
(1965) 08 GUJ CK 0008
In the Gujarat High Court
Case No : Reference (I.T.) No. 38 of 1964,

Khodiyar Pottery Works Ltd., Sihor

APPELLANT

Vs

Its Workmen

RESPONDENT

Date of Decision : 05-08-1965

Acts Referred:

Industrial Disputes Act, 1947 — Section 10A

Citation : (1965) 08 GUJ CK 0008

Hon'ble Judges : N.K. Vakil, J

Bench : Single Bench

Judgement

1. The dispute between the Khodiyar Pottery Works, Ltd., Sihor, and the workmen employed under it with regard to the undermentioned demand of the workmen was referred by the Government of Gujarat by No. KH-SH/243/AJK. 2164/JR, Education and Labour Department, dated 27 April 1964 to the tribunal consisting of myself under Ss. 10(a) and 10(d) of the Industrial Disputes Act, 1947 (14 of 1947) :

Demand

"Any sort of contract system existing in the Khodiyar Pottery Works, Ltd., Sihor, should be abolished and the workers employed by the contractors should be absorbed as workers of the Khodiyar Pottery Works."

2. The workmen filed their statement of claim, Ex. U. 1, dated 30 April 1964. The company filed its written statement, Ex. C. 2, dated 11 July 1964. Thereafter the reference was being fixed for hearing. The reference was actually heard on 15 July 1965.

3. The case of the union in its statement of claim is that the Khodiyar Pottery Works run a factory for production of glazed pottery articles; that it employs about 300 workers but out of these 300 about 150 work under some twenty contractors; that these twenty contractors amongst themselves get Rs. 3,600 in addition to their usual wages. It is the union's case that this amounts to unfair

labour practice as it causes discrimination between persons working in the same factory. The union, therefore, prays that such contract system should be abolished and the profit which about twenty contractors get over and above their wages should be distributed among all the workmen.

4. The company contends in its written statement that it is a misnomer to call the system a contract system. In a contract system really so called, there are some workmen recruited by and working under the control of contractor or contractors. The workmen engaged by the contractors do not get the same rate of wages and do not enjoy the same rights and benefits like privilege leave, workmen's compensation, maternity leave, festival holiday, lay-off, bonus and provident fund. Here, the contractors themselves are workmen who work like other workmen and who get the wage of their grade. The system is going on for about fourteen years in the interest of all concerned and has resulted in economy, productivity, efficiency and preservation of quality. The company denies that it causes apprehension about security in workmen and amounts to unfair labour practice.

5. Sri Shridharani examined Mangal Singh Dolat Singh at Ex. U. 3 and Manjibhai Dhulabhai at Ex. U. 5. The company filed affidavit of its secretary Shankerlal Mugatram Bhatt at Ex. 9. This was by consent of parties treated as examination-in-chief and he was cross-examined by Sri Shridharani at Ex. C. 10. Annexed with the affidavit, has been filed under the signature of the manager, a list showing the days on which loading and unloading work was done in 1964 and 1965. After the evidence was led Sri Shridharani for the workmen and Sri Mankodi for the company addressed the tribunal on the merits of their respective cases. The reference was then adjourned for award. After considering the submissions made by Sri Shridharani for the workmen and Sri Mankodi for the company and after considering the evidence on the record and the circumstances and probabilities, I adjudicate on the dispute as under.

6. It appears from the evidence and the record that about 300 persons work in the company. There are several departments in the company. In departments like slip house, casting department, chakda department, glaze department, tunnel department, firing department, despatch and store department, packing department and loading and unloading departments contracts are given to some workers or worker of the department for the carrying out of the work on stipulated rates. A few of them are group contracts but most of them are individual contracts given to some one individual worker of the department. For example, Ex. C. 5 is a group contract given to five persons of semi-skilled category for glazing goods in the green stage, e.g., Rs. 3.60, is the rate fixed for glazing 1,000 dishes. These five persons are assisted by seven unskilled workers. Amongst the five, two are of the A grade and the rest of the B grade. Similarly individual contracts are given to some individual worker in the department and other workmen working in his group are associated with in carrying out of work. In pursuance of a demand made by workers' union a few years ago, all the

