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**(1989) 10 BOM CK 0027**

**In the Bombay High Court**

**Case No : Writ Petition No. 3457 of 1987**

General Labour Union (Red Flag)

APPELLANT

Vs

K.M. Desai and others

RESPONDENT

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**Date of Decision : 11-10-1989**

**Acts Referred:**

Contract Labour (Regulation and Abolition) Act, 1970 — Section 12, 21, 7

**Citation : (1990) 60 FLR 239 : (1990) 2 LLJ 259**

**Hon'ble Judges : M.L. Dudhat, J**

**Bench : Single Bench**

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## **Judgement**

1. This writ petition is preferred by the petitioner-union against respondent No. 2 challenging the order dated 23rd January, 1987, passed by the Industrial Court, Bombay. Few facts which are germane to the main issue are as under :

2. The present petitioner-union filed a complaint being Complaint (ULP) No. 692 of 1986 against respondent No. 2 - M/s. Rashtriya Chemicals & Fertilizers Ltd., Bombay, respondent No. 3 - M/s. K. M. Alwa & Co., (Canteen Contractors) and respondent No. 4 - M/s. Gambir Catering Services, alleging that these respondents indulged in unfair labour practice under Item No. 6 of Schedule-II and Item Nos. 9 and 10 of Schedule-IV of M.R.T.U. & P.U.L.P. Act of 1971 (hereinafter for the sake of brevity referred to as "the said Act of 1971"). It was averred in the said complaint that respondent No. 2 is conducting a canteen for its employees. Till May 1983, the said canteen was conducted by the department of respondent No. 2, but subsequently both the employees as well as respondent No. 2 decided to discontinue the said canteen and further decided that the said canteen should be run by contractor in the general interest of the employees. In view of the aforesaid decision, the company - respondent No. 2 absorbed all those employees who were working in the said canteen in its other departments. Thereafter, respondent No. 2 - company appointed M/s. Everest Caterers as contractors from 15th May, 1983, to 31st May, 1984, and during this period the said caterers employed their own persons and conducted the canteen. Thereafter,

on 1st of June, 1984, till July, 1986, respondent No. 2 - company appointed respondent no. 3 as a contractor to run the said canteen. In July, 1986, respondent No. 4 was appointed as a contractor and its services are continued till today. It is pertinent to note here that respondent No. 2 - company after its appointing the said contractor for looking after its canteen registered their contract u/s 7 of the Contract Labour (Regulation and Abolition) Act, 1970 (for brevity sake hereinafter referred to as "the said Act of 1970"). Respondent No. 2 company has also produced a document dated 2nd December, 1985, which shows the name of respondent No. 3 as a contractor in the certificate granted by the authority.

3. M/s. Shastri and Varadayya, the learned counsel, appearing on behalf of the petitioner - union have taken me through all the relevant documents and the judgment of the Industrial Court. They contended that admittedly though the respondent No. 2 - Company registered its contract u/s 7 of the said Act of 1970, respondent No. 3 has not registered the said contract u/s 12 of the said Act of 1970 and, therefore, on the failure of respondent No. 3 to register its contract u/s 12 of the said Act of 1970, the employees working under respondent No. 3 have become the direct employees of respondent No. 2 - company. In order to support this contention they relied on the decision in the *The Workmen of Best and Crompton Industries Ltd. Vs. The Management of Best and Crompton Engineering Ltd., Madras-55*, . I have gone through the facts of the aforesaid case. It is clear that in fact the Industrial Court where the dispute was filed came to the conclusion that the contractor was merely a name - lender and in reality it was the company who employed the 75 laborers. This finding of the Industrial Court was set aside by the Single Judge of the High Court of Madras. However, in the Letters Patent Appeal filed against the said judgment the Division Bench of the Madras High Court held that since the finding given by the Industrial Court was the finding of facts, the same ought not to have been disturbed because the finding was neither perverse nor was there any error apparent on the face of the law. Apart from that, even on facts the Division Bench came to the conclusion that though permission was taken for 30 persons, in fact 75 persons were employed and though the licence was for a particular area only, still the workmen were working in different areas. After taking into consideration the aforesaid facts, the Division Bench came to the conclusion that in fact these persons were employed by the company itself. However, as I have already pointed out above that though till the year 1983 the canteen was run by the company itself departmentally, after the unanimous decision taken by the company and its employees those about 100 employees were absorbed in the other departments of the company and the canteen was given for conducting by the contractor. In view of these facts, the ratio of the aforesaid Madras case is not applicable in the present case. There is also no provision in the Act of 1970, whereby it can be construed even by a remote possible way that the failure on the part of the contractor to register his contract u/s 12 of the Act of 1970, the employees employed by the contractor would become the direct employees of the

