

**(2006) 12 DEL CK 0078**

**In the Delhi High Court**

**Case No :** Writ Petition (C) No. 14191 of 2004

Chhathoo Lal

APPELLANT

Vs

The Management of Goramal Hariram Ltd.

RESPONDENT

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**Date of Decision :** 05-12-2006

**Acts Referred:**

Contract Labour (Regulation and Abolition) Act, 1970 — Section 10, 3, 7  
Industrial Disputes Act, 1947 — Section 25F

**Citation :** (2006) 12 DEL CK 0078

**Hon'ble Judges :** S.N. Dhingra, J

**Bench :** Single Bench

**Advocate :** H.K. Chaturvedi, for the Appellant; Mohit Gupta, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Shiv Narayan Dhingra, J.—By this writ petition, the petitioner has challenged the validity of award dated 4.1.2003 passed by the Labour Court-II, Karkardooma, Delhi whereby the reference was answered against the petitioner.

2. Briefly the facts are that the petitioner raised a dispute that his services were illegally terminated by the respondent. The dispute was referred in following terms to the Labour Court:

Whether the termination of the services of Shri Chhathoo Lal is illegal and/or unjustified and if so, to what relief, is he entitled and what directions are necessary in this respect?

3. Before the Labour Court, the respondent/management took the stand that there was no relationship of employer-employee between the management and the workman. The Tribunal framed an issue about the employer-employee relationship, apart from the terms of reference. The Tribunal after considering the evidence came to the conclusion that the petitioner was an employee of contractor, Mr. P.K. Nayyar, who was assigned the contract of packing work by the respondent/management. The documents placed on record showed that the

petitioner had sent the leave applications etc. through the contractor and he was being supervised by the contractor. The contractor was having registration u/s 7 of the Contract Labour (Regulation and Abolition) Act and the registration certificate was proved. The Tribunal observed that in view of the fact that the petitioner was an employee of contractor, there was no relationship of employer-employee between the petitioner and the respondent and answered the reference against the petitioner.

4. The petitioner challenged the award on the ground that the management could not have raised the issue that the petitioner was not an employee of the management neither the Tribunal could have travelled beyond the reference and framed an issue about the employer-employee relationship. The other ground taken is that the documents produced by the workman viz. slip of EPF and ESI card were sufficient to show that he was an employee of the respondent. Even if he was considered as an employee of the contractor, the contract was camouflage and sham and he should have been considered as an employee of the management on this ground itself. The other ground of the challenge of the award is that the contractor was not having a license u/s 3 of the CLRA Act, Therefore, the contract entered into between the respondent and contractor was sham and camouflage and not giving benefits to the petitioner in the garb of illegal contract amounted to unfair practice. It was the obligation of the principal employer, to comply with all the labour laws and principal employer should have complied with the provisions of Section 25F of the Industrial Dispute Act. The petitioner relied upon Secretary, H.S.E.B Vs. Suresh and Others etc. etc., in support of the arguments that unless there was a genuine contract, the provisions of Contract Labour (Regulation and Abolition) Act shall not be available to be invoked. It was pleaded by the petitioner that the findings of the Labour Court are contrary to law and perverse.

5. The respondent counsel on the other hand supported the award passed by the Tribunal and advanced the arguments as given by the Tribunal in its award.

6. The law in respect of contract labour has been now laid down by Supreme Court in very clear terms in Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., wherein Supreme Court had categorically held that prohibition of contract labour can be considered only by the appropriate Government u/s 10 of the Contract Labour (Regulation and Abolition) Act. Where the contract is alleged to be sham and camouflage, the industrial adjudicator has to adjudicate upon this issue and come to a conclusion if the contract was sham and camouflage. The industrial adjudicator if comes to conclusion that the contract was sham and camouflage may direct the absorption of the employees of contractor by the principal employer. In the present case, the petitioner did not claim that he was an employee of the contractor. He claimed that he was an employee of the principal employer. It is only during evidence, it transpired that he was the employee of the contractor and he was not a direct employee of the respondent. The Tribunal, Therefore, came to

conclusion that there was no employer-employee relationship between the petitioner and the respondent. After this finding, the petitioner has taken the stand that even if he was an employee of the contractor, the contract should have been declared as camouflage and he should have been considered an employee of the principal employer.