workmen working in the company have been classified. They have been giving different grades according to skilled, semi-skilled or unskilled nature of their work and they are given incremental scales of wages. All these workmen work in the concern. All of them get the wages under the sanctioned scale irrespective of the fact whether they are department workers not associated with the contract given to a group of workmen or individual worker or are associated with some group of individual in carrying out the work giving to them on contract. About 45 per cent of the total workmen do the work of the latter type. The group or the individuals pay the persons associated with them according to the sanctioned scales pay up their own wages and they would keep the balance to themselves. Such balance is referred to as profit in evidence. The persons who are given contracts are persons of skill who themselves work in the company and who can take work from the persons associated with them. They supervise the working of their group. There is no distinction between contractors, workers associated with them and department workers with respect to rights and benefits which are available to all equally. The contractor cannot raise or reduce the wages. The notices for disciplinary action are given by the company. The ultimate control and decision are by the company. All the workmen working in the concern get leave with wages, paid festival holidays, compensation in case of accident, provident fund or bonus on the same principles.

7. Sri Sridharani has relied upon the general disapproval of the contract system by the Supreme Court which observed in the case of *standard Vacuum refining Company v. Its Workmen and another* [1960 II L.L.J. 233 at 238] :

"In dealing with the question it may be relevant to bear in mind that industrial adjudication generally does not encourage the employment of contract labour in modern times."

8. However, in the very next paragraph appearing in the first column at p. 239 the Supreme Court observed :

"The same opinion has been expressed by several labour enquiry committees appointed in different States. We agree that whenever a dispute is raised by workmen in regard to the employment of contract labour by any employer, it would be necessary for the tribunal to examine the merits of dispute, apart from the general consideration that contract labour should not be encouraged, and that in a given case the decision should rest not merely on the critical or abstract objections to contract labour but also on the terms and conditions on which contract labour is employed and the grievance made by the employees in respect thereof. As in other matters of industrial adjudication, so in the case of contract labour, theoretical or academic considerations may be relevant, but their importance should not be overestimated".

9. That means that the system which is impugned as a contract system has to be closely examined by the industrial tribunal and judged on its own merits. In examining the system, the tribunal will have to see whether the workers alleged

to be contract workers are really the employees of the contractor or the company, whether the system employed amounts to the employment of a middleman who derives benefit at the cost of workmen and whether the employees working under the contract are at disadvantage when compared with the departmental workers, whether they could receive benefits from the abolition of the system which they are not enjoying at the relevant time and whether the system affects their security of service in any way. Sri Shridharani also relied upon the appellate judgment in the case of *United Salt Works and Industries, Ltd., Kandla v. Its Workmen* [1962 I L.L.J. 131] delivered by the Supreme Court. In that case in paying wages to the workmen, mukadams supervising their work, deducted their commission from the wages payable to them. The arbitrators directed that the then prevailing system of paying commission to contractors and mukadams after deducting it out of the wages due to labour should be abolished. This direction was found to be very reasonable by the Supreme Court and was upheld generally except with regard to mud work.

