
(2000) 12 AP CK 0045
In the Andhra Pradesh High Court
Case No : LPA No. 329 of 1992

Bala Mallamma

APPELLANT

Vs

Registrar, Osmania University, Hyderabad and another

RESPONDENT

Date of Decision : 04-12-2000

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 10(3)
Workmens Compensation Act, 1923 — Section 12, 30(1)

Citation : (2002) ACJ 986 : (2001) 2 ALD 228 : (2001) 2 ALT 107 : (2001) 1
APLJ 48 : (2001) 2 LLJ 268

Hon'ble Judges : V. Eswaraiah, J; Bilal Nazki, J

Bench : Division Bench

Advocate : Mr. M. Panduranga Rao, for the Appellant; Mr. K. Ramakantha Reddy,
SC for OU, Mr. Chindam Pratap, for the Respondent

Final Decision : Allowed

Judgement

Bilal Nazki, J.—The facts giving rise to this letters patent appeal are enumerated below:

The parties shall be hereinafter referred to as "applicant" and "respondents" as they are referred in the order of the Commissioner for Workmen's Compensation, Hyderabad.

2. The applicant filed an application that her son K. Ravi who had been employed by respondent No.2-K Gopal died on 13-12-1987 during the course of employment. The deceased Ravi had received injuries when he fell down from a height of 40 feet as he was whitewashing the Osmania University Science College walls. He was taken to hospital where he died. He was aged 20 years. His mother sought compensation of Rs.53,760/- and also sought penalty and interest. Respondent No. 1-Osmania University was represented before the Commissioner and it took the plea that the University had executed an agreement on 19-12-1987 with respondent No.2-K. Gopal for execution of the work of whitewashing to all exterior faces of the walls of the University. They took the

plea that it was respondent No.2 who was liable to pay the compensation. The respondent No.2 took a plea that the deceased Ravi was not a worker in terms of Workmen's Compensation Act and he had received the work order from respondent No.1 on 16-12-1987 and even prior to that date the deceased had undertaken the work only under the direct instructions of the University. The Commissioner ordered that the University and the Contractor were jointly and severally liable to pay the compensation of Rs.53,760/-. This order was challenged in an appeal which was decided by a learned single Judge of this Court by a judgment dated 8-11-1991. The learned single Judge reversed the order of the Commissioner. Hence this appeal by the applicant.

3. Before the case is considered on merits, it is noteworthy to mention here that a poor man aged 20 years while whitewashing the walls of the University died in the year 1987, 13 years have passed and the matter is still pending in the Courts and the compensation sought and allowed is a meagre amount of Rs.53,760/-. Two points which the learned single Judge framed for consideration were that:

(1) Whether the deceased-Ravi was employed by respondent No.2 or the appellant/University (appeal was filed by the University);

(2) If the deceased was employed by respondent No.2, whether the appellant is liable to pay the compensation payable under the Act:

4. On question No.1 the learned single Judge found that u/s 30(1)(a) of the Workmen's Compensation Act (for short "the Act") no appeal would lie against the order of the Commissioner unless substantial question of law is involved in the appeal. The Commissioner had found that the deceased was employed by the respondent No.2, which was a question of fact, therefore the learned single Judge could not interfere in this question. The learned single Judge was of the opinion that the deceased had been employed by respondent No.2.

5. On point No.2 the learned single Judge considered the import of the Section 12 of the Act and came to the conclusion that whitewashing/colour washing was not a regular feature of the activity of the University and it could not be treated ordinarily as part of the business of the University, therefore he allowed the contentions of the University and set aside the findings of the Commissioner. The result was that the learned single Judge held that the University was not at all liable to pay the compensation.

6. Now in the facts and circumstances of the case, the only question before this Court is whether the University was liable to pay the compensation or not. Section 12 of the Act lays down :

Section 12(1) Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contract with any other person (hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal

shall be liable to pay to any workman employed in the execution of the work any compensation which he would have been liable to pay if that workman had been immediately employed by him, and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of the compensation shall be calculated with reference to the wages of the workman under the employer by whom he is immediately employed.

(2).....

(3)

(4) This section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken, or usually undertakes, as the case may be, to execute the work or which are otherwise under his control or management.

