of settlement dated 31.12.1980 entered into between the Management, KEB and KEB Employee's Union (Reg.No. 659).

2. The present Canteen which is now run by the Contractor in Cauvery Bhavan is not functioning satisfactorily. As such many of the employees are found going out for taking their refreshments. In order to improve this situation, an Ad hoc Committee was constituted to make recommendations to the Board for running the canteen on "NO PROFIT/NO LOSS BASIS" and to improve the quality and to avoid loss of time by the staff going out during office hours.

3. The Ad hoc Committee has suggested among other things that the Canteen may run by a Managing Committee with the Public Relation Officer, KEB as its Chairman.

4. The Ad hoc Committee has solicited that the Managing Committee may be provided (by the Management of KEB) with the facilities of premises, free power, water supply, available furniture, cooking utensils, crockery, cutlery, etc. and for sparing to the Canteen Committee the help of an Assistant. The canteen duly constituted may operate from 10th September 1986 which will replace the existing canteen.

ORDER No. KE/CLO.B14.8509/84-85 BANGALORE, DATED : 30TH AUGUST, 1986

After careful consideration of all aspects of the matter, sanction is accorded to run the "KEB CANTEEN" in Cauvery Bhavan, by a Committee appointed by the Board (vide Annexure - "A") as a staff welfare measure, for a period of one year only (in the first instance) on experimental basis.

2. The Canteen shall be called "THE K.E.B. CANTEEN". The Management agrees to provide the following facilities to the Committee;

1. Free electricity and water supply in the premises to be used for canteen facilities;

2. The furniture existing in the present canteen will be handed over to the Committee for use in the Canteen.

3. A seed capital of Rs. 43,000/- (Rupees forty three thousand only) is sanctioned towards Working expenses namely:-

(i) purchase of cooking utensils, crockery, cutlery, electric and gas ovens etc.,

(ii) Initial purchase of provisions;

- (iii) one month salary of staff to be appointed like cooks, servers etc;
- (iv) Assistants of one Assistant on full time basis to work as Manager-cum-Cashier to the Committee.

The entire equipment and furniture handed over to the Committee/acquired by the Committee for the use of canteen in the course of their term shall be the property of the Board. In the event of the Managing Committee being unable to carry on the objectives satisfactorily, the Managing Committee shall be jointly and severally accountable for all the furnitures and equipments provided, which shall be returned to the Board. The account of articles of furnitures and equipment supplied/purchased shall be maintained properly by the Committee.

The Chairman of the Committee is requested to take necessary action to start the canteen from 10.9.1986.

It is clarified that the canteen shall be an institution run by the Managing Committee. The Management of K.E.B. shall have nothing to do with or be responsible for any liabilities created or for the staff employed by the Managing Committee or for any other matter.

- 3. The Committee shall open a Bank account in any of the local banks which shall be jointly operated by the Secretary and the Treasurer.
- 4. The working of the canteen under the above arrangement would be reviewed at the end of one year, after which future set up could be decided.
- 5. The head of account to which the seed money is to be debited will be intimated by the Financial Adviser & Chief Accounts Officer.

By order, Sd/- - 30/8 Secretary, KEB."

The following features may be noted from the above said order.

- (i) The canteen committee is created by the 1st respondent to run the Canteen;
- (ii) The committee shall be constituted by the KEB and its members are the officials of the KEB;
- (iii) The Chairman of the Committee will be a designated officer of the KEB;
- (iv) Electricity and water will be supplied by the KEB free of charges;
- (v) furniture belonging to the KEB will be handed over to the Canteen Committee for use;
- (vi) Seed money for
 - (a) purchase of crockery etc.
 - (b) purchase of furniture
 - (c) for payment of initial salary of the workers employed in the canteen will be

provided by the KEB, interest free.

(vii) service of one of the staff of the KEB will be made available to the Committee to work as Manager-cum-Cashier.

(viii) The equipment and furniture handed over to the Committee for the use and such of those to be acquired in future will be the property of the KEB.

(ix) All equipments acquired by the Committee also to be handed back to the Board at the end if and when canteen ceases to work.

(x) The working of the canteen will be reviewed by the Board once a year.