respondent No. 2 - company. On the contrary, for the failure of the contractor to register the contract some penalty is prescribed on the contractor. This being the clear position, according to me, there is no substance in the aforesaid contention raised by the learned counsel on behalf of the petitioner - union. Admittedly, till the year 1983 the canteen was run departmentally by respondent No. 2 company itself and subsequently the said employees working in the canteen were absorbed by respondent No. 2 company in the other departments. Not only this, but there was also a unanimous decision taken by respondent No. 2 - company and its employees that the canteen was to be given for running by the contractor after inviting tenders. This clearly shows that from the year 1983 the employees working in the canteen had no concern whatsoever with respondent No. 2 and from 1st of June, 1974, till July, 1986, they were the workers employed by respondent No. 3 - contractor.

4. The learned counsel for the petitioner also relied on the decision in Hussainbhai, Calicut Vs. The Alath Factory Thezhilali Union, Kozhikode and Others, . However, since the facts of the present case are altogether different, the ratio of the aforesaid case is not applicable to this case. In the aforesaid case the Supreme Court came to the conclusion that though the company had not directly employed any persons and the laborers were employed through the contractor, still they were in fact employees of the Company.

5. Mr. Rele, the learned counsel appearing on behalf of respondent No. 2 and Mr. Cama, the learned counsel, appearing on behalf of respondent No. 3, have relied on an unreported judgment of this Court in Petroleum Refineries Employees Union v. M/s. Hindustan Petroleum Corporation Ltd. Misc. Petition No. 2300 of 1979 and Workmen of The Food Corporation of India Vs. Food Corporation of India, . Relying on the aforesaid decision, both the learned counsel have contended that even assuming for a while that the workmen were employed in the canteen under the contract, unless the workmen are doing the work in the same line as in the factory or the same kind of work as in the establishment, they cannot become the workmen or the employees of the company under Sections 46 and 103 of the Factories Act, 1948. I find substance in this contention and reject the contentions made on behalf of the petitioner union that under Sections 46 and 103 that since these workmen were employed in the canteen which is the essential service for the company, these workmen become the direct employees of the company.

6. It was also argued on behalf of the petitioner - union that since respondent No. 3 has failed to pay the dues as ordered by the Industrial Court u/s 21 of the Contract Labour Act of 1970, it is the duty of the 2nd respondent company to pay the same. According to the learned counsel, even the learned member of the Industrial Court has not taken into consideration the said aspect while passing the final order. According to me, there is no evidence on record to show that there was any attempt on behalf of the petitioner to recover the said dues from respondent No. 3, though the order was passed by the Industrial Court as far

back as on 23rd January, 1987. Apart from the above, I may also point out that respondent No. 3 has filed Writ Petition No. 2284 of 1987 on the Original Side of this Court against the said order dated 23rd January, 1987, the same is still pending. Only after the decision in the said writ petition, if the respondent No. 3 fails to pay the said amount then in that event the petitioner - union will be entitled to recover the said amount from respondent No. 2 - company

7. In view of the above, I agree with the conclusion arrived at by the Industrial Court on the issue that from June, 1984, till July, 1986, those who were in the service of respondent No. 3 had no concern whatsoever with respondent No. 2 and I confirm the said finding. The Industrial Court has further held that breach is committed by respondent No. 3 - Contractor and consequential order is also passed. However, I am told that the said order is under challenge by respondent No. 3 in the other writ petition pending in the Original Side of this Court. In view of the aforesaid clear position, there is no substance in the second contention of the petitioner as well.

8. In the result, this writ petition is dismissed with no order as to costs. Rule stands discharged.