7. The main ingredient of this provision is that the principal shall be liable to pay any workman employed in the execution of the work any compensation if that workman had been engaged by a contractor who had been engaged by the principal. The only condition is that the engagement should have been made in the course of or for the purpose of trade or business of the principal. Therefore it could be presumed that a workman suffering damage was engaged by the principal, either he had been engaged by a contractor engaged by the principal or the principal himself. This provision would not, however, apply if the premises is not the one for which the parties have agreed to execute the work. It is an admitted position that the accident took place at the place of the work, which was the University itself.

8. Now the only bone of contention is that as to whether engaging a person for whitewashing the walls of the University would be an activity which could be in the course of or for the purpose of "trade" or "business" of the University. It was contended that the University was constituted for imparting education, for conducting examinations in various colleges including the colleges affiliated to it and for conferring degrees, as such the University is not engaged in any trade or business. It was further contended that the construction and maintenance of the buildings of the University was not a part of its trade or business. Various judgments were pressed into service to show that the activity for which the deceased was engaged i.e., whitewashing of the walls of the University was not a part of trade or business of the University. Reference has been made by the learned single Judge also to the following judgments :

(1) Mahabaleshwar v. Badku AIR 1925 Bom. 179,

(2) S.M. Ghose Vs. National Sheet and Metal Works Ltd. and Another, ,

(3) New India Tannis Ltd. Vs. Aurora Singh Mojbi and Another, ,

(4) Municipal Board, Almora Vs. Jasod Singh and Another, .

9. In Mahabaleshwar's case (supra) GIP Railway entered into a contract with a company under which the latter had to construct transmission line to carry electric lines to various sub-stations in the Railway. The deceased was engaged by the contractor and in the course of the employment he was knocked down by a train and killed. The Bombay High Court held that the Railways were not liable as their trade or business was carrying persons and goods and not the erection of powers stations or transmissions lines.

10. Another case in Ghose v. National Sheet and Metal Works (supra) to which a reference has been placed by the learned single Judge pertains to a person who had been engaged by a contractor for painting the electric shed of a company. The Calcutta High Court found that this was not an ordinary business of the company and when the worker had died, the company could not be burdened with the payment of compensation.

11. In New Indian Tennis's case (supra) it was stated that occasional repairs can in no view be held as part of the company's trade or business either ordinarily or extraordinarily.

12. In Almora Municipality's case (supra) it was held that the Municipal Boards do not construct buildings, bridges themselves, but entrust them to the contractors and the Board could not be held liable if during the course of such exercise, any worker died.

13. Another case was Executive Engineer, Kadana Dam v. Phebiben 1977 LAB IC 165, which found favour with the learned single Judge. The Government of Gujarat had undertaken to construct a dam. The work was being executed through its PWD. The department had given contracts for various civil construction works to different parties. In one of such works, a contractor had engaged a workman and the workman died in an accident during the course of his employment. In this case the Court held that though the work undertaken was a sovereign function, but it will have to be deemed as trade or business of the principal.

14. The learned Counsel for the applicant has drawn our attention to the judgment of the Supreme Court reported in 5. S. Mohan Lal Vs. R. Kondiah, . Para No.3 of the said judgment is important for the purpose of the present case, which is reproduced below :

"The expression business has not been defined in the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960. It is a common expression which is sometimes used by itself and sometimes in a collection of words as in "business, trade or profession". It is a word of large and wide import, capable of a variety of meanings. It is needless to refer to the meanings given to that term in the various Dictionaries except to say that every one of them notices a large number of meanings of the word. In a broad sense it is taken to mean "everything that occupies the time, attention and labour of men for the purpose of livelihood or profit". In a narrow sense it is confined to commercial activity. It is obvious that

the meaning of the word must be gleaned from the context in which it is used. Reference to the provisions of the Constitution or other statutes where the expression is used cannot be of any assistance in determining its meaning in Section 10(3)(a)(iii) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960. It is not a sound principle of construction to interpret expressions used in one Act with reference to their use in another Act; more so if the two Acts in which the same word is used are not cognate Acts. Neither the meaning, nor the definition of the term in one statute affords a guide to the construction of the same term in another statute and the sense in which the term has been understood in the several statutes does not necessarily throw any light on the manner in which the term should be understood generally. On the other hand, it is a sound, and, indeed, a well-known principle of construction that meaning of words and expressions used in an Act must take their colour from the context in which they appear".

