

(1995) 11 BOM CK 0041

In the Bombay High Court

Case No : Writ Petition No. 5945 of 1991

Dattatraya Kashinath and Others

APPELLANT

Vs

Chhatrapati Sahakari Sakhar Karkhana Ltd., Pune and Others

RESPONDENT

Date of Decision : 01-11-1995

Acts Referred:

Factories Act, 1948 — Section 2, 3
Industrial Disputes Act, 1947 — Section 28

Citation : (1996) 2 LLJ 169

Hon'ble Judges : B.N. Srikrishna, J

Bench : Single Bench

Judgement

B.N. Srikrishna, J.—This writ petition under Article 227 of the Constitution of India is directed against an Order of the Industrial Court, Pune dated Pune dated 25th March, 1991 made in Complaints (ULP) No. 345 of 1986, 346 of 1986, 347 of 1986 and 348 of 1986 under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the Act").

2. The Petitioners filed Complaints u/s 28 read with Items 9 and 10 of Schedule IV of the Act before the Industrial Court, Pune. The Petitioners alleged in their Complaints that the First Respondent was a co-operative sugar manufacturing factory covered under the provisions of the Bombay Industrial Relations Act, 1946 (BIR Act), that though they were working as regular though they were working as regular employees in the service of the First Respondent, their names were not being shown on the records of the First Respondent and they the records of the First Respondent and they were being paid ad hoc amounts by treating one of the employees as a contractor; that they were being continuously deprived of the benefits of direct employment and other consequential benefits by the First Respondent. The First Respondent contested the Complaints contending that the Petitioners were not its employees and that they were merely engaged on a contract basis. The First Respondent contended that the petitioners were part of a gang of persons who used to report for work and were

assigned casual work as and when available; that the work allotted or assigned to the petitioners was never a part of the manufacturing process of its factory and that the remuneration for the work carried out by the gang of persons was paid to one of the workers in lumpsum and he would distribute it to the other members of the gang. The Industrial Court, by its impugned order, held that the petitioners failed to show that they are "employees" within the meaning of Section 3(13) of the BIR Act and consequently that they were not "employees" within the meaning of Section 3(5) of the Act. On this reasoning, the Complaints came to be dismissed. Hence, this Writ petition.

3. Shri Bapat, learned Advocate appearing for the petitioners, made a grievance that the observations of the learned Judge of the Industrial Court in paragraph 5 display an anxiety on his part merely to "throw away the Complaints at ease" and not adjudicate them according to law. After having perused the impugned order and the evidence on record, I am inclined to agree with the criticism made by Shri Bapat.

4. In his anxiety to "throw away the Complaints at ease", the learned Judge overlooked several admissions made by the First Respondent. In the Affidavit of Dattatraya Kashinath Jamdar, dated 22nd February, 1990, filed in support of the Petitioners' case, it was pointed out that the work being done was regular work of the factory of the First Respondent and that deliberately the names of the petitioners were not borne on any of the records. It was also pointed out that a gang of persons would be called and kept on work, the wages payable to them fixed in an ad hoc manner, on a lump sum basis; that the bill for the services rendered would be raised in the name of one of the workers, who would he handed over the total amount payable to all the members of the gang and he would carry out the distribution of wages. The first respondent made sure that no records pertaining to any worker were kept and the name of none of the employees was ever entered into the First Respondent's records. It is somewhat surprising that the Factory Inspector of the local area permitted such employment by the First Respondent, which was clearly contrary to the provisions of the Factories Act, 1948 and the Rules made thereunder. Be as it may, the evidence on record further shows that Gokuldas Krishnaji Tengal, supervisor in the Agricultural Department of the factory, was examined in support of the case of the First Respondent. The said witness admitted, inter alia, that, during the crushing season, whenever work was available in the factory, it was allotted on "contract basis" to individual persons or through a contractor. He also stated that, whenever workers work on contract basis, the record is kept by the contractor himself or by the Supervisor of the contractor. With regard to the nature of the work carried out by the Petitioners, the witness said that the petitioners had been discharging duties in the Agricultural Department, and not in the Civil Department, that they were working in the Tyre Sub-Division, where the welding, greasing, drilling and other work was being carried out. Though the work was carried out by permanent workers, whenever there were exigencies of work, temporary workers were employed during the season and the temporary

workers and other "paltry" workers were doing the work of carrying the tyres and collecting rubber tubes of the tyres etc., which work was being given on contract basis. According to the witness, the petitioners were thus working on contract basis. The witness admitted : "In fact, the Complainant was working as a Contractor himself or through the contractor, and the contract work given by the company supervisor in the said department was supervising. " He also stated that the responsibility of recording the attendance and the wages is of the contractor or supervisor of the contractor. The Petitioners were not treated as direct employees of the First Respondent Karkhana and they were not made eligible to the wages and other benefits available to the direct employees of the Karkhana. This was admitted by the witness, though it was contended speciously that, because the petitioners were appointed on contract basis, they were not entitled to the benefits given to the permanent or temporary workers directly employed by the First Respondent Karkhana. This was the state of the evidence on record.

