

(1987) 07 KAR CK 0032

In the Karnataka High Court

Case No : Writ Petition No's. 14443 and 14444 of 1983

Mamtaj Gaffar Mulla and Others

APPELLANT

Vs

Vilas Beedi Factory and Others

RESPONDENT

Date of Decision : 28-07-1987

Acts Referred:

Beedi and Cigar Workers (Condition of Employment) Act, 1966 — Section 39, 39 (1), 8, 9

Industrial Disputes Act, 1947 — Section 2 (k), 33 C (2)

Citation : (1987) ILR (Kar) 3282 : (1988) 2 LLJ 128

Hon'ble Judges : S.G. Doddakale Gowda, J

Bench : Single Bench

Judgement

1. Rule.

2. Petitioners have challenged the validity of Order, dated 19th January 1983 passed on Application Nos. 12 and 4 of 1980 dismissing their applications u/s 33-C(2) of the Industrial Disputes Act as not maintainable.

3. Petitioners through their applications filed u/s 33-C(2) of the Industrial Disputes Act sought for computation of the leave wages and the national and festival allowances etc.

On a preliminary objection raised by the Management, the Labour Court has held thus :-

"If that is so, the "Private Dwelling house" will not be an industrial premises. Similarly it cannot be a "Beedi Industrial Premises" also under the State Act unless it is included in the definition of the "Beedi Industrial Premises" in the State Act. However I am unable to agree with the argument of Mr. Apte that simply because it is excluded in the Central Act, and not so in the State Act, it should be taken that the provisions of the Industrial Disputes Act can be invoked by the home workers also for any relief u/s 33-C(2) of the I.D. Act. If the Central Act is express, the State Act is silent."

No doubt, as observed by Labour Court, both Karnataka Beedi Industrial Premises (Regulation of Conditions of Work) Act, 1964 (hereinafter referred to as the "State Act") and Beedi and Cigar Workers (Condition of Employment) Act, 1966 (hereinafter referred to as the "Central Act") are in force. By the impugned order, the Labour Court declaring the State Act to be repugnant to Central Act has held that petitioners as "home workers" cannot invoke the provisions of Industrial Disputes Act for redressal.

4. Contention of Mr. Narasimhan, learned Counsel for the petitioners, is that manufacture of Beedi being an industry, any dispute that arise between "employer" and "employees" must necessarily be adjudicated by a Labour Court as it squarely falls within the definition of Section 2(k) of the Industrial Disputes Act. His submission is that employees working, both in "industrial premises" and "establishment" are entitled to rights and privileges alike and can enforce the same through a common machinery. Denial of relief to "Home Workers" on the ground that Industrial Disputes Act itself is not applicable to them is opposed to precedents and scheme of social welfare legislation.

Sri Gururajan, learned Counsel for the first respondent, relying on Section 39 of the Central Act and the decision of the Bombay High Court in Ramanbhi Patel (Asali Sampal) v. Judge, Labour Court, Akola and Another Spl. Civil Application No. 822 of 1973, tried to sustain the conclusion contending that employees working in an industrial premises alone can avail of the remedy under the Industrial Disputes Act and the Industrial Disputes Act is not applicable in so far as other workers are concerned.

5. In view of this rival contention, the question that requires consideration is whether the petitioners who are undisputedly "Home Workers" falling within the definition of "employee" as defined in the Central Act can enforce their rights invoking the aid of the Industrial Disputes Act or the forum is elsewhere ?

6. The provisions of the Central Act are filled to the brim with tenderness and humanity to beedi workers.

The object of the Central Act was to promote the welfare of the workers in Beedi and Cigar establishment and to regulate their service conditions. "Establishment" is defined to mean any place or premises including the precincts thereof in which or in any part of which any manufacturing process connected with the making of beedi or cigar or both, is being, or is ordinarily, carried on and includes an industrial premises. "Industrial premises" means any place or premises (not being a private dwelling house), including the precincts thereof, in which or in any part of which any industry or manufacturing process connected with the making of beedi or cigar or both is being, or is ordinarily carried on with or without the aid of power. "Employee" means a person employed directly or through any agency, whether for wages or not, in any establishment to do any work, skilled, unskilled manual or clerical and includes (i) any labour who is given raw material by any employer or a contractor for being made into beedi or cigar

or both at home (hereinafter referred to in this Act as "home worker"), and (ii) any person not employed by an employer or a contractor but working with the permission of, or under agreement with, the employer or contractor. Section 8 to 23 of the Central Act deal with sanitary condition, working hours, over-time, interval, holidays and so on, of employees working in "industrial premises."

