
(1999) 02 AHC CK 0045

In the Allahabad High Court

Case No : C.M.W.P. No. 2109 of 1997, 41787 of 1998 and 1654 of 1999

Bharat Heavy Electricals Ltd., Haridwar

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 17-02-1999

Acts Referred:

Constitution of India, 1950 — Article 226, 38, 39, 42, 43

Uttar Pradesh Industrial Disputes Act, 1947 — Section 14A, 6N

Citation : (1999) 2 AWC 1013 : (1999) 81 FLR 990 : (1999) 2 LLJ 297

Hon'ble Judges : O.P. Garg, J

Bench : Single Bench

Advocate : Tarun Agarwal and Rakesh Tewari, JJ, for the Appellant; S.C. and V.C. Misra, for the Respondent

Judgement

O.P. Garg, J.—These are three connected writ petitions. In Civil Misc. Writ Petition No. 2109 of 1997, counter and rejoinder-affidavits have been exchanged. The subsequent two Writ Petition Nos. 41787 of 1998 and 1654 of 1999 are the offshoot of the order of award which has been challenged in the first Writ Petition No. 2109 of 1997. The parties would swim or sink in all the :three writ petitions on the findings to be recorded in Civil Misc. Writ Petition No. 2109 of 1997. With the consent of the learned counsel for the parties, all the aforesaid three writ petitions are being finally decided together.

2. Heard Sri Tarun Agarwal, learned counsel for the petitioner and Sri V. C. Misra, assisted by Sri S. C. Dwivedi, learned counsel for the workmen-respondent Nos. 6 to 19 in Civil Misc. Writ Petition No. 2109 of 1997, as well as learned standing Counsel.

3. The Bharat Heavy Electricals Ltd.. Ranipur. Haridwar (for short "B.H.E.L.") engages the services of Gardeners (Malees) to sweep, clean, maintain and look after the lawns and parks inside the factory premises and the campus of the residential colonies. Respondent Nos. 6 to 19 were engaged for the purpose through the agency of S./Sri Malkhan Singh, K. P. Singh Chauhan and Mahendra

Singh respondent Nos. 3, 4 and 5. The engagement of the 14 workmen, who are respondent Nos. 6 to 19, it is alleged, was terminated on 1.12.1998. According to the workmen, their termination was unlawful as they had been employed for more, than 240 days in a year. The legality of the order of termination was also challenged on the ground that the provisions of Section 6N of the U. P. Industrial Disputes Act (hereinafter referred to as "the Act") had not been complied with.

4. The dispute raised by the 14 workmen resulted in a reference under the Act. The individual cases of the 14 workmen came to be registered as I.D. Case Nos. 31 of 1990 to 44 of 1990. In all these cases, notices were issued by the Presiding Officer, Labour Court, Dehradun. The petitioner BHEL took the plea that the workmen concerned were never employed by it and since no privity of contract subsisted between the workmen and the petitioner. It is not liable to pay any amount of compensation or to reinstate the workmen in service. The Labour Court made a compensation award dated 5.7.1996 in all the above 14 references. A copy of the award dated 5.7.1996 is Annexure-17 to the Writ Petition No. 2109 of 1997. It has been ordered by the Labour Court that the workmen shall be re-employed and that on account of non-compliance of the provisions of Section 6N of the Act, each one of the workmen shall be entitled to get a sum of Rs. 15,000 as compensation besides Rs. 500 as cost. This award has been challenged in Civil Misc. Writ Petition No. 2109 of 1997.

5. It appears that on 30.11.1998, the Deputy Labour Commissioner has Issued a certificate to the Collector for recovery of Rs. 2,17,000. This recovery certificate has been challenged in Civil Misc. Writ Petition No. 41787 of 1998. An order dated 29.6.1998, passed u/s 6H of the Act for payment of the aforesaid amount has also been challenged. In the third Writ Petition No. 1654 of 1999, the petitioner has challenged the order dated 2.1.1999 whereby the petitioner has been called upon to show cause as to why prosecution of the petitioner under the provisions of Section 14A of the Act be not launched. It is in these circumstances that the three separate writ petitions have come to be filed under Article 226 of the Constitution of India.

