
(1995) 11 AP CK 0027
In the Andhra Pradesh High Court
Case No : W.A. No. 1196 of 1988

Investigation and Security Services (India) Pvt. Ltd.	APPELLANT
Vs	
Commissioner of Labour and Others	RESPONDENT

Date of Decision : 17-11-1995

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (1995) 3 ALT 622 : (1996) 1 LLJ 1049

Hon'ble Judges : M.N. Rao, J;B. Sri Atchuthananda Swamy, J

Bench : Division Bench

Advocate : G. Vidyasagar and V. Viswanathan, for the Appellant;

Judgement

B. Sri Atchuthananda Swamy, J.—Though this appeal was filed by the appellant aggrieved by the orders of the Hon'ble Sri Justice Ramaswamy, as he then was, wherein his Lordships held that the 4th respondent being the principal employer and the appellant, a contractor under it as defined in Section 2(c) of the Contract Labour (Regulation and Abolition) Act, 1970, hereinafter called as "the Act", is bound to pay the same wages that are being paid by the 4th respondent to the security guards directly employed by it under Rule 25(v)(a) of the Andhra Pradesh Contract Labour (Regulation and Abolition) rules, 1971 (for short "the Rules") framed by the State Government in exercise of the powers conferred on it by Section 35 of the Act. On a deeper consideration, we think it necessary to adjudicate the legality of the agreement entered into by the appellant - Company with the 4th respondent on December 11, 1980 as modified from time to time and if it is found to be ultra vires, to apportion the liability between the appellant Company and 4th respondent for payment of the wages to the security guards supplied by the appellant - Company to the 4th respondent at par with the security guards directly employed by it.

2. The undisputed facts leading to filing of this case are that the 4th respondent-Corporation which is an undertaking of the Government of India having secured the contract for execution of the Civil and structural constructions for the Steel

Plant at Balacheruvu at Visakhapatnam, applied to the Deputy Commissioner of Labour, Visakhapatnam in its letter No. GM/PO/35/VSP/75/4250 dated October 10, 1975 for registration as principal employer under the Act and also obtained registration certificate No. RD- 26/75 dated November 2, 1975. Thereafter, having appointed very few security guards to prevent illegal unauthorised entry and exit of men and material the 4th respondent entered into an agreement with the appellant for supply of more number of security guards, head guards and shift incharge, at the monthly remuneration of Rs. 400/- Rs. 500/- and Rs. 600/- respectively under the impugned agreement dated December 11, 1980.

3. It is not in dispute that the security guards directly employed by the 4th respondent and the security guards supplied by the appellant were discharging the same or similar kind of work, But while the 4th respondent was paying higher wages to its employees under the guise of the impugned agreement, it was paying lesser amount to the Security Guards supplied by the appellant which in turn was paying Rs. 317-77 to the security guard, Rs. 360-13 to the head guard and Rs. 359-46 to the Sergeant under various heads like salary, minimum bonus at 8.33% employer's share of Provident Fund at 8.25%, leave relief at 8% cost of uniforms at Rs. 30/- retaining an amount of Rs. 82-23 in case of a security guard, Rs. 139-87 for a head guard and Rs. 240.54 to a sergeant towards administration and supervisory charges. Subsequently, by mutual negotiations between the appellant - company and the 4th respondent-corporation, the wages payable to all these watch and ward staff used to be revised on the basis of notifications that were being issued by the Government of Andhra Pradesh under the Minimum wages Act from time to time.

4. While so, the in-charge Inspector connected with the enforcement of the provisions of the Act visited the site on May 19, 1993 and having found the anomaly between the wages paid to the watch and ward staff employed by the 4th respondent and the watch and ward staff supplied by the appellant-Company filed a complaint before the Commissioner of Labour. The 1st respondent, who is the competent authority under the Act having taken the complaint on file, registered it as Case No. 1/83 and issued notices to all concerned.

5. The hearing of the case before the 1st respondent seemed to have spread over for several days and after recording the evidence on behalf of the parties and after examining the provisions of the Act as well as the Rules made by the State Government, the 1st respondent by order dated August 13, 1984 held that the 4th respondent is the principal employer and the appellant-Company as a contractor under it as defined u/s 2(c) of the Act, has to pay the same wages that are being paid to the watch and ward staff directly employed by the 4th respondent.

6. Aggrieved by the said orders, the appellant filed Writ Petition No. 12963/84 and the same was dismissed by his Lordship Justice Ramaswamy, as he then was, by order dated August 6, 1988 and confirmed the findings of the 1st

respondent although the reasoning in a small measure was different. Aggrieved by the said order, the present appeal was filed by the appellant.