7. In *Steel Authority of India Ltd. Vs. Union of India (UOI) and Others*, Supreme Court observed as under:

The 1970 Act is a complete code by itself. It not only provides for regulation of contract labour but also abolition thereof. Relationship of employer and employee is essentially a question of fact. Determination of the said question would depend upon a larger number of factors. Ordinarily, a writ would not go into such a question.

In *State of Karnataka and Others Vs. KGSD Canteen Employees Welfare Association and Others*, , this Court held:

Keeping in view the facts and circumstances of this case as also the principle of law enunciated in the above-referred decisions of this Court, we are, thus, of the opinion that recourse to writ remedy was not apposite in this case.

We may reiterate that neither the Labour Court nor the writ court could determine the question as to whether the contract labour should be abolished or not, the same being within the exclusive domain of the Appropriate Government. A decision in that behalf undoubtedly is required to be taken upon following the procedure laid down in Sub-section (1) of Section 10 of the 1947 Act. A notification can be issued by an Appropriate Government prohibiting employment of contract labour if the factors enumerated in Sub-section (2) of Section 10 of the 1970 Act are satisfied.

When, however, a contention is raised that the contract entered into by and between the management and the contractor is a sham one, in view of the decision of this Court in *Steel Authority of India Limited (supra)*, an industrial adjudicator would be entitled to determine the said issue. the industrial adjudicator would have jurisdiction to determine the said issue as in the even if it be held that the contract purportedly awarded by the management in favor of the contractor was really a camouflage or a sham one, the employees appointed by the contractor would, in effect and substance, be held to be direct employees of the management.

8. In the present case the workman had not raised any contention that the contract entered into between the contractor and the management was a sham. In fact the contention of the workman was that he was an employee of the respondent. The Labour Court could not have gone into the question whether the contract was sham or not because no such reference was made to the Labour Court. The reference made to the Labour Court was that whether the services of the petitioner were illegally terminated or not and the contention of the

petitioner was that he was a direct employee of the respondent. I consider that the petitioner should have initially raised a proper dispute. He should have come up with clean hands and submitted that he was an employee of the contractor and the contract should be declared as sham and camouflage and he should be considered as an employee of the principal employer. He did not disclose the true facts and taking a false plea stood in the way of referring the proper dispute to the Labour Court. It is settled law that the Labour Court is a creation of the reference and the Labour Court cannot go beyond the terms of reference except that the questions incidental to the dispute and those, who go to the root to the jurisdiction of Labour Court can be decided by the Labour Court while deciding a reference.

9. The contention of the counsel of petitioner that the Labour Court could not have gone into the questions of relationship of employer- employee does not stand the scrutiny of law. The issue of relationship of employer-employee goes to the root of the jurisdiction of the Labour Court and is incidental to the issue raised by the petitioner that he was illegally terminated by the respondent. If he was not an employee of the respondent there could have been no question of his illegal termination the question of his illegal termination would arise only if he was an employee of the respondent.

10. In A.P.S.R.T.C. and Others Vs. G. Srinivas Reddy and Others, Supreme Court held that if the respondents wanted the relief of absorption they will have to approach the Industrial Court and establish that the Contract Labour System was only a ruse/camouflage to avoid labour law benefits to them. Where the workmen do not approach the Court with correct reference and true facts, workmen cannot later on turn around and say that now they should be considered as workmen through the contractor and they should be deemed to be the employees of the management because contract was sham and camouflage.

11. In view of my above discussion, I find no force in the writ petition. The writ petition is dismissed.