

(2010) 12 KAR CK 0071
In the Karnataka High Court
Case No : Writ Appeal No. 1966 of 2010

Bharath Electronics Ltd.

APPELLANT

Vs

Sri Vishnu Murthy, Bel Sc/St Welfare Association and
Government of Karnataka Dept. of Labour

RESPONDENT

Date of Decision : 27-12-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 39

Citation : (2010) 12 KAR CK 0071

Hon'ble Judges : J.S. Khehar, C.J; Manjula Chellur, J

Bench : Division Bench

Advocate : P.D. Vishwanath, for A.G.H. Associates, for the Appellant; V.S. Naik, for R1, N.D. Sathish Chandra, for R2 and Basavaraj Kareddy, Prl. Govt. Advocate for R3, for the Respondent

Final Decision : Allowed

Judgement

1. Heard arguments on both sides.
2. The brief facts that led to the filing of the above appeal are as under :

The Respondent joined the service of the Appellant from 22.11.90 as a semi skilled helper. Though he started initially working at HF Section, he was changed to different sections from time to time. His salary also was (sic) at Rs. 22.50 per day. However, he was paid salary once a month. The permanent employees in the cadre of semiskilled helpers were getting Rs. 3,500/- per month. Though he was treated as a daily wage employee, he worked continuously till he was refused work on 10.4.93. A notice dated 3.1.2994 was sent to the organisation to restore his work. When his request was not complied with, he approached this Court in W.P.7108/1993. This Court held that the dispute involves several questions of facts, therefore, it would be proper for the Petitioner to raise a dispute under the Industrial Disputes Act, 1947. Accordingly, a dispute was raised in Ref. 83/1995 and the matter was decided before the Labour Court. The reference came to be rejected against the Respondent.

3. This came to be challenged in W.P. 17477/2001. The learned Single Judge by his order dated 1.2.2006 allowed the petition setting aside the award of the Labour Court observing as follows :

Secondly, it is seen that the issue framed was with regard to whether the Petitioner was directly employed or was a contract labourer. The Labour Court ought to have made the contractor a party to the proceedings in order to give a clear finding on the question, whether he was directly employed or otherwise. Therefore, there are circumstances, which stand out on the face of the award and would require interference by this Court.

4. The matter was remitted back to the Labour Court for fresh consideration. This order came to be challenged in Writ Appeal No. 383/2006 and the Writ Appeal also came to be dismissed holding that the documents like the requisition sent to the contractor for supply of workers or the agreement entered into between the Appellant and the public undertaking were not produced before the Labour Court.

5. After remand the 2nd Respondent was impleaded as a party as per the directions of the learned Judge in the above writ petition. Subsequent to the remand of the matter, the matter came to be disposed of afresh on 24.9.2008 by dismissing the reference. The Labour Court opined that the alleged workman was not able to prove that his service conditions and wages are similar to that of regular workman and it also opined that the Appellant being public sector company, should not have engaged services of casual contract workmen as its regular workmen. Accordingly it held that the Respondent-workman was not entitled for any reliefs as claimed in the reference.

6. Aggrieved by the same, this writ petition in question came to be filed by Respondent No. 1 seeking quashing of the order dt. 24.9.2008 in reference No. 83/1995.

7. The learned single Judge by his order dated 9.4.2010 held that during the course of hearing it was noticed that the order of reference made to the Tribunal by the Government, was not suitably made. In other words, the point of reference was not appropriately made and opined that the order of reference should be as under :

Whether the Petitioner was employee under the contractor engaged by the management by the BEL or not an employee under BEL.

8. According to the learned single Judge, without understanding the context and consequences, reference was made on some other point. Therefore, it is for the 3rd Respondent (Department of Labour) to understand the application of writ Petitioner and make reference in the above terms. Aggrieved by this order, the present appeal is filed.

9. It is not in dispute that the Appellant is a public sector undertaking of the Government of India. The first Respondent raised a dispute whether the management of BEL, its contractor and BEL, SC & ST Welfare Association was

justified in refusing work to Vishnu Murthy, the Respondent, on 10.4.93 who was working on contract basis at Stores Section, if not, to what relief the workman is entitled to.

10. From the records, it is seen that subsequent to remand, at the first instance, the second Respondent said to be the contractor of the Appellant-management was impleaded before the Labour Court. After filing the counter statement, parties led further evidence and by the order dt.24.9.2008 the reference came to be rejected. The 2nd Respondent came to be impleaded in the reference for the first time by the writ Petitioner only after the remand order of the learned single Judge in the 2nd writ petition.