5. A careful consideration of the various conditions stipulated above will clearly show that there is the invisible hand of the KEB, the 1st respondent herein controlling the affairs and running of the canteen. The Managing Committee is "appointed" by the KEB. The office of the Chairman goes by the designation of this officer and not to any individual. Every member of the Committee is an officer of the KEB. The KEB provides the seed money. This money is utilised besides for acquiring the crockery, utensils, purchase of provisions, but also for the purpose of payment of wages to the workers for the first month. It is to be noted that the services of an officer of the KEB is made available to the Committee to function as its Manager-cum-Cashier. The KEB has also made available the equipment and furniture to run the canteen. It supplies free electricity and water. That is to say every thing required for running the canteen is provided by the KEB. While, it makes available existing furniture and equipments it is also provided that whatever is acquired by the Managing Committee in future from out of the income generated by running the canteen will also form the property of the KEB. It means, every item of the property be it acquired by the Committee or not will pass on to the KEB. The Committee is directed to run the canteen "no profit/no loss" basis. It is not provided anywhere that the canteen committee need return the seed money or pay any interest on the amount advanced. In view of these dominant features it will not be wrong if we infer that the 1st respondent itself runs the canteen for all purposes.

6. Now similar question as to the status of a worker in a canteen attached to an industrial establishment had come up for consideration before various courts. Recently the Supreme Court had occasion to survey the case law in *PARIMAL CHANDRA RAHA AND ORS. v. LIFE INSURANCE CORPORATION OF INDIA AND ORS.* AIR 1995 SC 1666. and after an exhaustive survey of the decision, Their Lordships summarised the position as hereunder:

"9. What emerges from the statute law and the judicial decisions is as follows:

(i) Where, as under the provisions of the Factories Act, it is statutorily obligatory on the employer to provide and maintain canteen for the use of his employees, the canteen becomes a part of the establishments and, therefore, the workers employed in such canteen are the employees of the management.

(ii) Where, although it is not statutorily obligatory to provide a canteen, it is otherwise an obligation on the employer to provide a canteen, the canteen becomes a part of the establishment and the workers working in the canteen, the employees of the management. The obligation to provide a canteen has to be distinguished from the obligation to provide facilities to run canteen. The canteen run pursuant to the latter obligation, does not become a part of the establishment.

(iii) The obligation to provide canteen may be explicit or implicit. Where the obligation is not explicitly accepted by or cast upon the employer either by an agreement or an award etc., it may be inferred from the circumstances, and the provision of the canteen may be held to have become a part of the service conditions of the employees. Whether the provision for canteen services has become a part of the service conditions or not, is a question of fact to be determined on the facts and circumstances in each case.

Where to provide canteen services has become a part of the service conditions of the employees, the canteen becomes a part of the establishment and the workers in such canteen become the employees of the management.

(iv) Whether a particular facility or service has become impliedly a part of the service conditions of the employees or not, will depend, among others, on the nature of the service/facility, the contribution the service in question makes to the efficiency of the employees and the establishment, whether the service is available as a matter of right to all the employees in their capacity as employees and nothing more, the number of employees employed in the establishment and the number of employees who avail of the service, the length of time for which the service has been continuously available, the hours during which it is available, the nature and character of management, the interest taken by the employer in providing, maintaining, supervising and controlling the service, the contribution made by the management in the form of infrastructure and funds for making the service available etc."

In this case, obviously the reason why the canteen was established was to enhance the efficiency of the worker. The order issued by the Board itself indicates that due to the absence of a canteen the workers were found going out for taking their refreshments. This had affected the efficiency of the workers. The KEB wanted to curb it to enhance the productivity of the workers. Secondly, it is seen that the genesis of the establishment of the canteen facility has arisen out of a memorandum of settlement dated 13-12-1980 entered between the Board and KEB employees union. It is thus apparently an obligation cast on the employer to establish a canteen. The service of the canteen is available to all workers working at the Cauvery Bhavan. The number of employees who avail the service is nearly 800. The appointment order issued to the petitioners. (Annexure A and similar documents) indicates that the working of the canteen is confined to the time and the days on which the KEB works and whatever holiday on which the KEB offices remained closed is treated as holiday for the canteen as well.