Section 26 and 27 under which reliefs were sought for read thus :

"26. Annual leave with wages :- (1) Every employee in an establishment shall be allowed in a calendar year leave with wages :-

(i) in the case of an adult, at the rate of one day for every twenty days of work performed by him during the previous calendar year;

(ii) in the case of a young person, at the rate of one day for every fifteen days of work performed by him during the previous calendar year.

Explanation :- The leave admissible under this sub-section shall be exclusive of all holidays whether occurring during, or at the beginning or at the end of, the period of leave."

Sub-sections (2) to (7) of Section 26 deal with manner or method of calculation of leave wages.

"27. Wages during leave period :- (1) For the leave allowed to him u/s 26 an employee shall be paid at the rate equal to the daily average of his total full-time earnings for the days on which he had worked during the months immediately preceding his leave exclusive of any over-time earnings and bonus but inclusive of dearness and other allowances.

Explanation I :- In this sub-section, the expression "total full-time earnings" includes the equivalent of the advantage accruing through the concessional sale to employees of foodgrains and other articles, as the employee is for the time entitled to, but does not include bonus.

Explanation II :- For the purpose of determining the wages payable to a home worker during leave period or for the purpose of payment of maternity benefits to a woman home worker "day" shall mean any period during which such home worker was employed, during a period of twenty four hours commencing at midnight for making beedi or cigar or both."

Labour Court relying on Section 39(1) of Central Act which reads thus :

"The provision of the Industrial Disputes Act. 1947 (14 of 1947), shall apply to matter arising in respect of every industrial premises."

has negated the relief holding that Industrial Dispute Act is not applicable to them. According to the Labour Court, Industrial Disputes Act is applicable only to employees working in "industrial premises" and inapplicable in so far as other are concerned viz., "home workers".

7. This question will have to be answered in the light of the working pattern of Beedi industry as explained by the Supreme Court in Mangalore Ganesh Beedi Works and Others Vs. Union of India (UOI) and Others, Supreme Court on an examination of the scope of definition of "Employee" and "Employer" as defined under the Central Act has categorised six types of employees and five types of employers at paras 34 and 35 of its Judgment. Dealing with the liability of manufacturer it is stated at paras 42 & 43 thus :

"The present legislation is intended to achieve welfare benefits and amenities for the labour. That is why the manufacturer or trade mark holder becomes the principal employer though he engages contract labour through the contractor. He cannot escape liability imposed on him by statute by stating that he has engaged the labour through a contractor to do the work and, therefore, he is not responsible for the labour. The contractor in such a case employs the labour only for and on behalf of the principal employer. The contractor being an agent of the principal employer for manufacturing beedis is amenable to the control of principal employer. That is why the statute says that even if the contractor engages labour without the knowledge of the employer the principal employer is answerable for such labour because the labour is engaged for or on his behalf. The Act and the Rule thereunder prescribe maintenance of log books and registers. Where the manufacturer or the trade mark holder engages labour directly, the manufacturer maintains registers and log books. Where the manufacturer engages contract labour through a contractor the manufacturer will require the contractor to maintain such log books of the contract labour and through such books and registers will keep control over not only the contractors but also the labour.

The principal employer is the real master of the business. He has real control of the business. He has held liable because he exercise supervision and control over the labour employed for and on his behalf by contractor. The benefits of the welfare measure reach the workmen only by direct responsibility of the principal employer. The basis of the welfare measure is in the interest of the workers with regard to their health, safety and wages including benefits of leave and family life."

In para 63 of the Judgment the manner of calculating annual leave with wages and wages during the leave period for employees in an "industrial premises" as well as "home workers" as are conferred under Sections 26 and 27 of the Act, is explained.

