
(2011) 02 BOM CK 0061

In the Bombay High Court

Case No : Writ Petition No. 3301 of 2006

Kisan Atmaram Kasti

APPELLANT

Vs

Forest Development Corporation of Maharashtra Ltd.

RESPONDENT

Date of Decision : 25-02-2011

Acts Referred:

Factories Act, 1948 — Section 2(m)
Industrial Disputes Act, 1947 — Section 25K, 25L, 25N
Plantations Labour Act, 1951 — Section 1, 2(f)

Citation : (2011) 3 ALLMR 650 : (2011) 6 BomCR 109 : (2011) 130 FLR 296 :
(2012) 1 LLJ 426 : (2011) 3 MhLj 774

Hon'ble Judges : R.K. Deshpande, J

Bench : Single Bench

Advocate : S.G. Loney, for the Appellant; R.S. Giripunje, for the Respondent

Final Decision : Allowed

Judgement

R.K. Deshpande, J.—These writ petitions challenge the common judgment and order dated 1812006 passed by the Industrial Court, Chandrapur, allowing Revision (ULP) Nos. 53, 54, 55, 56, 57, 58 and 59 of 2004 filed by the Respondent Forest Development Corporation of Maharashtra Limited (for short, "the FDCM) by setting aside the common judgment and order dated 682004 passed by the Labour Court in Complaint (ULP) Nos. 147, 148, 149, 150 and 153 of 2000. The Labour Court had allowed the complaints filed by the Petitioner complainants challenging their termination from service on the ground that the same was in violation of the mandatory provisions of 25N of the Industrial Disputes Act, 1947. The Respondent FDCM was directed to reinstate the Petitioner complainants on their former post with continuity in service, but 5 without back wages. The Industrial Court has set aside the said judgment and order passed by the Labour Court, and hence the Petitioner complainants are before this Court.

2. The short question, which arises for decision in all the writ petitions, is

whether the provisions of Section 25N of the Industrial Disputes Act are applicable to the Respondent FDCM. If it is applicable, then the judgment and order of the Labour Court setting aside the termination and directing reinstatement with continuity in service, is required to be restored, as undisputedly the provisions of Section 25N of the said Act have not been complied with in the present case. Shri Loney, the learned Counsel appearing for the Petitioner complainants, has urged that he is pressing only this point of applicability of the provisions of Section 25N of the said Act, and according to him, if the said provisions are held not applicable to the Respondent FDCM, then in that event the judgment and order of the Industrial Court dismissing the complainants filed by the Petitioner complainants will have to be maintained.

3. The Labour Court has recorded the finding that the Respondent FDCM is covered by the definition of "plantation", as given under Clause (f) of Section 2 of the Plantations Labour Act, 1951, and hence the Respondent FDCM is an "industrial establishment", as defined u/s 25L(a)(iii) of the Industrial Disputes Act. The Labour Court has also recorded the finding that the Respondent FDCM is also a "factory", as defined under Clause (m) of Section 2 of the Factories Act, 1948, and hence the same is also an "industrial establishment", as defined u/s 25L(a)(i) of the Industrial Disputes Act. Thus, on these two counts, the Respondent FDCM is held to be an "industrial establishment", and hence it has been held that the provisions of Section 25N of the Industrial Disputes Act are attracted, as Section 25K of the said Act makes the said provisions applicable to the "industrial establishment". In this regard, the Labour Court has relied upon the judgment of the Uttarakhand High Court in *Ami Chand Vs. Uttarakhand Forest Development Corporation and Others*, .

4. In the revisions preferred by the Respondent FDCM, the Industrial Court has held that the judgment of the Uttarakhand High Court in *Amichand v. Uttarakhand Forest Development Corporation and others*, relied upon by the Labour Court, can be distinguished on the facts and circumstances of the case. It was held that in the present case, the complainants were working as Chowkidar and Gardener and the Act to which the ruling pertained, was the State Act applicable to the Forest Development Corporation of that State, whose details were not before the Court, and, therefore, the said judgment could not be made applicable to the facts of the present case. It was further held that neither the employer nor the employees in the said judgment had approached for seeking permission u/s 25N(2) of the Industrial Disputes Act, whereas the Respondent FDCM had produced an order from the appropriate Government holding that the provisions of Section 25N of the said Act are not applicable to the Respondent FDCM. It was held that the Labour Court has recorded the finding that the provisions of Section 25F of the said Act were followed and the same does not call for any interference. However, on the question of applicability of the provisions of Section 25N of the said Act, it was held that the Labour Court has committed an error in applying the said provisions.