7. We have gone through the orders passed by the 1st respondent as well as the learned single Judge. We do not see any reason to disagree with the findings recorded by the competent authority as well as the learned single Judge and we affirm the view taken by the learned single Judge that the 4th respondent is the principal employer and the appellant-Company is a contractor as defined in Section 2(c) of the Act. No material was placed before us in support of the contention raised by the learned Counsel for the appellant Mr. Vidyasagar that 5th respondent is the principal employer and the 4th respondent is a contractor under it and his client has to be treated only as a sub-contractor and as such, the question of paying same wages to the watch and ward staff supplied by it to the 4th respondent will not arise, more so in the light of the registration certificate No. RD-26/75 dated November 2, 1975 issued by the Deputy Commissioner of Labour, Visakhapatnam in favour of the 4th respondent registering it as a principal employer. Hence, we have no hesitation to reject his contention and confirm the finding of the learned Single Judge to that extent.

8. As far as the nature of duties and the kind of work turned out by the watch and ward staff supplied by the appellant and the watch and ward staff directly employed by the 4th respondent- Corporation are concerned, there is no serious dispute and in so many words, the representative of the 4th respondent agreed to this aspect while giving evidence before the 1st respondent. As such, the watch and ward staff supplied by the appellant - Company are entitled to claim the benefit of equal wages and other connected service benefits at par with the watch and ward staff employed by the 4th respondent in terms of Rule 25(v)(a) of the Rules which reads:

"In cases where the workmen employed by the contractor perform the same or similar kind of work as the workmen directly employed by the principal employer of the establishment, the wage rates, holiday, hours of work and other conditions of services of the workmen of the contractor shall be the same as applicable to the workmen directly employed by the principal employer of the establishment on the same or similar kind of work."

9. In terms of the above legal position, the watch and ward staff supplied by the appellant to the 4th respondent are entitled to receive equal wages and other service benefits at par with the watch the ward staff directly employed by the 4th respondent.

10. The next question that arises for consideration is, who has to pay the difference in wages to the watch and ward staff supplied by the appellant to the 4th respondent?

11. During the course of the hearing of the appeal, it turned out that the appellant-Company was registered under the provisions of the Companies Act with the avowed object of offering security services to its clientele as per the

terms and conditions reduced to writing on the basis of the negotiated wages reached between it and its clientele. In the course of its business activity, the appellant entered into an agreement for supply of three categories of watch and ward staff to be posted at different places for preventing illegal unauthorised access and exit of men and material at the rates specified in the agreement. It is pertinent to note that one of the parties to the agreement is an instrumentality of the State falling within the ambit of Article 12 of the Constitution. Then the question will be, whether the Government or any of its instrumentalities can enter into an agreement which runs counter to the constitutional mandate of equal pay for equal work and public policy? The answer in our view is an emphatic "no".

12. The learned counsel for the 4th respondent contended that the appellant-Company entered into the agreement with eyes wide open and as such, the question of paying difference of wages by the 4th respondent as envisaged in Section 21(4) of the Act, would not arise. He also contended that as there was no prayer in the Writ Petition for such a relief, the appellant Company is estopped from seeking the above relief and the Court is not justified in permitting the appellant-company to assail the validity of the impugned agreement at a belated stage. At any rate, the liability of the 4th respondent Corporation would arise only when the sub-contractor fails to pay the same wages to the staff supplied by it.

13. Before advertng to these contentions, we propose to examine whether the agreement dated December 11, 1980 entered into by the appellant and the 4th respondent is opposed to public policy. A similar question arose before this Court way back in 1968 in *Satyanarayana Gupta v. Government of A.P.* 1970 (2) An.W.R.25. In that case Justice Chinnappa Reddy (as he then was) considered the validity of the procedure followed by the Excise Commissioner in awarding contracts for transporting and supply of liquor manufactured by indigenous methods in the Government Distilleries at Narayanaguda and Kamareddy to the licensed depots, storing it therein and issuing it therefrom to the licensed liquor shops in all the Telengana Districts for a maximum quantity of one paisa. After stating that "it is not disputed that the Excise Commissioner invites tenders and awards contracts for transportation of liquor in pursuance of powers vested in him u/s 3 of the Act", the learned judge observed "The question whether the procedure being presently followed for the award of these contracts attracts "the rule against acting ultra vires" in view of the admitted fact that evil consequences and unlawful activities are bound to follow as inevitably as night follows day". After citing several English decisions, it was held by the learned Judge:

"To define with precision the scope of the doctrine of ultra vires or to attempt a classification of the sub-divisions of the principle of ultra vires is a futile exercise. The various aspects of ultra vires often slide into one another, as has been said, and where the test of unreasonableness has to be applied the line between what

is reasonable and what is unreasonable is often very thin. In the present case, however, the exercise of power in the manner exercised by the Excise Commissioner, inevitably leading to unlawful activities, can only be considered to be an improper and unreasonable exercise of power, in total disregard of public policy. Since the legislature could never have intended to invest the Excise Commissioner with authority to promote unlawful activities it must be held that exercise of power by the Excise Commissioner in a manner bound to lead to unlawful activities must be considered to be exercise of a power never vested in the Excise Commissioner.

