
(1988) 04 AP CK 0008
In the Andhra Pradesh High Court
Case No : W.A. No. 633 of 1984

Desai Brothers

APPELLANT

Vs

Laxmi Bai Peddamalla and Others

RESPONDENT

Date of Decision : 15-04-1988

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 33C(2)

Citation : (1994) 3 LLJ 994

Hon'ble Judges : K. Jayachandra Reddy, J; Bhaskara Rao, J

Bench : Division Bench

Advocate : A. Krishnamurthy, for the Appellant; P. Vittal Rao, for Respondents 1 to 61 and Govt. Pleader for Education for Respondents 62 and 63, for the Respondent

Final Decision : Allowed

Judgement

Jayachandra Reddy, J.—The point that arises in these appeals is can a Labour Court or an Industrial Tribunal, while entertaining an application u/s 33C(2) go into the question whether the petitioner is a workman or not. The Labour Court held that the petitioners, who have filed objections u/s 33C(2) of the Industrial Disputes Act are workmen even if the objection raised by the Management is taken to be true. Questioning the same, the Management has filed several writ petitions and the learned Single Judge affirmed the view taken by the Labour Court. The learned Single Judge has also held that the Beedi Manufacturers ultimately paid wages to the workmen through the agency of Thakedar and in that factual situation the workmen should be regarded as the workmen of the Beedi Manufacturers. It is that finding that is seriously challenged in these writ appeals by the Management.

2. For a proper appreciation of the point urged, we may state few more facts. The respondents in the writ petitions, claiming to be the workers, filed applications u/s 33C(2) of the Act claiming compensation and notice pay u/s 25FF of the Act. They claimed that they were workmen of M/s. Desai Brothers,

Hyderabad. The applications were resisted by the Management on the ground that the applicants are not the employees of M/s. Desai Brothers and therefore their applications u/s 33C(2) of the Act are not at all maintainable. In other words, a preliminary objection was raised that the applicants were not their workmen. In support of their stand, the Management stated that according to the practice, the Company will supply Beedi leaves, tobacco to Thakedar (contractor) and he will supply the finished product. The Company at the relevant time paid Rs. 4.90 to the Thakedar for every 1000 beedies supplied by the Thakedar and the company is not at all connected as to what processes the Thakedar apply in rolling beedies, whom he appoints etc.

3. The Labour Court held that even if the stand taken by the Management is to be accepted and even according to M.W. 1, the Thakedars were paid certain amounts for piece rate wages to the labourers engaged by them, besides commission payable to Thakedars, "this is a case similar to D.M. Sahib & Sons v. Union of U.B. Workers : 1964 II LLJ 633. Hence even assuming that the version of the respondent is true, still Thakedar cannot be treated as the principal employer of the petitioners as per the provisions of Bidi and Cigar Workers (Conditions of Employment) Act, 1966".

4. As already mentioned above, the Management challenged this finding in the writ petitions. But the learned Single Judge held that in the factual situation the Bidi Manufacturers paid wages to the workmen through the agency of Thakedars and therefore they must be treated as workmen.

5. The learned counsel for the Management appellant, submits that these Thakedars lend their services to many manufacturers and as a matter of fact in the instant case the Thakedar started working for another Beedi Manufacturer, who is a competitor to the appellant and therefore it is needless to say that all workmen who rolled beedis through Thakedars and handed over to Thakedar do not become workmen of the appellant.

6. It can therefore be seen that the real controversy is whether the workmen were the employees of Thakedars or by necessary implication they have to be treated as workmen of the appellant i.e. Messrs. Desai Brothers.

7. As mentioned above, the Labour Court has very much relied upon the principles laid down by the Supreme Court in D.M. Sahib & Sons v. Union of U.B. Workers (1 supra). Before we state the ratio laid down in that case, it has to be mentioned that in an enquiry u/s 33C(2) the Management can raise an objection. It is not the case of the workmen that the Management cannot raise an objection at all. Suppose such an objection is raised, viz., regarding the relationship of the employer and employee between the applicants and the Management, can the Labour Court straightway reject the applications filed u/s 33C(2) or whether it can make some reasonable enquiry on this aspect. The learned counsel for the appellant submits that once such an objection is raised, the Labour Court has no other option except to return or dismiss the applications filed by the so called

workmen and the only option left for such applicants is to raise an industrial dispute. The learned counsel appearing for the workmen on the other hand submits that there may be instances where the Management can raise a frivolous objection and to say that just because an objection is raised, the applications u/s 33C(2) of the Act have to be rejected outright, will defeat the very object with which Section 33C(2) is enacted.

8. It is held in a number of cases that Section 33C(2) of the Act is in the nature of an execution proceeding and the scope of jurisdiction of the Labour Court to entertain applications u/s 33C(2) of the Act should be on those lines. In *The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc.*, it is observed that:

"It is of course, true that the Executing Court cannot go behind the decree, nor can it add to or subtract from the provision of the decree. These limitations apply also to the Labour Court; but like the executing Court, the Labour Court would also be competent to interpret the award or settlement on which a workman bases his claim u/s 33C(2). Therefore, we feel no difficulty in holding that for the purpose of making the necessary determination u/s 33C(2), it would, in appropriate cases, be open to the Labour Court to interpret the award or settlement on which the workman's right rests".