10. Examining the system adopted by the company on merits, it does not appear to suffer from the infirmities attaching to the contract system in general. It might be that when the company first started to work some workmen might have been obtained through the contractors but at present all the employees whether departmental or working with the contractors are virtually the employees of the company. All the employees are classified and they get their own incremental wage-scales. The contractors are bound to pay them their wages as fixed and the association with the contractors does not prejudice them in any way. They have all the rights and privileges which are enjoyed by the departmental labour including leave with wages, paid holidays, compensation in case of accident, maternity benefit, provident fund and bonus. The contractors would be entitled to their bonus on the basis of their wages and the extra amount they get is not taken into consideration in paying their bonus. The disciplinary jurisdiction is of the company. Notices are issued by the company. I do not believe the evidence that sometimes extra work is taken from the workmen associated with the contract labour. No such workmen is examined. There was no such protest raised before. The persons associated with the contractors get all they are entitled to and are not likely to benefit by the abolition of the system. The company is resorting to this system because it is more economical, productive and convenient. The workmen who are working with the contractors have been associated with them for long time and they can take work from them more effectively. There is only a general supervisor for each khata but this system provides for supervision over smaller groups within the department and taking work from them without causing any prejudice to the workmen. A system which is working for the thirteen to fourteen years and which causes no prejudice to the workers in general should not be lightly disturbed. The work in the loading or unloading department is not of a permanent nature but of casual nature and that becomes clear from the statement of days on which the department worked in 1964 and 1965 filed by the company. The case reported in 1962 I L.L.J. 131 is

also clearly distinguishable because in that case the mukadams were permitted to deduct their commission from the wages payable to workmen whose work they supervised. Here the contractors cannot touch their wages or their conditions of service and merely get their association in the carrying out of the contract. The mere fact that two separate lists of department workers and workers associated with contractors are maintained does not affect the merits. The contractors themselves are workmen of the concern. They themselves are given their grades according to their skill and incremental scales. They are chosen on the ground of superior scale. There is no discrimination against or prejudice to the workers who have in any case to do the work in the concern on payment of wages fixed. It was urged by Sri Shridharani that in the case of Parshuram Pottery Works Company, Ltd., the demand was for abolition of contract system and as a result of the reference, the contract system was abolished. As pointed out by Sri Mankodi, the dispute in the reference was settled by negotiations and there was no award by the tribunal on merits with regard to abolition of contract system. The terms of settlement are published as an annexure to the award in Reference Nos. 27, 28 and 52 all of 1959 published at p. 2458 in the Gujarat Government Gazette, Part I-L, dated 19 October, 1961. There were several demands and there was bound to be a give-and-take. If as a result of give-and-take a demand is accepted, it cannot serve as a precedent to decide on merits a dispute between a similar concern and its workmen. In Adjudication No. 15 of 1956 the tribunal consisting of Sri N. L. Vyas had in demand 3 to deal with the contention of the workmen that in electric goods department no contract should be given to outsiders. The award of Sri Vyas is published in Gujarat Government Gazette, Part I-L, dated 1 August, 1957, at p, 3327. He has dealt with this demand at pp. 3322 and 3333. In that case one hand-press had been given to one of the workmen of the factory and he worked the press with the assistance of one another workman of the factory and the articles produced were being glazed and finished by the members of the family of this workman. They all worked on a contract basis. It was found this system reduced the cost of production. Sri Vyas observed at p. 3333 :

"It therefore clearly appears that, by adopting this system, the company has not retrenched any workmen, and no workman has been already affected as regards his wages and conditions of service. When that he is so, I do not understand how this tribunal can direct the company not to get some work done outside the department on a contract basis."

11. Without prejudice to their case Sri Mankodi conceded that group contracts were, when possible, better than individual contracts and would be more favourable to similarly skilled persons and if the tribunal so recommended, the company would try to give group contracts in preference to individual contracts in preference to individual contracts whenever it was feasible.

12. In view of the above it is neither advisable nor desirable to abolish the system which is going on for about thirteen to fourteen years and which results

in economy and efficiency. I however direct that all the workmen working in the concern will be considered the employee of the company and not contractors. If and when any new workman has to be employed, the appointment will be by the company and not by any contractor. The company will not extend the contract system to any other department in which it does not exist at present and in the departments in which the company is now giving contracts to single individuals it will try to give group contracts whenever it is possible. It will not be practicable or advisable to recommend the strength of the group because the availability of persons of similar skill and their efficient and harmonious working will have to be ensured. Of this the company would be the best judge. The company will exercise its discretion always ensuring efficiency and harmony in carrying out the work. Except for the above direction, the demand for the abolition of the contract system is rejected.