On behalf of the Government it is urged that the Government is entitled to act in a manner which is to its best advantage and if subsequent to the grant of contracts the contractors indulge in unlawful activities it is neither the concern of the Government nor can it invalidate the award of contracts. This is an argument which ill becomes the Government. The Government and its officers cannot dissociate public interest from their acts and cannot forget that there is a duty in them to maintain law and order, a primary function of Government, and the public policy requires that they should not do anything to encourage unlawful activities."

14. In another case *Ratanchand Hirachand Vs. Askar Nawaz Jung and Others*, again Justice Chinnappa Reddy, as he then was, speaking for the Bench held as follows:

"Law cannot afford to remain static. It has, of necessity to keep pace with the progress of society and Judges are under an obligation to evolve new techniques or adopt old techniques to meet the new conditions and concepts." The Court further held that even where the parties have waived the objection, the Judge coming to notice it should hold the agreement void."

15. In *Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others*, while striking down regulation 9(b) of Delhi Road Transport Authority (Conditions of Appointment and Services) Regulations, 1952, which enabled the Management to terminate the services of an employee without any notice or pay in lieu of notice published illegally not only on the ground that it was violative of Article 14 of the Constitution of India but also the principles of natural justice and public policy as envisaged u/s 23 of the Contract Act, his Lordship Justice Ramaswamy, observed as follows: at page 476.

"This Court as a Court of constitutional conscience enjoined and is zealously to project and uphold new values in establishing egalitarian social order. As a court of constitutional functionary exercising equity jurisdiction, this Court would relieve the weaker parties from unconstitutional contractual obligations, unjust, unfair, oppressive and unconscionable rules or conditions when the citizen is really unable to meet on equal terms with the State. It is to find whether the citizen, when entering into contracts of service, was in distress need or compelling circumstances to enter into contract on dotted lines or whether the

citizen was in a position of either to take it or leave it and if it finds to be so, this Court would not shirk to avoid the contract by appropriate declaration. Therefore, though certainty is an important value in normal commercial contract law, it is not an absolute and immutable one but is subject to change in the changing social conditions.

16. In *Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*, an identical view was also expressed.

17. In *N.P. Mathai v. Federal Bank Ltd.* 1993 Lab.I.C.1539 the Kerala High Court considered the validity of Clause 28 of the Federal Bank Officers Service Code, which read:

"28. The management may terminate the service of any officer by giving him one month's notice in writing or one month's salary in lieu of such notice, if in the opinion of the management continuation in service of such officer is not desirable in the interest of the bank and/or if the officer continuously fails to show results."

18. After reviewing the progress of law on the aspect of public policy, it was held that above clause is unenforceable and any action taken under that Clause is invalid since the same being opposed to public policy.

19. For all the above reasons, we hold that the agreement dated December 11, 1980 entered into between the appellant-company and the 4th respondent Corporation attracts "the rule against acting ultra vires" resulting in evil consequences and unlawful activities and as such, the same is liable to be struck down by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India. In the light of the view taken by us, the first submission made on behalf of the 4th respondent - Corporation falls to ground.

20. Coming to the second objection raised by the Counsel for the 4th respondent that the appellant - company neither questioned the validity of the agreement nor sought any relief against it, suffice it to state that such an objection was answered by a Division Bench of this Court in *Ratanchand's case* (supra) in the terms already extracted above. In recording such a finding the Court relied on a judgment in *E.A. Janu Sait Vs. N. Ramaswami Naidu*, wherein the Court has taken the view that the question of public policy can be taken for the first time at the stage of arguments although not pleaded.

21. with regard to the third objection that the liability of the 4th respondent would arise only when sub-contractor failed to pay the same wages, we hold that the 4th respondent being an instrumentality of the State knowing fully well that its act of obtaining the services of the watch and ward staff by paying lesser wages than the wages paid to the regular staff on its establishment by inducing the appellant - company to enter into a contract opposed to public policy cannot take advantage of its own unethical act and throw the burden of paying difference in wages on the sub-contractor at par with regular employees on its establishment. At any rate, such an illegal act on the part of a litigant cannot

have judicial assent. Accordingly, we direct the appellant-company to pay the amounts retained by it towards the administration and supervisory charges out of the amounts paid by the 4th respondent to each of the three categories of employees i.e, security guards, shift incharge and Sergeant under agreement dated December 11, 1980 and the remaining difference of wages payable at par with the regular watch and ward staff in the establishment of the 4th respondent Corporation shall be paid by it within 8 weeks from the date of receipt of the copy of the order as required u/s 21(4) of the Act, which is extracted hereunder:

"21. Responsibility for payment of wages:

(4). In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

22. Incorporating the above directions, a writ of Mandamus will be issued to the appellant-company as well as the 4th respondent - corporation.

23. Accordingly, the Writ Appeal is disposed of with the above directions. No costs.