5. Surprisingly, despite his attention being pointedly drawn to the provisions of Section 3(13) of the BIR Act and the judgment of the Supreme Court in Maharashtra Sugar Mills Ltd. v. State of Bombay & Ors. 1951 II L. L. J. 299 and the judgment of this Court in Umedsingh Hamirasingh and Others Vs. The Marsden Mills, Limited and Others, , the learned Judge very erroneously distinguished the said cases as not applicable to the case on hand on the ground that the work of the petitioners was done by joint efforts, that the payment were shown on the basis of work done on contract in the name of one person of the gang and that continuity of work was not shown. On these facile observations, the learned Judge held "the evidence coming forth was not sufficient to establish the activities of employer and employee between the Respondent and Complainant". Several other authorities which were pointed out were also brushed aside as not serving any useful purpose to the Complainant. To say the least, the learned Judge has dealt with the matter in a most unsatisfactory manner.

6. A complaint under the Act is maintainable at the instance of an employee. "Employee" is defined in Section 3(5) of the Act as under :-

"3. In this Act, unless the context requires otherwise, -

(5) "employee" in relation to an industry to which the Bombay Act for the time being applies, means an employee as defined in clause (13) of section 3 of the Bombay Act; and in any other case, means a workman as defined in clause (s) of the section 2 of the Central Act;"

The expression "Bombay Act" is defined as "the Bombay Industrial Relations Act, 1946". Thus, any person so answering the definition of "employee" within the meaning of section 3(13) of the Bombay Industrial Relations Act, 1946 is entitled to maintain a complaint under the Act.

7. Section 3(13) of BIR Act reads as under :-

"3. In this Act unless there is anything repugnant in the subject or context -

(13) "employee" means any person employed to do any skilled or unskilled work for hire or reward in any industry, and includes -

(a) a person employed by a contractor to do any work for him in the execution of a contract with an employer within the meaning of sub-clause (e) of clause (14);

(b).....

(i).....

(ii)....."

8. Section 3(14) reads as under :

" (14) "Employer" includes -

(a).....

(b).....

(c).....

(d).....

(e) where the owner of any undertaking in the course of or for the purpose of conducting the undertaking contracts with any person for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the undertaking, the owner of the undertaking."

9. A conjoint reading of Section 3(13)(a) with Section 3(14)(e) leads to the conclusion that, where an employer of an industry covered by the provisions of the BIR Act, in the course of or for the purpose of conducting the undertaking, contracts with any person for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the undertaking, the owner of such undertaking would be the "employer" and the person employed by the contractor to do such work would be the "employee". In my view, the evidence on record unmistakably points out that the work carried out was a part of the work of the First Respondent's undertaking, and that the petitioners were employed through a contractor to execute such work, despite the considerable ingenuity displayed by the First Respondent in calling them a gang of persons and making payment through one member of the "gang". I am, therefore, of the view that the petitioners were "employees" within the meaning of Section 3(13) of the BIR Act and were consequently "employees" within the meaning of Section 3(5) of the Act. The Complaints filed by the petitioners were, therefore, perfectly maintainable. The industrial Court erred in dismissing the Complaints on the ground of maintainability. The impugned order dated 25th March, 1991 is, therefore, liable to be quashed and set aside.

10. In the result, the Writ Petition is allowed. The impugned Order dated 25th

March, 1991 made jointly the Complaints (ULP) No. 345 of 1986, 346 of 1986, 347 of 1986 and 348 of 1986 is hereby quashed and set aside. All the said four Complaints are restored to the file of the Industrial Court, Pune, which shall hear and dispose them of in accordance with law and the observations made in this judgment, as expeditiously as possible.

11. The First Respondent to pay the costs of the writ petition quantified at Rs. 500/-.

12. Rule accordingly made absolute.

13. Certified copy expedited.