15. This judgment reiterates a principle of interpretation and the principle is that the meaning of the word must be gleaned from the context in which it is used. Meaning assigned to a word in a particular Act may mean one thing and the meaning of the same term may give a different meaning when used in a different Act. Therefore, the word "trade" or "business" as used in this Act have to be understood in the context in which this Act has been enacted. Basically the Act has been enacted to provide compensation to the workers suffering during the course of employment. It is also the purpose of the Act that they should get speedy remedies and it appears that the intention of enacting the Section 12 of the Act was only to ensure that compensation is paid by the principal expeditiously and if this purpose of the Act and the provision are kept in mind, then the word "trade" or "business" may not have the same meaning which it would have, for instance, when used in interpreting a taxing statute. If the plea of the University is accepted that they are engaged in imparting education, conducting examinations and conferring degrees only and cannot be termed to be doing any business or trade and hence they are not liable to pay compensation, then any person engaged for similar activity by any Government Department, any University, any hospital, if faced with an accident, would not be able to get compensation in terms of Section 12 of the Act although such a person would be a workman under the Act. Similarly if an individual who wants to construct a residential house of his own engages a person for construction of the house and if such a person faces an accident during the course of the building of the house, he would be remediless under the Act. Even otherwise the normal activity of the University is imparting education, conducting of examinations and conferring degrees, this they cannot do without having proper buildings. In a similar case where PWD had engaged contractors for the purpose of construction of bridges and roads and an accident occurred and a worker died, the contentions raised before the Jammu and Kashmir High Court in *Public Works Department v. Commissioner, Workmen's Compensation* 1981 LAB IC 493, were also raised before this Court. Para 7 of the judgment is reproduced below :

"The only object behind the provisions of Section 12 appears to be to secure speedy payment of compensation resulting from injuries to a workman. The Legislature intended to make doubly sure payment of such compensation to the workman, or to his dependants in the event of his death, as it could not exclude the possibility of the contractor being in some cases a man of straw, whose straitened circumstances might jeopardise the chances of recovery of such compensation. If, therefore, a restricted meaning is given to the word "business" so as to imply an activity with the object of earning profit only, the object behind Section 12 is likely to be defeated. Not only to speak of the Government performing its various functions of a welfare State, even many other persons may have to be kept out of the purview of Section 12 by assigning such a limited meaning to the word "business" occurring in it. Such an interpretation would absolve from liability to pay compensation even a person who would appoint a contractor for building his residential house, as building one's residential house cannot be said to have the object of earning profit or gain behind it. It cannot, as such, be said to partake of "business" or "trade" in commercial sense. Merely because the word "business" is clubbed with the word "trade" in Section 12, it should not be inferred that it has been used in simple commercial sense. Both these words have to be read disjunctively and not conjunctively. Similarly, the doctrine of immunity attached to sovereign acts of State cannot be extended to acts like constructing roads or bridges, as such acts are not of such a nature as cannot be done by a private person. Viewed thus, the word "business" occurring in Section 12 has to be given an extended meaning, so as to include even an activity which engages time, attention, or labour as a principal serious concern or interest of the Government or an individual without an element of profit in it. It is one of the meanings given to the word "business" in dictionary. (See Webster's New International Dictionary, Vol. I, Ed.1926). Construction of roads being one of the principal concerns of the Public Works Department of the Government inviting its serious attention, it is "business" within the meaning of Section 12 and the appellant was thus the principal employer vis-a-vis the deceased labourers. With utmost respect to the learned Judge, if I may say so, I am unable to agree with the view taken by him in Y. Srinivasa Rao's case (1972 ACJ 398) that "business" means and includes only that activity which is aimed at earning profit. Such an interpretation, as already observed, is bound to destroy the very *raison d'être* of Section 12. On the other hand, I am in respectful agreement with the view taken by the High Court of Punjab in Sardara Singh Narinjan Singh Vs. Sub Divisional Officer, Chandpur and Another, , and Gopal Singh and Sundar Singh v. Punjab State and others AIR 1955 P&H 4976, that in such cases even Government can be made liable to pay compensation as principal employer u/s 12. To this extent, therefore, the impugned award is not open to question".

16. We find ourselves in agreement with the views of the Jammu and Kashmir High Court and we do not find ourselves agreeing to the views expressed by the other High Courts contrary to the view of the Jammu and Kashmir High Court.

For these reasons, we hold that the University is liable to pay compensation to the applicant. The judgment of the learned single Judge is set aside and the award passed by the Commissioner is restored. The appeal is accordingly allowed.