5. Coming to the findings recorded by the Labour Court that the Respondent 7 FDCM is covered by the definition of plantation as given in Clause (f) of Section 2 of the Plantation Labour Act, 1955, Shri Giripunje, the learned Counsel appearing for the Respondent FDCM is right in urging that there was no pleading to that effect in the plaint. The Labour Court has referred to the definition of plantation under Clause (f) of Section (2) of the Plantation Act, which is reproduced below;

(f) "plantation" means any plantation to which this Act, whether wholly or in part, applies and includes offices, hospitals, dispensaries, schools, and any other premises used for any purpose connected with such plantation, but does not include any factory or the premises to which the provisions of the Factories Act, 1949 (64 of 1948) apply.

The definition clause states that the plantation means any plantation to which the provisions of the Plantation of Labour Act, 1955 apply. Section 1 of the Plantations Labour Act deals with the application of the Act and the same is reproduced below.

1. Short title, extent, commencement and application.

(1) This Act may be called The Plantations Labour Act, 1951.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may by notification in the official Gazette, appoint.

(4) It applies to the following plantations, that is to say,

(a) to any land used or intended to be used for growing tea, coffee, rubber [cinchona or cardamom] which admeasures [5 hectares] or more and in which [fifteen] or more persons are employed and were employed on any day of the preceding twelve months;

(b) to any land used or intended to be used for growing any other plant, which admeasures [5 hectares] or more and in which [fifteen] or more 8 persons are employed or where employed on any day of the preceding twelve months, if, after obtaining the approval of the Central Government, the State Government, by notification in the Official Gazette, so directs.

[Explanation. Where any piece of land used for growing any plant referred to in Clause (a) or Clause (b) of this Sub-section admeasures less than 5 hectares and is continuous to any other piece of land not being so used but capable of being so used, and both such pieces of land are under the management of the same employer, then, for the purposes of this Subsection, the piece of land first mentioned shall be deemed to be a plantation, if the total area of both such pieces of land admeasures 5 hectares or more]

Bare reading of the aforesaid provisions reveals that in order to decide whether the Respondent FDCM is engaged in the plantation referred to in Sub-section (4)

(a) of Section 1, the facts are required to be gathered. Similarly, the notification if at all issued by the State Government under Sub-section (4)(b) of Section 1 is also required to be produced on record. In the absence of the pleadings of necessary facts and production of notification, as contemplated by subsections (4) (a) and (b) of Section 1, the Labour Court could not have gone into the question as to whether the Respondent FDCM was covered by the definition of plantation as given under Clause (f) of Section (2) of the Plantation Labour Act, 1955. The finding of the Labour Court on that aspect cannot be sustained.

6. Now, coming to the finding of the Labour Court that the Respondent FDCM is also a "factory" as defined under Clause (m) of Section 2 of the Factories Act, 1948, and hence the same is an "industrial establishment" as defined u/s 25L(a) (i) of the Industrial Disputes Act, the same is based upon the decision of Uttaranchal High Court in Amichand's case, cited supra. The Labour Court has recorded the finding on the basis of Article 7 of Memorandum of Association that the Respondent FDCM is involved in manufacturing process by employing workmen for cutting the trees and manufacturers of and dealers in plywood, pulpwood, matchwood, hardwood, wood blocks for flooring and other purposes, boxes, windows, door wood pulp, wood, coal, spare, derricks, sleepers, fool handless, paneling wood work, furniture and articles of all descriptions. The finding is that, in the process large number of workmen more than 100 are working in the Corporation and hence it is a factory within the meaning of Clause (m) of Section 2 of the Factories Act, 1948.

7. The contention of the learned Counsel for the Respondent FDCM is that, the labour Court has committed an error in holding that the manufacturing process is carried out by the Respondent FDCM. According to him, there is no manufacturing process involved and hence, the Respondent FDCM is not a factory. It is also his submission that no averment is made in the complaint that any manufacturing process is being carried or that the complainants are involved in the manufacturing process or that the Respondent FDCM is a factory. According to him, simply because plantation is carried out, it does not mean that it is an "industrial establishment" as defined u/s 25L of the said Act.

8. The question is, therefore, whether the Respondent FDCM is a "factory"

within the meaning of Clause (m) of Section 2 of the Factories Act, 1948 and hence an "industrial establishment", as defined u/s 25L(a)(i) of the Industrial Disputes Act. Perusal of the complaint shows that there are pleadings sufficient to consider and decide the question. Hence, the contention of lack of pleadings is rejected. In order to decide the question what is required to be seen is that whether the Respondent FDCM is engaged in the activities of manufacturing process.