11. During the pendency of the writ petition No. W.P. 9343/2009 several appellations were pending which are as follows :

(i) Misc. W. No. 11592/09 praying to clarify the order dated 16.6.2009 and issue further direction to the 3rd Respondent to issue necessary corrigendum;

(ii) Misc.W. No. 12489/09 praying to condone the delay of 112 days in filing the recalling application;

(iii) Misc. W No. 12490/09 praying to recall the order dated 30.7.2009 and restore the writ petition to its original position; and

(iv) Misc. W. No. 12491/09 praying to amend the writ petition.

All applications came to be disposed of by order dt. 15.12.2009. Aggrieved by the order dated 15.12.2009 in Misc. W. 12490/2009 allowing the recalling of the order dated 30.7.2009 and other orders, writ appeals came to be filed in W.A. Nos. 327-328/2010. Those appeals were also dismissed. Subsequently, the writ petition was dismissed.

12. According to the Appellant's counsel, though they sought time for filing the statement of objections to the amended petition, the learned Judge disposed of the writ petition on 9.4.2010, which has resulted in prejudice to the Appellant-management. According to the Appellants, the learned Single Judge ought not to have framed the point of reference directing the 3rd Respondent to make such reference and the same is unsustainable. It was contended that only the appropriate government has power to frame point of reference and this was totally ignored by the learned single Judge. Therefore, the learned Single Judge was erroneous in framing the point of reference. According to the Appellant's counsel, the Appellant being a Central Public Undertaking, under the principles of the Industrial Disputes Act, the Central Government is the appropriate Government and by virtue of Notification dt.3.7.98 u/s 39 of the I.D Act, delegates power to the State Government. However, under Notification dt. 5.5.2008, the Central Government has rescinded the Notification dt.3.7.1998. Therefore, the State Government has no jurisdiction to refer the point of dispute for adjudication to the Labour Court. With these arguments, they sought for setting aside the orders of the learned Single Judge dt.9.4.2010.

13. As against this, the learned Counsel for the first Respondent contended that he was working under the Appellant and not through the labour contractor. According to him, the finding of the Labour Court is virtually incorrect and contrary to the evidence brought on record. The documents like CSI card and the fact that the first Respondent was covered under PF would indicate that he was employed under the first Respondent.

14. On perusal of the entire records, we note that the point of dispute was referred for adjudication to the Labour Court by order dt. 19.6.1995. We are in 2010. At no point of time, correctness of the point of reference came to be questioned by the first Respondent in writ petition No. 9343/2009. On earlier occasion, the Labour Court passed an award dt. 14.11.2000 rejecting the reference and even in Writ Petition No. 17477/2000 questioning the order of the Labour Court, no such contention was taken up by the first Respondent. In the absence of raising of such contention by the first Respondent whether the learned Single Judge was justified in taking up the responsibility of framing the points for reference?

15. We place reliance on the case of Mahabir Jute Mills Ltd., Gorakhpore Vs. Shibban Lal Saxena and Others, . In this case, apart from discussing the scope of principles of natural justice, their Lordships had an occasion to consider the question whether the High Court can give a direction to the Government to make a reference. In the said case, they were concerned with Section 4K of the U.P. Industrial Disputes Act, which conferred powers on the Government to refer any industrial dispute if it is of opinion that such a dispute exists or that any matter is connected with, or related to, the dispute. Under the provisions of Industrial Disputes Act, only the appropriate Government has power to frame point of reference and send the point of dispute for adjudication to appropriate Labour Court or the Tribunal. In the absence of the first Respondent right from 1995 till today raising any objection to the framing of point of reference, the learned Single Judge was not justified in framing the point of reference and directing the Government to refer the said point of reference. Even if the Court felt that the impugned order of the Government suffered from any legal infirmity, all that it could have done was to ask the Government to reconsider it, but it cannot direct the Government how to act and how to exercise its statutory discretion and what should be the point of reference. In other words, the High Court cannot compel the Government to exercise its discretion in a particular manner. Even otherwise, perusal of the orders of the learned Single Judge does not even indicate how the point of reference already referred by the Government would not cover all the controversies between the parties. In the absence of any such discussion, there was no justification for the learned Single Judge to take upon himself the responsibility of framing question of reference which is the sole jurisdiction of the appropriate Government. As a matter of fact, the Appellants have also raised a contention that it being a Central Public Undertaking and the appropriate Government being the Central Government had issued Notification dt.3.7.98 u/s 39 of the Industrial Disputes Act delegating +the powers to the State

Government and the same was withdrawn on 5.5.2008. The-learned Single Judge has to consider the effect of withdrawal of Notification dt.3.7.1998 by the Central Government delegating the powers to the State Government u/s 39 of the Industrial Disputes act as well.

16. For the reasons mentioned above, we are of the opinion that the appeal deserves to be allowed and the matter be placed before a learned Single Judge for disposal of the writ petition on merits afresh.

Accordingly, the writ appeal is allowed. The matter be placed before a learned Single Judge for disposal of the writ petition on merits afresh.