
(1994) 04 KAR CK 0017
In the Karnataka High Court
Case No : Writ Petition No. 13996 of 1987

Management of VISL

APPELLANT

Vs

Presiding Officer and Another

RESPONDENT

Date of Decision : 15-04-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Industrial Disputes Act, 1947 — Section 25 F

Citation : (1994) 3 KarLJ 110 : (1995) 1 LLJ 196

Hon'ble Judges : Shivappa, J

Bench : Single Bench

Advocate : S.G. Sundaraswamy and B.C. Prabhakar, for the Appellant; D.V. Shylendra Kumar, C.G.S.C. for Respondent No. 1 and K. Subba Rao, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner in this writ petition has sought for quashing the award dated July 20, 1987 published in the Gazette dated August 22, 1987 produced at Annexure-A.

2. The brief facts of the case are as under:-

The VISL is a Company registered under the Companies Act It has set up its factory for manufacturing of Iron and Steel Products, at Bhadravathi. It has taken some mines on lease from the State Government. One such mine is at Biliklabetta and it is known as Biliklabetta Quartz Mines (hereinafter referred as B.B. Mines).

3. For mining operations contractors were appointed from time to time. The contractors in turn engaged labourers. Sri Puttaiah, T and Sri Chennakeshava are the contractors extracting the work in the Mines, engaged 185 workers and they used to pay Rs. 4/- for male workers and Rs. 3/- for female workers per day from the year 1975 till March 31 of 1983. The Mines Employees Association

raised a dispute for higher wages. It was referred to the Industrial Tribunal as Reference No. 9/74. The General Manager, VISL and the first party workmen compromised the matter and the wages were increased. Management paid stationary benefits also. Under the Mines Act Registers were maintained in Form-A, B, D, G and H and VISL also provided creche to children, Canteen, Rent free quarters, hospital facilities and fair price shops. They have also maintained statutory registers under different Acts. In Reference No. 6/71 a Compromise was filed by the workmen and the second party VISL. Prior to the retrenchment or closure of the Mines, it is their case that VISL did not issue any notice and workmen are victimised for ever. The II party (b) and (c) issued notice to each workman on February 24, 1983 stating that their contract period was due to expire on March 31, 1983 and advised the workers to seek employment elsewhere i.e., from 1st April, 1983. The notices issued by the Contractors are not valid. The I party issued notices to the II party (a) (b) and (c). The matter was admitted for conciliation in March, 1983. The Assistant Labour Commissioner, Mangalore, sent notices to the n party and asked to maintain the status-quo, but they stopped the work from March 1, 1983. The Management stated that they have closed the mines temporarily for 1 or 1 1/2 years. It is the case of the workmen that the provisions of Sections 25F and 25(O) have been violated. When the conciliation was pending, a sum of Rs. 300/-was paid to each worker as advance. On November 3, 1983, the management had issued a notice to terminate the award of Reference No. 9/74, retrenchment is illegal and they sought for reinstatement with full back wages.

4. The Counsel for the petitioner i.e. VISL, contended that the mining operations was done by the contractors engaged for specific period and it is they who engaged the labourers and that there is no employer and employee relationship between themselves and they were engaged by one T. Puttaiah and Chennakeshava and their contract was for two years and due to 85% power cut for considerable time the ferro silicon plant of Bhadravathi was shut down thus resulting in huge piling of the Quartz. The matter was viewed by the VISL Management and after careful consideration it was decided to close down the Mining Operation of B.B Mines, though the Management had the right to terminate the contract by giving 15 days notice even during the contract period, the closure came into effect at the end of the contract i.e. March 31, 1983. It is further contended that the I party has no locus standi to raise the dispute. The Management accepted to deduct certain amount from the bills of the contractors every month and pay a certain part of wages payable by the contractors directly to the workers. It was done to safeguard the interest of contract workers because of statutory obligation imposed on the principal employer u/s 21 of the Contract Labour (Regulation and Abolition) Act, 1970. It is also averred that the small portion of the monthly bills of the contractor was withheld and kept as deposits. If the contractors were to discharge their obligation the same was refunded to them. It is the case of the VISL that it had no control over the working of the contract workers and the contractors and workers used to take

instructions from the officials of the Company regarding technical aspects. It is the specific case of the VISL that the responsibility of employing the workers, supervision, control and taking disciplinary action vested with the contractors. The contractors had given notice to these workers on February 24, 1983 about the expiry of the contract on March 31, 1983. Since they had no ready cash, they requested the management to pay the retrenchment compensation and adjust the amount from the bills. The VISL therefore agreed to pay the retrenchment compensation at Labour Court, without prejudice to the right, namely that VISL is not liable to pay the retrenchment compensation. It is also contended that it is not a case of retrenchment but it is a case of closure for termination of the contract and that the closure is real and bona fide. The dispute is deemed to have been lapsed by virtue of compromise award in Reference No. 9/74 and thus the alleged employer and employee relationship came to an end. The VISL had paid gratuity, P.P., Maternity benefit and Workmen" Compensation and it has vicarious liability under the statute as principal employer and further contended that the provisions of Sections 25(F) and (O) are not attracted.