8. The policy of Industrial Disputes Act is to protect workmen as a class against unfair labour practice. "The broad concept of Industrial Dispute means any dispute or difference between the employers and workmen or between workmen and workmen, connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person". "An element of collective bargaining which is the essential feature of the modern trade union movement is necessarily involved in an industrial adjudication". Petitioners are

also workmen as defined in Section 2(s) and any dispute regarding their service conditions would be an industrial dispute, within the meaning of Section 2(k) of the Industrial Disputes Act.

If that is so, does Section 39 of the Central Act exclude or oust the jurisdiction of the Labour Court to adjudicate a dispute between an "employer" and a "home worker" ?

9. The machinery for redressal of grievance of employees, as defined in the Central Act, whether working in industrial premises or establishment, can only be the same and not distinct and separate so far as "home workers" are concerned, because dispute involves the right of workmen as a class. No doubt, the "establishment" as defined is wider in its concept than the "industrial premises". Except Section 39 which states that the Industrial Disputes Act shall apply to matters arising in respect of Industrial Premises there is no mention of any other forum through which the rights and privileges conferred under the Act on home workers can be enforced. Under sub-section (2) of Section 39, if disputes relate to issue of raw materials, rejection of beedi and cigar or both rejected by the employer, then they are required to be settled by such authority and in such manner as the State Government may, by Rules, specify, be it home workers or otherwise.

Courts and Tribunals have held hitherto that a dispute between a beedi or a cigar workman and a manufacturer can be adjudicated under the Industrial Disputes Act having regard to the definition of "workmen", "industrial dispute", "industrial establishment" or "undertaking" as defined therein. Even in the absence of sub-section (1) of Section 39, normally, employees were required to resort to remedy under the Industrial Disputes Act, as manufacture of beedi and cigar is undisputedly an "industry within the meaning of Section 2(j) of the Industrial Disputes Act. Can non-specification of remedy in so far as the employees other than those working in industrial premises be considered as an implied ouster ? Under sub-section (1) of Section 39, Parliament has recognised that a dispute between an "employer" and an "employee" working in industrial premises can be settled under the Industrial Disputes Act. Can that recognition be treated as an ouster of jurisdiction of Labour Court to settle disputes of "employees" working in the establishment or does it mean the applicability of the provisions of the Industrial Disputes Act to such workers is excluded ? It is not possible to infer that the Parliament having included "home workers" in the definition of "employees" omitted to extend the same remedy as could be availed of by an "employee" working in "industrial premises" and/or intended "home workers" to resort to a Civil Court.

10. Firstly, "employees" as defined in Central Act are entitled to be treated alike. It is not possible to interpret or construe that Parliament intended to provide different forums, to employees of the same industry, for redressal of their grievances viz., one set of employees working in industrial premises can enforce their right under Industrial Disputes Act and the other type of employees like

"home workers" can seek redressal before a competent Civil Court.

11. Secondly, Supreme Court in Mangalore Ganesh Beedi's case (supra), has death with the object and scope of the Act, with reference to the definition of "employee" as defined therein and also indicated the manner of working out the benefits conferred on a "home worker" u/s 26 and 27 of the Act in para 63 of its Judgment. Supreme Court in D.C. Dewan Mohideen Sahib and Sons Vs. The Industrial Tribunal, Madras, while examining the modus operandi with respect to manufacture of beedies entrusting the leaves and tobacco to contractors, contractors after getting it rolled from the workers selling the same to the manufacturer deducting the cost of leaves and tobacco, has held that such system would establish the relationship of an "employer" and "employee" and a dispute pertaining to their service conditions constitute an industrial dispute within the meaning of Section 2(k) of the Act. Supreme Court, observing thus :-

"But there can be no doubt that the workers employed by the so called contractors are really the workmen of the appellants who are employed through their agents or servants whom they choose to call independent contractors."

has upheld the decision of the Madras High Court that a dispute of that nature squarely falls within Section 2(k) of the Industrial Disputes Act.

