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**(1962) 11 MP CK 0006**  
**In the Madhya Pradesh High Court**  
**Case No : M.P. No. 37 of 1961**

Hakim Singh

APPELLANT

Vs

J.C. Mills

RESPONDENT

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**Date of Decision :** 15-11-1962

**Acts Referred:**

Constitution of India, 1950 — Article 227

**Citation :** (1963) JLJ 134

**Hon'ble Judges :** P.R. Sharma, J;H.R. Krishnan, J

**Bench :** Division Bench

**Advocate :** B.P. Ashthana, for the Appellant; S.K. Dubey, for the Respondent

**Final Decision :** Dismissed

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## Judgement

H.R. Krishnan, J.—This is a petition by an employee of a contractor supplying certain packing materials to the J. C. Mills Ltd., owners of a well known industrial concern at Gwalior. It is under Articles 227 of the Constitution, praying that we should set aside the decision of the Industrial Court that the Petitioner cannot be deemed to be an employee under the non-applicant No. 1-J. C. Mills Ltd., for the purpose of the Bombay Industrial Relations Act either under the general law of master and servant, or under the special provisions of the Act in Section 3(13)(a) read with Section 3(14)(e).

2. The facts of the case are the following. The J. C. Mills Ltd., manufacture textile goods and send them out in bales. Among the packing materials required are a quantity of metal strips and rivets which apparently come in large reels and quantities; the strips have to be cut in proper length and width and the rivets fixed where they are joined. This last process seems to be done in the premises themselves. After the strips and rivets of the proper length, breadth and number are prepared, they are handed over to the packing department which uses for the packing of the bales which are then sent out. Mohanlal son of Ramautar opposite party No. 2 is the contractor who brings this kind of material, cuts it, and fixes it with rivets according to requirements of the packing department and

ha ads them over. The Petitioner Hakimsingh is an employee of this contractor. In view of some confusion noted in the argument at the bar, we have to record clearly that the finding of fact of the tribunals including the Industrial Court is that-

Mohanlal has nothing to do with the baling of cloth as such. He has taken the contract from the store department of the mills to rivet small iron strips and also to cut large strips in order to make them suitable for this purpose. He only supplies the strips of the required size.

It is in this work that the Petitioner assists Mohanlal contractor. This work of cutting and riveting strips is done for convenience in the premises of the mills; but neither Mohanlal nor the Petitioner has anything to do with the packing process as such.

3. The prayer of Hakimsingh was that he should be treated as an employee in the industry carried on in the establishment Of the J. C. Textile Mills. If this is conceded, he gets under the Industrial Relations Act several benefits which he cannot get as the employee of the contractor Mohanlal who is not running an industry and has probably no more than a few hands working under him. For this, the Petitioner depends upon the definitions already referred to which can be usefully quoted:

"Employee" means any person employed to do any skilled or unskilled manual or clerical work for hire or required in any industry, and includes-

(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);

sub-clause (e) of Clause (14) runs:

"Employer" includes-

(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.

4. In spite of the rather heavy wording of these definitions, what emerges is by no means complicated. There must be an industrial undertaking owned by somebody, an individual or a company; some work which is ordinarily part of the undertaking must have been entrusted by the owner to a contractor; that contractor must be employing an employee; now that employee can by the combined operation of these definitions insist upon being treated as the employee of the owner himself. The obvious idea is that the owner of an industrial undertaking cannot evade the responsibilities towards his employees which are imposed by laws, by entrusting part or whole of the conduct of the undertaking to a contractor. Most often, the contractor will be a smaller man and his establishment may at times turn out to be too small for the operation of the

labour laws. If an owner is enabled to evade his duties to the employees who work in his industry, by having a number of contractors, then the policy behind the labour laws can be frustrated. Therefore Clause 14 (e) and 13 (a) have the effect of fixing the responsibilities on the owner just as if he was directly employing the employee concerned.

5. The essence of the matter is that the work that the contractor is to do should be ordinarily a part of the industrial undertaking. It should not be something outside the industrial undertaking as such though it may be an essential ancillary. If, for example, we have a contractor supplying some raw material, say, cotton or wool, to a textile factory, an employee under the contractor cannot claim to be one under the owner of the textile undertaking because the production of the raw material, however necessary for the undertaking, is not ordinarily a part of it. It is not the necessity of the contractor's undertaking that is going to decide the issue; but its being part of the owner's undertaking itself.

6. The learned Industrial Court has considered both the aspects of the question. The first, whether under the general law of master and servant the Petitioner is an employee of the opposite party No. 1. We are certainly in agreement with the conclusions of the learned Industrial Court; but it is really unnecessary to discuss the question here, because in this Court at any rate, it is not suggested for a moment that the Petitioner is an employee of the J. C. Mills Ltd., by any direct nexus. The only manner in which it is sought to be made out that he is their employee is by the operation of the two definition clauses already mentioned. If Mohanlal were a packing contractor, in other words, if he packed the bales getting so much per bale or so much per month, then certainly his work would be a part of the undertaking, because no industrial undertaking is complete till the goods are properly packed or labelled or sent out. But Mohanlal is not doing any part of the packing. He is only supplying the packing materials. Because of its nature and the necessity of his being supplied with the length and width of strips required from time to time, he is given a room or shed on the premises for preparing the kind of packing material he has contracted to supply. His being on the premises makes, of course, no difference.

7. Actually, the learned Industrial Court has pointed out the absurd results to which we might be led if we hold that the contractor who supplies this or that raw material for this or that part of the work in the undertaking is one who is doing work as part of it. It is clear from the foregoing discussion that the Petitioner cannot be considered to be an employee of the owner of the undertaking by the combined operation of the two definitions; by direct operation of the law of master and servant he is of course not the owner's employee. The petition is accordingly dismissed. Parties shall bear their own costs. The security deposit, if any, may be allowed to be withdrawn by the Petitioner.

P.R. Shama, J.

8. I agree.