9. The Respondent FDCM is established in the State of Maharashtra and is incorporated under the Companies Act with the objects disclosed in the Memorandum of Association. Clause (III) of the Memorandum of Association

deals with the object for which the Company is established and sub clause (A) deals with the main objects to be pursued by the Company on its incorporation. The objects which are relevant in sub clause (A) of Clause (III) are reproduced below.

(1) To develop land in the State of Maharashtra acquired by the Company by purchase, lease or otherwise for forest resources by raising thereon plantations of economically important species like teak, bamboos, khair, semal and such other suitable species in the State of Maharashtra as the Company may think fit.

(2) To plant, grow, cultivate, produce and raise plantation of all kinds of varieties of forest plants, trees and crops and natural products of any kind and other agricultural crops and to buy, sell, export, import, process, distribute or otherwise, deal in all kinds of forest plants, forest produce, trees, crops, natural products and agricultural and silvicultural cash crops.

(5) To carry on business of felling, converting, dragging, hauling, marketing, processing, standardising, grading, sorting, distributing and selling the forest products naturally or otherwise grown or raised on the lands leased or owned by the Company.

(6) To carry on business of timber and lumber merchants, lumber yard and saw mill shingle mill and pulp and paper mill proprietors, and to buy, sell, prepare for market, process import, export and otherwise deal in timber piles and poles lumber and wood of all kinds and to manufacture and deal in articles of all kinds in the manufacture of which timber or wood or any other forest produce is used; to carry on the business of logging and lumbering, purchasing, acquiring and leasing timber berths, and so far as may be deemed expedient the business of general merchant in any other businesses which may seem to the Company capable of being conveniently carried 11 on in connection with any of the above, or calculated directly or indirectly to render profitable or to enhance the value of the Company's property or rights for the time being.

(7) To carry on business as manufactures of, and dealers in plywood, pulpwood, matchwood, hardwood, wood blocks for flooring and other purposes, boxes, windows, doors, wood pulp, wood wool, masts, spars, derricks, sleepers, tool handless, paneling ,woodwork, furniture and articles of all description wholly or partly made from wood or forest produce, the waste products or by products of wood or forest produce.

The ancillary objects are stated in Clause (B) of the Memorandum of Association. The relevant objects in Clause (B) are reproduced below.

(9) To manufacture, process, prepare for market, refine and otherwise manipulate and deal in and turn to account all materials and commodities grown or produced by the Company and all refuse and by products derived there from.

(10) To carry on business as planters, cultivators, sellers and dealers in teak, timber, wood, plywood, pulpwood, matchwood, hardwood and such other

products of every description and to manufacture, dispose of, sell and deal in products of such plantations and other forest crops of every description.

(11) To establish, administer, own and run industries or institutions manufacturing or dealing in forest products.

10. The complainant has entered the witness box and has examined himself. He has stated that the main object of FDCM is to plant the species like teak, bamboos and other various woods and thereafter cutting all those trees and to sale by auction, to earn profits. He has further stated that all the activities are being done with the help of employees collectively or cooperatively. There is no cross examination on these points. The Respondent FDCM has examined Divisional Manager Shri Rajesh Shankarrao Kadam and he has stated that the Respondent has prepared the annual 12 report and the account of each year. He has further stated that he has brought 20th Annual Report for the year 200001 and the same is placed on record as Exh. 45. He has further stated that future activities of the Respondent Corporation are mentioned on page 14 of Exh. 45 and the other activities are mentioned on page 12 of the report. He has further deposed the profit earned by the Company during the year 199899 to 200001. He has further stated that only thinning of old teak plantation was going on with the Respondent Corporation and cutting and selling teak wood were the activities included in thinning of plants as well as cutting of bamboos. He has further accepted that the FDCM is doing the business of teak wood and selling of bamboos. Perusal of the Board's report at Exh.45 shows the material sold during the previous year and the activities carried out by the FDCM

11. Shri Loney, the learned Counsel appearing for the Petitioners has relied upon the decision of the Apex Court reported in Uttaranchal Forest Development Corpn. and Another Vs. Jabar Singh and Others, . In the said judgment, the question considered was, whether the provisions of Section 25N of the Industrial Disputes Act are attracted or not in case of Uttaranchal Forest Development Corporation and whether for noncompliance with the conditions contained in Section 25N, the retrenchment order as well as award has to be declared as illegal and non est. The Supreme Court has held that the provisions of Section 25N are attracted and noncompliance with the section makes the retrenchment order illegal and no nest. While considering the said question, the court was required to consider as to whether the Uttaranchal Forest Development Corporation was engaged in manufacturing process in carrying out its activities. After going through the functions and powers exercised by the Corporations, it has been observed that the 13 Corporations are inter alia to undertake removal and disposal of trees and exploitation of forests and resources. The Corporation has also the power to set up workshops or factories for processing raw materials. The Supreme Court relied upon the findings recorded by the High Court that the Corporation is totally a commercial corporation which undertakes removal and disposal of trees and exploitation of forest resources entrusted to by the State Government. The finding was also recorded by the High Court, which was

accepted, the Corporation has power to set up workshops or factories for processing raw materials. It was held that the activities in question fully satisfy the ingredients of the definition of "manufacturing process" as defined u/s 2(k) of the Factories Act, 1948.