In other words what their Lordships laid down is that the Labour Court to the limited extent can enquire into the nature of the claim to determine whether relief can be given u/s 33C(2) or not. It cannot make a roving enquiry about the respective rights. But, as pointed out by the Supreme Court in the above case it has at least a right to interpret the award or settlement. In the instant case, there is no such settlement or award. But the workmen claimed that they here worked for some time in supplying beedis to the Management. When an objection is raised that they are not at all workmen, the Labour Court has to make an enquiry to that limited extent. But, if it becomes a disputed question, then of course it cannot entertain applications u/s 33C(2) of the Act. But if it is prima facie satisfied that dispute is frivolous and does not in any manner change the character or the status or the relationship, then naturally it can proceed with the enquiry u/s 33C(2). In this context it is also useful to note some of the guidelines given by the Supreme Court in *D.M. Sahib & Sons v. Union of U.B. Workers* (1 supra). We may at the outset mention that this is a case raised u/s 10 of the Industrial Disputes Act. But their Lordship have also considered the nature of relationship that has to be established in deciding the question whether a person is a workmen or not. That is to say that they considered the scope of Section 2(s). This is also a case where the contract or took leaves and tobacco from the appellant and employed workmen for manufacturing beedi and after beedies were manufactured the contractors took them back from the workmen and delivered them to the appellant. The workmen took the leaves home, cut them there and leaves process of actual rolling by filling the leaves with tobacco took place in what were called contractors' factories. The system was that appellants fixed the price of tobacco and leaves supplied to the contractors who

took them to the places, where work of rolling was done and gave them to the workmen. On these facts a case was sought to be made out as if there was a sale of leaves and tobacco to the appellants by the contractors and the Tribunal however held that it was clear that there was no sale of either raw material or of finished products, for, according to the agreement, if beedies were not rolled, raw materials have to be returned to the appellants and the contractors were forbidden from selling the raw material to any one else. On the question whether the workers in question were workmen of the contractors or Beedi concerns, their Lordships after considering the material on record, held that:

"All that happens is that when the manufactured bidis are delivered by him to the appellants, amounts due for the so called sale of raw materials is deducted from the so called price fixed for the beedis. In effect all that happened is that the so called independent contractor is supplied with tobacco and leaves and is paid certain amounts for the wages of the workers employed and for his own trouble. We can therefore see no difficulty in holding that the so called contractor is merely an employee or an agent of the appellants as held by the appeal Court and as such employee or agent he employs workers to roll beedis on behalf of the appellants, The work is distributed between a number of so called independent contractors who are told not to employ more than nine persons at one place to avoid regulation under the Factories Act".

Their Lordships also in effect pointed out that the situation and control are the two important deciding factors in considering this aspect.

9. Mr. A. Krishna Murthy, learned counsel appearing for the Management, submits that in the instant case the test laid down by the Supreme Court is not satisfied, because the Management of M/s. Desai Brothers had no direct contract or control or supervision over the workers, who are engaged by the Thakedars. At any rate, according to the learned counsel, the entire evidence that has been adduced ought to have been considered before coming to the conclusion that merely because for manufacturing beedis raw material is given to Thakedars who in turn engage some workers and supply beedis to the Management, it cannot be said that the workers, who roll beedis are directly the employees of the concern. This is a question of both law and fact. To arrive at a correct conclusion regarding the maintainability and enquiry into the applications filed u/s 33C(2), some reasonable enquiry is necessary. In the instant case, it appears, necessary evidence is adduced on both sides. The Labour Court has already held that applicants to be workmen merely because they are engaged by the Thakedars. There may be some similarity to some extent with the principles laid down in D.M. Sahib's case. But the question is that mere employment by Thakedars does not in every case bring about the direct relationship of employee and employer between the person who roll bidis and the Beedi concerns. There may be several manufacturing processes like Ancillary industries, where some parts being supplied by some small scale manufacturers and of a large scale industry takes material from them, gives some material to them and then takes finished

ancillary products. It is rather difficult to say that all the workers who work in the ancillary industry would automatically become the workmen in the main concern. In *Workmen of The Food Corporation of India Vs. Food Corporation of India*, the scope of Section 2(s) was considered by the Supreme Court. There also the workmen were employed by a contractor. In Paragraph 12, their Lordship observed thus:

"The expression employed has atleast two known connotations but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and him as between employer and employee or master and servant. Unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act".

10. We therefore, having given our earnest consideration to the principles laid down by the Supreme Court and also the provisions of the Act and the definition of "workman", think that the Labour Court ought to have examined the other evidence also and then given a finding whether there was such relationship as pointed out by the Supreme Court. Hence we set aside the order of the learned Single Judge and the common order passed by the Labour Court, and remand the matter to the Labour Court to consider all the evidence adduced and decide the issues involved. If *prima facie* the Labour Court is satisfied that the petitioners are workmen, it can proceed with the enquiry. But, if on the other hand it finds that some genuine doubt arises about the relationship, then the only course left for the Labour Court is to direct the Union or the workmen to raise a dispute u/s 10 of the Industrial Disputes Act.

11. With the above directions, the writ appeals are disposed of. The Labour Court is directed to dispose of the matter in the light of the above directions. No order as to costs.