This means the canteen is solely and exclusively intended for the benefit of the employees working in the office of the KEB at Cauvery Bhavan. The management of the canteen is also in the control of the KEB. The Chairman of the Committee is the Public Relations Officer. A person continues as a Chairman of the committee so long as he is the Public Relations Officer of the KEB. It means the KEB can will and control as to who should be the Chairman. No one other than an official of the KEB can be a member of the Managing Committee. It is constituted by the KEB. All the furniture, equipments and other moveables belong to the KEB and whatever acquired from out of the income of the canteen, also becomes the property of the KEB. In other workers with the income generated the canteen acquires property for the KEB. The Manager-cum-Cashier of the canteen is a full time employee of the KEB and his salary is paid by the KEB. The premises to run the canteen belongs to the KEB and is made available for the use free of charge. Likewise electricity and water is also supplied free of costs to the Canteen. An interest free seed money of Rs. 43,000/-is also made available to the canteen committee. It is not disclosed as to whether it should be returned. The KEB has dictated the use of the seed money. It includes payment of salary of the workers for the initial month. In short in the premises belonging to the KEB utilising its equipments, furniture, crockeries, and the free electrical energy and water supplied by the KEB and by purchasing the provision and paying the salary with the money made available by the KEB itself, the committee runs a canteen for the need of the employees working in the KEB office in Cauvery Bhavan and only on such days and hours that the staff of the KEB works, with the sole object of improving the efficiency of the employees employed in the office of the KEB in Cauvery Bhavan. These are admitted facts. What is the status of such a canteen and who is the employer of the workers employed in the canteen?

7. As regards the first aspect of the question is concerned the Office of the KEB situate in Cauvery Bhavan is part of the Electricity Board itself. The work carried by the employee in the office at Cauvery Bhavan has direct nexus to the work of the Electricity Board namely generating, transforming or transmitting of power. This can be deduced from the following observation of the decision of the Supreme Court in Nagpur Electric Lights and Power Co. Ltd. Vs. Regional Director Employees State Insurance Corporation, etc., , wherein it is stated as under :

"...All these employees, clerical or otherwise, are employed in connection with the work of the factory, that is to say, connection with the work of transforming and transmitting electrical power. Some of the employees are clerks; they are not engaged in manual labour. But a person doing non-manual work can be an employee within the meaning of Section 2(9)(i) if he is employed in connection with work of the factory. The duties of the administrative staff are directly connected with the work of the factory. The case of Employees" State Insurance Corporation, Bombay v. Raman 1957 I L.L.J. 267 is distinguishable. In that case a company had a factory and an administrative office. The office was situated in a building which was situated within the same compound in which the factory was located. The entire compound was surrounded by one compound wall. It was

found that the work of the factory began with the collection of raw materials and ended with the production of finished articles and the work of selling the products was not connected with the work of the factory. The administrative office handled sales of the products manufactured in the factory as well as goods imported from abroad. The factory and the administrative office maintained separate muster and wage rolls and separate accounts. In these circumstances, it was held that the clerks employed in the administrative office, whose work consisted mainly of taking down dictations from the manager and other officers and typing out letters, were not employees within the meaning of Section 2(9)."

This decision of the Supreme Court has been later explained and the said principle was enlarged in the decision *G.L. Hotels Limited and Others Vs. T.C. Sarin and Another*, wherein it is stated as follows:

"...In this connection, he invited our attention to certain observations in *Nagpur Electric Light & Power Co. Ltd. v. Regional Director, Employees' State Insurance Corporation*. At page 96 of the said judgment, the Court has observed as follows:

"In view of Section 2(k)(iii) the process of transforming electrical energy from a high to a low potential and the process of transmitting the energy through supply lines are both manufacturing processes. In a part of the premises occupied by the company, the two processes are carried on with the aid of power by means of electrical gadgets and other devices. On the premises more than twenty persons were and are working. No part of the premises is used for purposes unconnected with the manufacturing processes. The premises therefore constitute a factory within the meaning of Section 2(12) of the *Employees' State Insurance Act, 1948*."

