
(1994) 11 KL CK 0026
In the High Court Of Kerala
Case No : O.P. No. 6767 of 1990

Kerala State Coir Corporation Ltd.

APPELLANT

Vs

Industrial Tribunal and Others

RESPONDENT

Date of Decision : 29-11-1994

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (1995) 71 FLR 688 : (1995) 1 ILR (Ker) 706 : (1995) 1 LLJ 951

Hon'ble Judges : K.T. Thomas, J

Bench : Single Bench

Advocate : C.C. Thomas and M.G. Karthikeyan, for the Appellant; M. Ramachandran and G.P., for the Respondent

Final Decision : Dismissed

Judgement

K.T. Thomas, J.—Eleven persons who worked as Security Personnel in the factory of the Kerala State Coir Corporation (the petitioner herein) raised an industrial dispute on the question of termination of their service. Petitioner resisted the case of the said persons on the ground that those eleven persons were actually allotted to the company by a registered society (called "State Security Guards Association") and wages due to them have been paid by the society to whom petitioner made the funds available. But the Industrial Tribunal before whom the dispute was referred has held that those eleven persons are workmen of the petitioner and further held that termination of their service was not in accordance with the provisions of the Industrial Disputes Act, 1947 (for short "the Act"). Consequently an award was passed declaring that those eleven persons continue in service and directed the petitioner to pay their wages during the period they were kept out. That award is challenged in this Original Petition.

2. The Industrial Tribunal proceeded on the premise that "there is no controversy regarding the status of those persons that they would come under the definition of "workmen" as defined in Section 2(s) of the Industrial Disputes Act, 1947."

3. Learned counsel contended that the Industrial Tribunal went wrong in adopting such an erroneous premise since that point was seriously contested matter before the Tribunal.

4. The contents of the counter statement filed by the Union of workers have been reproduced in the award. As the correctness thereof has not been disputed in this Original Petition, the relevant portion is extracted: Security services were provided by different companies or societies to the factory of the petitioner - company from time to time on requisition being made by the petitioner. On each occasion agreement was executed between the petitioner and the company or the society concerned for supply of personnel. In November 1985 security services were rendered by a company called "M/s. Ex-servicemen Industrial Guard (P) Ltd.,". On the expiry of the contract with them another company was approached and subsequently M/s State Security Guards and Charitable Society had entered into a contract with the petitioner. Payment for the personnel was made only to the society and not directly to the workmen. Since the petitioner is a Government company, appointments were governed by the Kerala Public Service Commission (Additional Functions in respect of Corporations and Companies) Act.

5. Learned counsel contended that since services of those persons have been rendered at the instance of a contractor, the master and servant relationship existed only between the contractor and the workmen. In support thereof he cited the decisions in Kerala Civil Aviation General Workers" Co-op. Society Vs. Union of India (UOI), and Cochin Shipyard Ltd., v. Industrial Tribunal (1989 (2) KLT 903, But those decisions are not of much use for deciding the question involved here. In the case of K.C.A.G. Workers Co-op. Society, porters supplied by a contractor for rendering service to the air travel passengers were not considered as workmen engaged by the Air Port authorities, but held that they were the employees of the respective contractors. The ratio cannot have any application to the dispute involved in this case. In Cochin Shipyard Ltd.,"s case what the learned single Judge considered was certain terms in a settlement in the light of Contract Labour (Regulation and Abolition) Act, 1970. Hence the position has to be considered in this case from a different angle altogether.

6. "Workman" has been defined in Section 2(s) of the Act as "any person employed in any industry to do any manual, unskilled, technical operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied.....". Some categories of persons have been excluded from the purview of the said definition and there is no case that any one of the eleven workmen involved in this case would fall within such excluded categories. The word "employed" in the section would postulate a master and servant relationship, no matter who supplied the person employed is under the control and supervision of the employer. Mode of payment, whether it was direct or through any other agency, does not normally determine the status of the person as workman. There is no dispute that eleven person were rendering security

service and it was the petitioner who allotted the work to those 11 persons and controlled them and decided the nature of work they had to render. The Society's role was only the supply the persons to do the work. In such a situation those persons would be workmen falling within the purview of Section 2(s) of the I.D. Act.

7. In *Hussainbhai, Calicut Vs. The Alath Factory Thezhilali Union, Kozhikode and Others*, a similar position was considered by the Supreme Court. A number of workmen were engaged to make ropes inside a factory and such workmen were hired by contractors who had executed agreements with the factory owner to get such work done.

The petitioner thereupon contended that those persons were not his workmen, but the workmen of the contractors. The contention was repelled on the ground that the factory owner has economic control over the workers' subsistence, skill and continued employment. "The presence of intermediate contractors with whom alone the workers have immediate or direct relationship ex contract is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, it is found, though draped in different perfect paper arrangement, that the real employer is the management, not the immediate contractor". The bench followed the earlier decision in *Mangalore Ganesh Beedi Works and Others Vs. Union of India (UOI) and Others*,

In view of the above legal position there is no scope for interference with the award in challenge under Article 226 of the Constitution. Original Petition is accordingly dismissed. No costs.