
(1959) 07 CAL CK 0014
In the Calcutta High Court
Case No : Civil Revn. Case No. 3436 of 1958

K.C. Das and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 30-07-1959

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : AIR 1960 Cal 408 : (1960) 2 LLJ 505

Hon'ble Judges : P.B. Mukharji, J

Bench : Single Bench

Advocate : Archana Sen Gupta, for No. 3 and A.P. Chakravarty, for No. 2, for the Appellant; Prodyot Kumar Banerji, for the Respondent

Final Decision : Dismissed

Judgement

P.B. Mukharji, J.

1., This is an application by fourteen persons who called themselves Labour Contractors, In fact, they were Labour Indentors. They make this application under Article 226 of the Constitution for the writs of mandamus and certiorari to set aside an order of reference dated July 24, 1958, made by the Government u/s 10 of the Industrial Disputes Act as between them and the workmen employed by them represented by the United Contractors' Workers Union and the Thikadar Mazdoor Congress.

2. These Labour Indentors recruited Labour for working in the two Companies, namely, the Indian Iron and "Steel Co. Ltd., and the Indian Standard Wagon Co., at Burnpore and Kulti. The contract of employment or of service of these workmen is with these Labour Indentors and not with those two Companies. The petitioners employ this labour. They discharge this labour. They pay this labour. They also maintain a register of their employment.

3. The important ground on which the order of reference is challenged by the petitioners can be stated briefly. It is the case of the petitioners that these

labourers are not constant and they vary and are changed according to the exigencies of the work. The petitioners admit that they receive payment from these Companies and the petitioners in their turn pay wages to the workers. The workers have no contract of service with the two Companies nor do the two Companies pay the workers directly. It is, therefore, contended on those facts by the petitioners that these workers employed by them could not be said to be workmen within the meaning of Section 2(s) of the Industrial Disputes Act and that the disputes cannot come within the purview of Section 2(k) of the said Act. In paragraph 21 of the petition, the petitioners contend that the "contract system of work is a purely management function and has nothing to do with any Industry or undertaking." In paragraph 23 of the petition, however, the petitioners admit that they exercise control over the workers by regulating their time of work and also regulating them during the time of work.

4. The pith and substance of this contention is that a Labour Indentor does not carry on an Industry. It is argued that he only acts as a conduit pipe to collect labour and divert them to the place where they are required. I am not convinced that this argument is sufficient to prevent the work of a Labour Indentor from being an Industry within the meaning of the Industrial Disputes Act. Section 2(j) of the Industrial Disputes Act defines "Industry" to mean, among other things, any business. The Labour Indentor carries on a business, His business is to recruit labour, to give them employment, to see that they do the work and, if necessary, to discharge them. This business is conducted by the Labour Indentor not as a benevolent or charitable work but these Labour Indentors, as middlemen, make a profit and take a remuneration for this work of collecting labour and canalising such labour for different types of work. I think that is clearly an Industry within the meaning of the Industrial Disputes Act. The workers in this case are employed directly and paid directly by these Labour Indentors. The definition of a "workman" u/s 2(s) of the Industrial Disputes Act means, inter alia, any person employed in any Industry. Reading Section 2(j) and Section 2(s) together, "workman," therefore, means any person employed in any business. Therefore, these workmen in this case, be they casual or intermittent, be they be paid by the job or by the time or by the piece, does not matter (sic). The nature of the work, certainly, will matter when it comes to an actual adjudication of their disputes relating to the kind of wages they should receive or the facilities they should get, That is a matter for the Industrial Tribunal. The definition of an "industrial dispute" in Section 2(k) of the Act means any dispute or difference between employers and workmen which is connected with the employment or non-employment or the terms of employment or with the conditions of labour. The present dispute certainly relates to the terms and conditions of the employment of labour by these applicants. The workers are the workers of these applicant Labour Indentors. The order of reference states the issues like, 1. Increment, 2. Dearness allowance, 3. Medical facilities, 4. Accommodation facilities, 5. General, Medical and Festival leave, all with pay and Maternity benefits, 6. Gratuity and 7. Fixation of the minimum earning of the piece-rated

workers at par with the wages of time-rated workers. They all indicate terms and conditions of employment.

5. It was at one stage argued on behalf of the petitioners that these workers were really the workers of the two Companies. The petition itself is against such contention and the facts that the petitioners themselves employ them, pay them and discharge them and maintain their register are all against such contention. The fact that these two Companies may have an ultimate voice in the sense that if they do not like the out-turn of these workers, then these labour indentors cannot virtually retain them for fear of losing their own labour contract with these Companies, cannot alter the legal relationship of master and servant between these indentors and the labour they recruit. That fact indicates only this feature that these Companies for whom the petitioners indent this labour can only complain against labour so recruited to the petitioners with whom the Companies have their labour contract, and not with the labour indented, and it is then that these indentors will have to discharge them. The learned Advocate for the petitioners drew my attention to the case of the workmen employed in Gaslton Colliery v. Management of Gaslton Colliery 1953 Lab IC 525. That case, I find, is against the whole argument of the petitioner because it says that the

"workmen engaged by a contractor could not be considered to be workmen of the Management and any claim they may have can be pursued only against the Contractor and not against the Management."

6. The law is sufficiently settled and laid down to-day by the Supreme Court in Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra, . That is an authority for stating the prima facie test for the determination of relationship between master and servant to be the existence of the right in the master to supervise and control the work done by the servant not only in the matter of directing what work the servant is to do but also the manner in which he is to do the work. Applying that "prima facie test" the facts here found show that the labour indentors are the master and the workmen are their employees. It was clearly laid down also by the Supreme Court there that the nature or extent of control which is requisite to establish the relationship of employer and employee must necessarily vary from business to business and was by its very nature incapable of any precise definition. It was, however, clearly laid down that a person can be a workman even though he is paid not per day but by the job and that the fact, that Rules regarding hours of work etc. applicable to other workmen could not conveniently be applied to them and that the nature as well as the manner and method of their work would be such as could not be regulated by any directions given by the Industrial Tribunal, was no deterrent against holding those persons to be workmen within the meaning of the definition, and that it would be for the Industrial Tribunal to consider what relief, if any, may possibly be granted to them having regard to all the special circumstances of the case.

7. For these reasons, I must hold that the order of reference is valid and legal.

The petition, therefore, must fail. I discharge the Rule. I make no order as to costs. Interim order, if any, is vacated.