12. Keeping in view the aforesaid tests laid down by the Apex Court, the evidence on record will have to be tested. From the evidence available on record, it is apparent that the function of FDCM is to develop the land acquired by purchase or on lease, to raise plantations thereon of important species like teak, bamboo, khair, semal, etc., to grow and cultivate them, to carry on the business of felling, converting, dragging, hauling, marketing, processing, standardising, grading, sorting, distributing, and selling the forest products. It is also the function of FDCM to carry on the business of timber and lumber merchants and saw mill, to buy, sell and prepare for market, to process import, export and otherwise deal in timber piles and poles lumber and wood of all kinds, and to manufacture and deal in articles of all kinds wherein the forest produce is used. Its business is also to manufacture and deal in plywood, pulpwood, matchwood, hardwood, wood blocks for flooring and other purposes, boxes, windows, doors, wood pulp, wood wool, masts, spars, derricks, sleepers, tool handles, paneling, woodwork, furniture, and articles of all description wholly or partly made from wood or forest produce, and also to deal with waste/by products of wood and forest produce. The FDCM is essentially engaged in carrying out the commercial activities, which is apparent from the annual report produced on record at Exhibit 45. Thus, there is a "manufacturing process" involved in preparation or bringing into existence of different articles from forest produce, which are marketable. All these activities are being done with the help of the employees for earning profits. Hence, FDCM is a "factory" within the meaning of Clause (m) of Section 2 of the Factories Act, 1948 and consequently an "industrial establishment", as defined u/s 25L(a)(i) of the Industrial Disputes Act, 1948 .

13. The learned Counsel Shri Giripunje, appearing for the Respondent FDCM has tried to distinguish the judgment of the Apex Court on the ground that, in fact the activities of cutting of trees are not being carried out by the Respondent Corporation because of the ban imposed by the Apex Court. He further submits that even the activities of manufacturing and dealing in plywood, pulpwood etc., as stated in Clause (A) of Item (1) of Memorandum of Association are not being carried out by the Corporation. The contention, however, cannot be accepted for the reason that there is no evidence available on record to substantiate this contention. The only witness examined by FDCM, has nowhere stated that such activities are not being carried out. There is even no suggestion to the complainant in his cross examination to that effect. Apart from this, what is required to be seen is the activities which the Forest Development Corporation can carry out as per Memorandum of Association. In fact, from Exh. 45 and the evidence of the witness examined by the Corporation, it is apparent that the Corporation is carrying out the commercial activities. It is not in dispute that more than 100 employees are engaged. In view of this, the distinction sought to

be made is not substantiated.

14. Shri Giripunje, the learned Counsel has supported the findings recorded by the Industrial Court that the appropriate Government in exercise of its power conferred by Clause (b) of Sub-section (1) of Section 25N, passed order on 11th July, 1989, holding that the provisions of Section 25N are not applicable to the workers employed in the Respondent FDCM. This order was not placed on record of the Labour Court. It was for the first time placed before the revisional Court. The revisional Court has relied upon the said order to hold that prior permission of the appropriate Government was obtained and that order had become final. The complainants were not provided opportunity before the Labour Court to meet the contentions based upon the said order of the State Government passed on 11th July, 1989. Be that as it may, the order pertains to 229 workers in respect of whom the permission was sought. The complainants before this Court were not amongst those 229 workers. Apart from this, the question whether the Respondent FDCM is an industrial establishment or not can be independently gone into by the Labour Court and which has in fact been gone into by the Labour Court. In view of this, the findings recorded by the Industrial Court on the basis of this order dated 11th July, 1989 passed by the appropriate Government under Clause (b) of Sub-section (1) of Section 25N of the Industrial Disputes Act, cannot be sustained.

15. In the result, the writ petitions are allowed. The common judgment and order dated 18.1.2006 passed by the Industrial Court, Chandrapur, in Revision (ULP) Nos. 53, 54, 55, 56, 57, 58 and 59 of 2004 is hereby quashed and set aside. The revision applications are dismissed and the common judgment and order dated 16.6.8.2004, passed by the Labour Court in Complaint (ULP) Nos. 147, 148, 149, 150 and 153 of 2000 is restored.

16. Rule is made absolute in these terms. No orders as to costs.