

(1988) 12 KL CK 0022
In the High Court Of Kerala

Cominco Binani Zinc Ltd.

APPELLANT

Vs

Pappachan

RESPONDENT

Date of Decision : 28-12-1988

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 21
Factories Act, 1948 — Section 46

Citation : (1989) 1 LLJ 452

Hon'ble Judges : K. Sreedharan, J

Bench : Single Bench

Judgement

Sreedharan, J.—Petitioner challenges Ext. P3 award passed by the third respondent, Industrial Tribunal, Alleppey in I.D. No. 23 of 1982. The petitioner-company is having more than 250 workers on its rolls. As per Section 46 of the Factories Act and the Rules framed thereunder the Company has to provide and maintain a canteen for its employees. The company has provided all facilities for running a canteen. The right to conduct the canteen was being given on contract to others from time to time. First respondent was a contractor engaged for the said purpose and he was running the canteen upto 18th April 1978. From 19th April 1978 to 28th June 1978 the workers of the Company themselves were running the canteen. From 29th June 1978 a new contractor took up the responsibility of running the same. At no point of time had the company run the canteen by itself. The contractors who took up the responsibility of running the canteen were engaging their own workmen and they were being paid by the contractors. While so, some dispute arose between the first respondent and the workers engaged in the canteen regarding the payment of bonus and arrears of wages for a short period. Consequent on those disputes the following issues were referred to the Industrial Tribunal for its decision by the Government as per G.O. (Rt) No. 1109/79/L&H dated 4th August 1979:

(i) Settlement of gratuity to the canteen workers of Cominco Binani Zinc, Binanipuram;

(ii) Bonus and arrears of wages to the above workers for the period upto 28th June 1978.

After trial the Tribunal passed Ext. P3 Award, the operative portion of which is in the following terms:

In the above circumstances I pass this award holding that the workers of canteen are also entitled for bonus during 1977-78 also on the same basis they received in the year 1976-77. The management will pay bonus to them as the principal employer and after paying the bonus, if they are so advised, they can proceed against the concerned contractor.

2. The contention raised by the petitioner is that the canteen was run by contractors like the first respondent, that the employees of the canteen were engaged by those contractors, that they are never considered as employees of the petitioner and that the petitioner is not liable to pay anything other than the actual wages due to the workmen if it is found that the contractors failed to give wages to their employees. It is the specific case advanced by the petitioner that no claim of bonus or gratuity can be made against them under the provisions of the Industrial Disputes Act, Payment of Wages Act or under any other legislation.

3. Ext. P1 is a copy of the statement of claim submitted by the union before the Tribunal. In paragraph-3 of that statement it is specifically averred that the service conditions of the employees working in the canteen were regulated by the settlements entered into between the concerned contractors and the union in the presence of Conciliation Officers. This statement of the union will go to show that the petitioner had nothing to do with the settlements which regulated the conditions of service of the employees engaged in the canteen. As per Section 46 of the Factories Act, the petitioner should provide and maintain a canteen for the use of its workers. In discharge of this obligation they have provided building, utensils, electrical fittings etc. for running the canteen. The actual responsibility of running the canteen was never taken by the petitioner. For the said purpose they engaged contractors. The contractors who are running the canteen employed their workmen. Can those workmen be considered as employees of the petitioner? The liabilities of the petitioner to discharge the obligations to the employees engaged in the canteen depend on the answer to this question.

4. As a matter of fact the Tribunal in Ext. P3 Award came to the conclusion that the workers were employed by the contractors who were running the canteen and that all the settlements regarding their service conditions were with the concerned contractors. The Union had no case that they entered into any agreement with the petitioner-company regarding the conditions of service of workers engaged in the canteen. So, in the normal course, the management cannot be made liable to satisfy the claims of the employees of the canteen.