7. The observation in the aforesaid paragraph namely "no part of the premises is used for purposes unconnected with the manufacturing processes" has been strongly relied upon by Shri Sorabjee to contend that according to this Court the rest of the premises of the hotel must be shown to be connected with the kitchen-activities and unless it is so shown, the rest of the hotel-premises cannot be covered by the said Act. There is no doubt that in the course of explaining the activity which was under consideration in the said judgment the Court has made the observation in question to show how in fact, even the activities carried on in the rest of the premises were also connected with the manufacturing process. The observation is, however, not the basis of the conclusion arrived at there. The observation has to be understood in the context in which it was made and cannot be interpreted to mean that in every case, such a connection has necessarily to be established in all respects. It is enough, according to us, that the manufacturing activity has a broad connection with the activities carried on in the rest of the premises."

These aspects clearly bring out that as there is unity of management and functional integrality between the employees working in Cauvery Bhavan and other wings of the KEB, both would form one establishment. The other wings of

the KEB cannot function without the office working in Cauvery Bhavan. The Board cannot run unless salaries and other benefits due to the workers are paid to the workman; it cannot also function without the necessary accounting and statistical data being prepared. Thus the office of the KEB in Cauvery Bhavan is an integral part of the premises where the electricity is generated, transformed and transmitted. It is therefore part of the same establishment. As noticed in the decision reported in *G.L. Hotels Limited and Others Vs. T.C. Sarin and Another*, , it is not necessary that all wings should be situated in the same premises. If so, inferentially it can be safely held that the canteen functioning in the Cauvery Bhavan as a facility to provide refreshments to the employees working in the KEB office is also part of the establishment.

8. Now, who is the employer of the workers working in the canteen? Can the Managing Committee be treated as their employer? The answer to this question would be "no".

9. We may commence to examine the question after noticing the following observations of the Supreme Court in *Silver Jubilee Tailoring House and Others Vs. Chief Inspector of Shops and Establishments and Another*, :-

"29. During the last two decades the emphasis in the field has shifted and no longer rests so strongly upon the question of control. Control is obviously an important factor and in many cases it may still be the decisive factor. But it is wrong to say that in every case it is decisive. It is now no more than a factor, although an important one. (13)

30. The fact that generally the workers attend the shop which belongs to the employer and work there, on the machines, also belonging to him, is a relevant factor. When the services are performed generally in the employer's premises, this is some indication that the contract is a contract of service. It is possible that this is another facet of the incidental feature of employment. This is the sort of situation in which a court may well feel inclined to apply to "organisation" test suggested by Denning, L.J. in *Stevenson Jordan and Harrison v. Macdonald and Evans*. (14)

31. The further fact that "a worker can be removed" which means nothing more than that the employer has the liberty not to give further work to an employee who has not performed his job according to the instructions of the employer, or who has been absent from the shop for a long time as spoken to by the Inspector of Labour in his evidence, would be speak of control and supervision consistent with the character of the business.

32. That the workers work on the machines supplied by the proprietor of the shop is an important consideration in determining the nature of the relationship. If the employer provides the equipment, this is some indication that the contract is a contract of service, whereas if the other party provides the equipment, this is some evidence that he is an independent contractor. It seems that this is not based on the theory that if the employer provides the equipment he retains some

greater degree of control, for, as already seen, where the control arises only from the need to protect one's own property, little significance can attach to the power of control for this purpose. It seems, therefore, that the importance of the provision of equipment lies in the simple fact that, in most circumstances, where a person hires out a piece of work to an independent contractor, he expects the contractor to provide all the necessary tools and equipment, whereas if he employs a servant he expects to provide them himself. It follows from this that no sensible inference can be drawn from this factor in circumstances where it is customary for servants to provide their own equipment. (15)

33. Section 220(2) of the American Restatement, Agency 2d. includes among the relevant factors:

"(e) whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work."

The comment on the first part of this paragraph is in these words :

"Ownership of instrumentalities. The ownership of the instrumentalities and tools used in the work is of importance. The fact that a worker supplies his own tools is some evidence that he is not a servant. On the other hand, if the worker is using his employer's tools or instrumentalities, especially if they are of substantial value, it is normally understood that he will follow the directions of the owner in their use, and this indicates that the owner is a master. This fact is, however, only of evidential value."

