
(1958) 10 BOM CK 0008

In the Bombay High Court

Case No : In Reference (I.T.) No. 205 of 1957

Kandivli Metal Works

APPELLANT

Vs

Their Workmen (Excluding Clerks)

RESPONDENT

Date of Decision : 31-10-1958

Acts Referred:

Industrial Disputes Act, 1947 — Section 12(5)

Citation : (1959) 1 LLJ 194

Hon'ble Judges : Syed Taki Bilgrami, J

Bench : Single Bench

Judgement

1. This is a reference under S. 12(5) of the Industrial Disputes Act, 1947 (XIV of 1947), by the Government of Bombay for adjudication of a dispute between the Kandivali Metal Works and the workmen employed under it (excluding the clerks), over the following demand by the latter :-

"Abolition of contract system. - All workmen who are at present on contract or working under contractor in the factory shall be directly employed by the company with effect from 1 May, 1956 and their wages shall be fixed according to the nature of their work, length of service, etc., in consultation with the union."

2. The union states that the company used to get the fitting and spinning work done from the beginning through the contractors, Ranganath, Kanthaswamy Naiker and Shankar Narayan Dhuri. Later, in 1949, polishing work was entrusted to a contractor Sri Ganpat Shelar. A year later, washing work also was given to a contractor named Ramachandra Zungre. By 1954 the fitting work increased considerably so that another contractor Sri Narayandas was also entrusted with this work along with the former contractors. Recently the company started manufacturing stainless steel utensils, and the work of spinning, rolling and cutting is being done through a contractor Sri Bhau. According to the union, the contractors workers are recruited by the company's consent, they work under its instructions, their names are in the company's muster roll, and their work is recorded by its time-keeper, their leave is sanctioned by its officer, and it

supplies all the machinery and tools and their material to their workers. These workers for their payment sign not only the contractors' book, but also the company's, and the spinning workers are paid directly by the company. The work is given through the contractor, with the object of avoiding the application of the industrial laws, and thus escaping the burden their application would entail. Most of these workers, it is said, are highly skilled and skilled, who should be paid the wages fixed under various awards for such class of workers. They have been paid low wages and unfairly denied all the benefits; due to them under the law by the company through this device of employing them through a contractor; hence they demand abolition of the contract system, and giving them direct employment with retrospective effect from 1 May, 1956, and point to point adjustment. The union has also in its statement of claim referred to the Labour Enquiry Committee's Report, and various decisions, and given extracts from them which I shall mention and discuss later.

3. The company in its written statement objects that the reference is not competent as the workers are not its employees, and cannot raise a dispute, and also that the demand for abolition of the contract labour infringes the fundamental right of the employer under the Constitution to carry on business as it chooses, and in the manner it thinks fit and proper. It denies the averments of the union regarding the intervention of the contractor being for any ulterior motive and the workers being virtually under its direct control. The kind of work entrusted to the contractor, it says, is incidental, and has been done through the contractors in the industry ever since it started. The contractors engaged by the company are experts in their various jobs, which they alone are capable of properly executing, and training the workmen for it. The contract system so long prevalent in the industry cannot, without sufficient reasons, be now abolished because the union demands it. Four contractors out of those mentioned by the union have been doing the work of the company since 1949. Sri Bhau Krishna was engaged as contractor after the company started manufacturing stainless steel goods. The company had to give a contract to him because it could not manage the work itself, and found that after giving of this contract, the production increased twofold, and the quality of goods also improved. It further says that the union cannot say that in fact all are the direct employees of the company, and the contractors are there merely in name, and at the same time demand abolition of the contract system. The company also denies the union's statement that the workers employed through the contractor were unaware of the fact, and realized only after the union was formed there. They were not the company's employees, and it says that they were directly under the control of the contractor and it was not possible for them to believe that they were not employed through him.

4. Regarding the union's allegation about the inadequacy of wages and unfairness of service conditions, the company says that the workers can make representations about this to their real employers, the contractors, and the company cannot redress their grievances. The company also says that the

decisions and the report of the Labour Enquiry Committee cited by the union have no relevance, and do not support their claim.

5. I shall decide the preliminary objections of the company first. The first objection is that the workers employed by the contractors are not the employees of the company, and they are not competent to raise the dispute. Reliance is placed on Pioneer Tile Works, Mangalore, and B. Narayan Shetty (1956) 11 F.J.R. 59. This case lends no support to the objection raised. In that case it was held that the employee of the contractor cannot benefit like a direct employee. Here there is no question of claiming any benefit, but the demand is for abolition of contract labour. To this demand the direct employees of the company are also a party.

6. The other objection raised by the company that the demand by the workmen infringes the fundamental right is equally devoid of force. In the Premier Automobiles, Ltd., Bombay, and the workmen employed under it [Bombay Government Gazette, Part I-L, dated 25 September, 1952, p. 3113], Sri Sen has held that there is no inherent right to employ contract labour. Sri Thakur has expressed the same opinion in Indian Hume Pipe Company case 1952 I.C.R. 66. He held that it was open for the workers who were engaged in any establishment through a contractor to demand that the contract system should be abolished if such a system was resulting in their being deprived of the benefits to which they would be entitled to if they were direct employees. This objection is therefore overruled.