It is unnecessary to multiply the precedents where a dispute between "employees" and "employer" manufacturing beedi or cigar were settled by the Labour Court or the Industrial Tribunal, as the case may be, prior to the promulgation of the Central Act. The reason why I have referred to this is that all along every one has understood that such disputes can properly and legitimately be adjudicated under the Industrial Disputes Act and under these circumstances, it is not possible to infer that the Parliament intended to exclude the jurisdiction of the Labour Court or the Industrial Tribunal and/or Section 39 intended to overcome the dictum in these cases declaring that the Labour Courts have got jurisdiction to adjudicate a dispute under the Industrial Disputes Act.

12. Thirdly, in case "home workers" are driven to seek their redressal before a competent Civil Court, which is the effect of the impugned order, it is likely to result in conflict of decisions and thus lead to anomalous position. If interpretation adopted by the Labour Court is accepted, then social welfare legislation would receive a set back.

13. It may be necessary to recapitulate the principles to be borne in mind in interpreting such legislation. Supreme Court in Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation, has stated that while interpreting social welfare legislation :

"Judges ought to be more concerned with the "colour", the "content" and the "context" of such legislation."

Further, it has reiterated its earlier view in Surendra Kumar Verma and Others

Vs. Central Government Industrial Tribunal-Cum-Labour Court, New Delhi and Another, which reads thus :-

"Semantic luxuries are misplaced in the interpretation of "bread and butter" statutes. Welfare statutes must, or necessary, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is not to make inroads by making etymological excursions."

In the light of the above principles, sub-section (1) of Section 39 must be held to have reiterated that provisions of Industrial Disputes Act are applicable to employees working in "industrial premises", but has not ousted the jurisdiction of Labour Court to settle disputes of Home Workers. It is not possible to construe that Parliament intended to provide different remedies for employees falling within the same definition.

14. Lastly, Sri Narasimhan, relying on the proviso to sub-section (1) of Section 40 of the Act, contended that their existing rights if more favourable than the one conferred under the Central Act should be construed to have been saved and on that premise also, refusal to grant relief by impugned order is illegal and without jurisdiction. Said proviso is only in the nature of the saving clause protecting interest of workmen derived under an award, agreement, contract of service or otherwise if more favourable than those conferred under the Act. If the forum for enforcement of rights and privileges invoking the aid of Industrial Disputes Act is treated as a right by itself, may be, as contended by Sri Narasimhan, it is possible to consider it having saved.

15. Sri Gururajan, learned Counsel for the first respondent, relying on the decision of the Bombay High Court in Ramanbhi Patel's case, cited supra, which reads thus :-

"It is true the term "establishment" as defined in the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 in Section 2(h) thereof is wider in concept than "industrial premises" and includes the latter. Still it is necessary to note that Section 39(1) of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 provides for the application of the Industrial Disputes Act 1947 to matters arising in respect of every "industrial premises" and not "establishments." It would therefore seem that so far as the home workers are concerned, they would not be governed by the provision of the Industrial Disputes Act, 1947, so that they would not be able to file an application u/s 33-C(2) of the Industrial Disputes Act, 1947."

contended that conclusion of Labour Court is correct. Unfortunately, there is no reference to working pattern of the industry as explained by the Supreme Court in Mangalore Ganesh Beedi's case (supra). In fact, Supreme Court has specifically illustrated the method of calculating the leave wages in respect of "home workers" which can only be legitimately computed by a Labour Court or the Industrial Tribunal. There is no reference to principles to be adopted for interpretation of social welfare legislation. The questions as to whether "home

workers" can claim the benefits under Sections 26 and 27 invoking the aid of Industrial Disputes Act as the establishment falls within the meaning of "industry" as defined in Section 2(k) of the Industrial Disputes Act and/or whether Central Act, as a special law, specially Section 39 has ousted the prevalent procedure have not been adverted to. Hence, with utmost respect, I am unable to subscribe to the vies expressed in Ramanbhi Patel's case (supra). The Labour Court instead of considering these broad aspects has inferred implied ouster which is, prima facie, perverse and illegal.

16. For the reasons stated above, Writ Petitions succeed. It is hereby declared that Labour Court has jurisdiction to entertain applications of petitioners filed u/s 33-C(2) of the Industrial Disputes Act. Impugned orders are hereby quashed. Matters remitted to Labour Court, Hubli, for fresh disposal in accordance with law. Rule made absolute.