It might be that little weight can today be put upon the provisions of tools of minor character as opposed to plant and equipment on a large scale. But so far as tailoring is concerned, I think the fact that sewing machines on which the workers do the work generally belong to the employer is an important consideration for deciding that the relationship is that of master and servant."

The question as to who is the employer again was examined by the Supreme Court in *Hussainbhai, Calicut Vs. The Alath Factory Thezhilali Union, Kozhikode and Others*, . as thus:

"5. The true test may, with brevity, be indicated once again. 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. He has economic control over the workers' subsistence, skill, and continued employment. If he, 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 when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the Management, not the immediate contract. Myriad devices, half hidden in fold after fold of legal form depending on the degree of concealment needed, the type of industry, the local conditions and the like may

be resorted to when labour legislation casts welfare obligations on the real employer, based on Articles 38, 39, 42, 43 and 43A of the Constitution. The Court must be astute to avoid the and achieve the purpose of the law and not be misled by the maya of legal appearances."

In the instant case, the presence of the Managing Committee with whom alone, the workers have immediate relationship *ex contractu* is of no consequences when, on lifting the veil and examining the conspectus of factor governing the employment, we discern the plain truth camouflaged in artistic umbrella of legal terminology and we identify the employer. In the background of what is stated above it has to be held that the petitioners are engaged in a work which is incidentally connected with the main activities of the KEB and that they by their labour enables the employees of the KEB the facility of enjoying the amenities made available to the workers of the KEB.

10. The question then arises as to the nature of the relief to be granted to the petitioners in these writ petitions. It is alleged by the petitioners that no trade union is prepared to sponsor their cause because of the negligible numerical strength. As their numerical strength is around 10, they cannot raise a dispute as well. As can be seen from Annexure-No. I to the Board Order No. KEB/B 16/2651/794-95 at 26-4-1994 which is produced before this Court, there are posts of cook, cook-cum-Butler etc, under the 1st respondent. Admittedly, these workmen are placed in the pay scale of Rs. 1,155-2480 and Rs. 1,200-2,735 respectively. Admittedly the petitioners herein are not paid the same pay paid to these workers though there is no difference in the nature of work discharged by the petitioners as also the above said workers. It cannot be disputed as well that the duties performed by them is similar to that the petitioners do. The petitioners can therefore certainly claim that they are entitled to be treated alike and paid equal pay for equal work. In this case the 1st respondent has filed a detailed statement of objections and taken a specific stand to the effect that the petitioners are not workers employed by the 1st respondent. It means the stand of the 1st respondent is defined and committed. Several representations submitted by the petitioners have not even been answered. In such circumstances it is reasonable to conclude that even if a direction is issued to the respondent to examine the question, the 1st respondent is not likely to examine the same unbiased or independently. If so, relying on the following principle laid down in the decision reported in 1993 Lab. I.C. 1817, *Lalbavta Hotel & Bakery Mazdoor Union v. Bharat Petroleum Corporation Ltd.*, a direction can be issued to the 1st respondent.

".... The principle to be culled out from these judgments is that, even where the discretion to act vests in a statutory functionary, if the Court is satisfied that, under the facts and circumstances of a particular case, the statutory authority is not likely to discharge its statutory functions in an unbiased manner in accordance with the statutory guidelines or there is likely to be undue delay, it is permissible for a constitutional Court to direct a writ of mandamus to the said

authority to act in a particular manner."

Hence in the light of what is stated in the preceding paragraphs this Court holds that the workers in the canteen run under the aegis of the 2nd respondent by the 1st respondent functioning at the premises of the KEB office in Cauvery Bhavan and where the petitioners are employed are employees of the KEB and that they are entitled to be paid equal pay being paid to persons holding similar post under the 1st respondent. The 1st respondent is therefore directed to pass consequential orders treating them as workers of the Electricity Board and extending to them similar benefits as are enjoyed by the workers of the Board with particular reference to the scale of pay, Dearness Allowance and other benefits. The writ petitions are disposed off as above.