6. In substance, the case of the petitioner is that since the workmen were not engaged by it and were directly employed by independent contractors, the award made against the petitioner is illegal, inoperative and inconsequential and, therefore, it may be set aside. On behalf of the workmen, this assertion of the petitioner has been repelled. It is maintained that all the workmen were, in fact, employed by the B.H.E.L. and have worked under the control of the petitioner.

7. At the very outset, it may be mentioned here that the Labour Court has recorded a finding of fact that 14 workmen had, in fact, been engaged for a period more than 240 days in 12 calendar months, and, therefore, the termination of their services without complying with the provisions of Section 6N of the Act was Illegal. A finding of fact has further been recorded that the workmen had worked under the control of the petitioner and, therefore, the device of employing the contractor, i.e., an intermediary between the workmen

and real employer was nothing but an attempt to camouflage the direct relationship of employer and employee between the petitioner and the workmen.

8. Sri Tarun Agarwal, learned counsel for the petitioner maintained that the petitioner was not the principal employer of the workmen and if the engagement of the workmen was terminated by the independent contractors, the petitioner cannot be burdened with the responsibility of payment of compensation in lieu of retrenchment. This submission has been repelled by Sri V. C. Misra, learned counsel for the respondents-workmen.

9. The moot point, therefore, for being considered and determined in the present writ petition is whether the workmen-respondent Nos. 6 to 19 are to be treated as having actually worked under the control and employment of the petitioner.

10. There is no dispute about the fact that the respondent-workmen were engaged for working as gardeners in the factory premises, campus and residential colony of the petitioner. Ram Sahai, Head Mali was admittedly employed by the petitioner. It was he, who used to supervise the work of the respondent Nos. 6 to 19. Another employee of the petitioner was Head Mali Sadhu Ram. It was he, who used to maintain the record of attendance of the workmen. It has come in evidence that Sadhu Ram used to keep the record of the attendance of the respondent-workmen and that when a dispute arose consequent upon their disengagement, he destroyed the same by tearing it off at the instance of one Varshney who was the Manager in the petitioner-establishment. If the workmen were, in fact, engaged by independent contractors, the record of their attendance should have been maintained by them and the control and supervision on the duties performed by the 14 persons should, in all probability, have been that of the independent contractors. In view of the positive findings of fact recorded by Labour Court that the petitioner had control and supervision over the work and duties to be performed by the respondent-workmen and that the record of their attendance was being maintained by the employees of the petitioner, there can be no escape from the conclusion that the respondent-workmen were under the direct employment, supervision and control of the petitioner. Sometimes, the employers, with a view to get over stringent provisions and prescriptions of the labour law, resort to a device to engage the workmen through some intermediary, Such an arrangement has to be termed as artificial and not real.

11. This aspect of the matter came to be considered in the case of Hussainbhai, Calicut v. Alath Factory the Zhilali, Union, Kozhikode and others. SLP No. 1853 of 1978. decided on 28th July, 1978, by Hon"ble Supreme Court. In that case, it was observed that the true test is 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 atone the workers have immediate or direct relationship