7. The contract system which the labour seeks to get abolished in this reference cannot be allowed to continue if the work done through the contractors is not of an intermittent or casual nature, but is required to be done in the regular course of the company's business, and does not vary a great deal from time to time, is more or less constant, and permanently required. Only where a concern finds that it cannot keep on its permanent staff the workers who are required to work only occasionally, and that the number of workers required at any time in any process varies greatly, or where the workers make or manufacture things which the company buys as finished goods or for any other similar reason, which makes the direct employment of labour inconvenient, undesirable or impossible that the employment of labour on contract basis can be justified. But if the same strength of workers is engaged in work throughout the year, and such work is a part of the usual process of manufacture, then the contract system cannot be allowed. The State has conferred certain privileges and benefits on industrial workers, and has set up tribunals for enforcing of their rights by special legislation, and imposed certain restrictions on the powers of the employers. The employers cannot be allowed to escape these by having resort to contract system. What I have said is now being well established by a series of decisions. Recently the President of this Court, Sri Meher, has in Standard Vacuum Oil Refining Company of India, Ltd., and the workmen employed under it [Bombay Government Gazette, Part I-L, dated 2 October, 1958. p. 4717] has fully

discussed this question, and agreed with the observations made by the Labour Appellate Tribunal in 1957 I L.L.J. 287 to the effect that the true test should be based on the sum total of the relevant circumstances principal among which would be the casual or intermittent character of the work, location of the work, the remoteness or difficulty of the terrain, the difficulty of supervising work in distant places or the necessity of contract labour in certain operations, as where distant lands have to be ploughed or trimmed or otherwise worked upon. The Labour Appellate Tribunal has also in Jagdishwar Printing Press and their workmen 1956 I L.L.J. 597 stated that the principal objective of labour is to eliminate the system of contract labour, so that labour might not be exploited by reason of such a system, and there have been numerous decisions of industrial tribunals on this subject. The Textile Labour Inquiry Committee Report also emphasizes the disadvantages under which the workmen would labour if contract system is allowed to continue, where in the circumstances of the case it is not absolutely necessary. In other words, it is considered to be an evil which only necessity should make us tolerate. It is further contended on behalf of the company that in all similar concerns contract labour is employed for some process or another. It has filed statement Ex. C. 6 which contains the names of various metal works and the processes for which contract labour is employed in them. This shows that in most of them rolling, spinning, polishing and washing, and in some concerns also packing and buffing, are done by contract labour. No evidence has been adduced in support of this. This is merely a statement, which has not been admitted by the opposite party. Even if it is granted that all these processes are carried on through contract labour in most of the concerns in the industry, it does not mean that this concern should be allowed to continue it on this account, if a clear case for its abolition is made out. I think that whatever the practice may be in other units, if the processes in which the contract labour is engaged in this concern are required permanently and form part of the regular work done in the company, and the number of workers engaged do not vary from time to time, the contract system must be abolished. A beginning will have to be made in the case of some unit in the industry. It is admitted that all the workers who are now employed by the contractors have been doing this work continuously for many years. That these workers are engaged in polishing, fitting, spinning, washing, etc., processes as constantly and regularly required as cutting, rolling, pressing, etc., carried out by the company's direct employees. Affidavits have been filed by some workers to show that they are on the muster roll of the company, and that they receive wages from the company, and that the apparatus and tools by which the work is done are supplied by the company, and it is the company's foreman or clerk who allots and distributes work among the workers. The company did not choose to call any of these workmen for cross-examination. There is no reason why these affidavits should not be believed. Thus a prima facie case has been established by the labour for abolition of contract system. It was for the company to show reasons which can justify its continuance. There is nothing on record to show that the number of workers required was not constant, and that the work was of a casual or intermittent

nature, and does not form part of the regular process of manufacture of goods. No reasons which can justify the continuance of contract labour have been established. Sri Jahagirdar for the company contends that the nature of work is such that constant supervision by a person with the special knowledge of work is required, and if the contract system is abolished, then both the quality and quantity of production will be affected. He has failed to show me any differences between the nature of work done by the direct employees of the company and the contractors' employees which makes a special type of supervision necessary for the work done by contractors' employees. I think considering everything the labour is fully justified in the present case in its demand for abolition of contract labour.

8. I, therefore, direct the company to abolish the system of contract labour within one month from the date this award comes into force. I am not prepared to give any retrospective effect to this order because that will place a heavy burden on the finances of the company. With regard to placing the workers who are at present on contract basis in the various categories, and fixing their wages according to the nature of their service, and the length of service, I direct that the company should do this in consultation with representatives of the union, and fix the wages of these workers according to the categories in which they are placed in view of their seniority and length of service, skill, etc.