5. As per Section 46 of the Factories Act, the management is responsible for providing and maintaining a canteen for the use of the workers if there are 250 or more workers in the factory. The petitioner engages more than 250 workers in

their factory. So, the petitioner is required to provide and maintain a canteen for the use of the workers. The petitioner has in fact provided the entire infrastructure for running the canteen. They have provided building, utensils, electrical fittings etc. for the said purpose. But they were not running the canteen by themselves. In such a situation, can they be made liable for the claims of workers engaged in the canteen? The answer can only be in the negative because the workers were banking on the contractor for settling the terms and conditions of their employment. The employees have no case that the petitioner had at any time taken part in the conciliation settlements regulating their conditions of service. Nor have they got a case that the petitioner had any disciplinary control over them. The mere fact that the petitioner had the responsibility to provide and maintain a canteen u/s 46 of the Factories Act, cannot make them the ultimate employer of the workers engaged in the canteen for all purposes. Canteen may be run by independent contractors or by co-operative societies of the workers or may be run by the company itself in discharge of the obligation u/s 46 of the Factories Act. In the first two categories the workers in the canteen cannot be considered to be the employees of the management. When the management entrusts the responsibility of running the canteen with a contractor the workmen employed and paid by such contractor cannot be treated as workmen of the management. There is no employer-employee relationship between the management and such workmen. All claims of the workmen are to be met by the contractor or the society as the case may be. If the canteen is run by the contractor or co-operative society the employer in relation to the workers engaged in the canteen will be the contractor or the society.

6. Even in a case where the canteen is run by the contractor the management of the factory like the petitioner cannot absolve themselves from the liability to pay the wages to the workers engaged in the canteen. The principal-employer's liability to pay wages is recognised in Section 21(4) of the Contract Labour (Regulation and Abolition) Act, 1970 as well. If the contractor fails to pay the wages the petitioner will be bound to pay the same. The wages due to the workmen does not include bonus or gratuity. This is made clear by the definition of wages in the Industrial Disputes Act and Payment of Wages Act. While defining the term "wages", the above mentioned Acts specifically excludes bonus and gratuity from its purview. So, on the facts of this case the petitioner is liable to pay the wages due to the workers which is in arrears and nothing more.

7. In the instant case the workers claimed wages for a short period on account of the failure on the part of the first respondent to pay the same. The petitioner cannot wriggle out of that responsibility. Sri B.S. Krishnan learned Counsel appearing for the petitioner, has rightly and fairly conceded the legal position that the petitioner is liable to pay wages due to the workers. According to counsel, the amounts so due to the workmen are not quantified nor has the 2nd respondent union put forward a claim for any specific sum towards the arrears of wages. In such a situation, I make it clear that the petitioner is liable to pay the

amount legally found due to the workers as arrears of wages.

8. The direction given by the Tribunal to pay bonus to the workers engaged in the canteen cannot be sustained for the reasons mentioned earlier. Apart from that the Tribunal was clearly in error in directing the petitioner to pay bonus to the workers engaged in the canteen at the rate at which the bonus was paid to the other employees in 1976-77. The payment of bonus for each year would depend on the trading reserve for that year. The rate applicable to one year cannot be taken as applicable to the succeeding year. It may vary. This aspect of the matter was not taken note of by the Tribunal when it directed the petitioner to pay bonus at the rate at which it was paid during the previous year. On that ground also the direction to give bonus cannot hold good,

9. The Tribunal while dealing with the issue relating to gratuity took the view that workers in the canteen are directly employed by the petitioner, that they are integral part of the factory and on that account they are entitled to gratuity from the petitioner. This finding is also against the provisions of law. As stated earlier, the workers in the canteen are not the employees of the petitioner and so they are not entitled to claim gratuity from the petitioner.

10. In view of what has been stated above, I quash Ext. P3 award in so far as it makes the petitioner liable to pay gratuity and bonus to the workers engaged in the canteen. That part of the award which makes the petitioner liable for arrears of wages due to the workers is sustained.

11. The Original Petition is disposed of with the above observations. No costs.

Issue carbon copy of the judgment to the parties on usual terms.