ex contract, is of consequence when, on lifting the veil or looking at the conspectus of factors governing employment, the naked truth becomes discernible, though draped in different perfect paper arrangement that the real employer is the management, not the intermediate contractor. Myriad devices, half-hidden in fold after fold or 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. It was further observed that the Court must be astute to avoid the mischief and achieve the purpose of the law and not be misled by the maya of legal appearances. If the livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefit and satisfaction of an enterprise, the absence of direct relationship or the presence of dubious intermediaries or the make-believe trappings of detachment from the management cannot snap the real life bond. The story may vary but the inference defies ingenuity. The liability cannot be shaken off. The findings of facts recorded by the Labour Court cannot be scrutinized or sifted in this writ petition. The tone and tenor of the employment of the respondent-workmen makes it amply clear that they were, for all practical purposes, the employees of the petitioner. The petitioner had retained direct control over the work and the duties of the respondent-workmen. The attendance of the workmen was also recorded by an employee of the petitioner. The involvement of the alleged direct contractors was merely a figurative. The engagement of the contractor was sham and not genuine. Therefore, if the fictitious agency, which was brought into existence as a device to camouflage the status of the respondent-workmen, is ignored, they would be treated to be in the direct employment of the petitioner. In the event of their unlawful retrenchment or disengagement, the respondent-workmen of the so-called independent contractors can raise an industrial dispute for declaring that they were always the employees of the principal employer and claim the appropriate relief. In such a case, the real employer cannot be permitted to disown the aggrieved workmen. As it is, I find that the award made by the Labour Court does not suffer from any illegality or irregularity calling for Interference by this Court in the exercise of extraordinary Jurisdiction under Article 226 of the Constitution of India.

12. It cannot be forgotten that the petty workmen are generally pitted against a mighty employer. The workmen find it difficult to ventilate their grievances against all powerful employer. The workmen are kept out of job to endlessly keep waiting for award and thereafter, resulting in further litigation and delay in enforcement of their rights. The management would always keep the workmen at bay by denying them absorption. It would be difficult for the workmen to work out their rights. It is tardy and time consuming process and years would roll by. Without the wages, the workmen cannot keep fighting litigation endlessly. The right and the remedy provided under the various labour laws would be a teasing illusion and a futile exercise if they are stifled at the machinations of the principal

employer.

13. The Labour Court has awarded an amount of Rs. 15,000 as compensation besides Rs. 500 in favour of each one of the respondent-workmen on account of illegal termination or disengagement of their employment. The petitioner instead of making payment of the aforesaid amount has unnecessarily driven the respondent-workmen to defend unwanted multiple proceedings initiated by the employer. The award dated 5.7.1996 has to be implemented and with a view to Implement the same, an order dated 30.11.1998 has been passed by the Deputy Labour Commissioner, Meerut Region, Meerut directing recovery of Rs. 2,17,000 as arrears of land revenue against the petitioner. This order has been challenged in Writ Petition No. 41787 of 1998. Since the petitioner-company failed to deposit the aforesaid amount, another order dated 2.1.1999 has been passed to show cause as to why prosecution u/s 14A of the Industrial Disputes Act be not launched. This order is subject-matter of challenge in Writ Petition No. 1654 of 1999. Since it has been found above that the award dated 5.7.1996 does not suffer from any Illegality or irregularity and has to be implemented, the subsequent order dated 30.11.1998 for recovery of Rs. 2,17,000 for being paid to the respondent-workmen cannot be interfered with. In case, the petitioner complies with the said order within time, as may be presently prescribed by this Court, it would be unnecessary to initiate criminal proceedings against the petitioner.

14. In the result, both the Writ Petition Nos. 2109 of 1997 and 41787 of 1998 are found without any merit and substance and are accordingly dismissed. In case the petitioner deposits a sum of Rs. 2,17,000 (Rs. Two lacs and seventeen thousand) with the Dy. Labour Commissioner, Meerut Region, Meerut, within a period of one month from the date of this order (i.e., today), no further action for initiating criminal proceedings in view of the provisions of Section 14A of the Act shall be taken against it. If the amount, aforesaid is deposited. It shall be disbursed to the respondent-workmen in terms of the award dated 5.7.1996. In the event of the failure of the petitioner to deposit the amount, aforesaid, within the stipulated time, this order would not be an Impediment in launching criminal proceedings against the petitioner u/s 14A of the Act. In the light of the observations made above, Civil Misc. Writ Petition No. 1654 of 1999 shall stand disposed of. The parties shall bear their own costs.