5. In addition to the main points of dispute namely whether retrenchment of 185 workmen, mentioned in the Annexure to the order of reference, of Bilikellabetta Quartz Mines by the Management of Visveshwaraya Iron and Steel Limited, Bhadravathi and their contractors Sriyuths T.Puttaiah and Chennakeshava, with effect from April 1, 1983 is legal and justified, other additional issues were also framed. The VISL examined one witness and got marked Exhibits M1 to M15, and the workmen examined five witnesses and got marked Exhibits W-1 to W-44. The Tribunal after considering the entire material, both documentary and oral, placed before it, ordered reinstatement of workmen with full backwages and consequential benefits. It is this award passed by the Labour Court which is under challenge in this writ petition.

6. The learned Counsel for the petitioner cited the following decisions for my consideration:-

P. Karunakaran Vs. Chief Commercial Superintendent, Southern Railway and Others, :- This is the case where the High Court of Kerala held that Southern Railways is not the employer and the contractor has to vacate the premises and with him the entire establishment has to vacate on the expiry of the licence period and to pave the way for the new contractor to run the refreshment room and that the absorption of the workers under the licence amounts to violating Articles 14 and 16 of the Constitution in the matter of employment under the Railways.

It is the case where the appointment was made by the licensee, workers worked for the benefit of the contractor and he had the control, supervision and right to terminate their services. But the same is not the situation in the instant case.

A.P. Dairy Development Cooperation Federation Vs. K. Ramulu and Others, The point decided in this case is whether the Court exercising writ jurisdiction can

direct the principal employer to ensure that the workers are employed by every contractor to whomsoever the principal employer might entrust his work on contract basis. The Court took the view under the Contract Labour (Regulation and Abolition) Act, 1970 there does not provide for such a measure but contents itself by mere regulation of the conditions of service of the employees under the contractor and abolition of the contract labour itself, in its opinion, not permissible to direct the principal employer to impose a condition of successive contractors engaged by it to employ the same labourers.

The facts and circumstances in that case and in the instant are different. It is not the question of employing labourers on the volition of the contractors, but under the direction of the VISL, labourers are engaged and continued to do the work for the benefit of the VISL with the disciplinary control vested in it. Therefore, this case on facts is dissimilar.

1990 LABIC 405 - The Chairman and Mg. Director, Singereni Cotheries Co. Ltd V. Kola Posham and Ors. This is the case where the Court took the view that the contract labour working in an establishment under the contractor is not entitled to claim absorption on regular basis without being sponsored by the Employment Exchange even if he has worked continuously for five years. This is a case where the contract labourers filed several writ petitions contending that they were working as Hamalies in the Company for over five years and were given training in loading the stored material and that they should be absorbed as Badili Fillers on regular basis without insisting on their names being sponsored by the Employment Exchange under the Contract Labour (Regulation and Abolition) Act, 1970.

This is a case where the labourers were working under the contractor on daily wages and the Company had no supervisory control over them and that it was open to the contractor to use the labour in other works and in other establishments also. But that is not the same situation here. Therefore, this case has no application.

Steel Authority of India Ltd. Vs. Steel Authority of India Ltd. Contract Workers" Union, This is the case where the Court took the view that there is absolutely no warrant to deem the direct relationship of employer and employee between the principal employer and the contract labour, only because, the contractor failed to obtain the licence. Just because there is a violation on the part of the contractor to obtain licence u/s 12 of the Act it would not result in bringing about direct relationship of employer and employee between the contract labourer and the principal employer.

That is not the case with which I am confronted with in the instant case. It is not the case that the contractor did not obtain the licence as required under the Act. Therefore, this case also has no application.

WRIT APPEALS Nos. 3 to 5 of 1991 State Authority of India Limited v. Steel Authority of India Limited contract Workers union :-This Court on consideration

of evidence, both documentary and oral, adduced by the parties recorded a finding that there is no relationship of employer and employees between SAIL and workmen and that they cannot be considered as deemed employees of the SAIL. This is the judgment given with reference to the facts and circumstances of that case and since the facts are not similar to the case on hand it has no bearing on the question in issue.

7. The point for consideration in this petition is whether there is a relationship of master and servant between the workmen and the petitioner Company and whether the workmen are entitled to be reinstated or the finding recorded by the Labour Court is unreasonable and calls for interference under Article 226 of the Constitution of India?

(1) Whether there exists the relationship of Master and Servant:-

The tests to determine the master and servant relationship are - who pays? for whose benefits the workmen work? under whose supervision? and the disciplinary action whether can be taken? If so, by whom and the employer has the right to reject the end-products?

The labourers are working for more than 20 years in the mines. The hours of work, nature of work, payment are regulated by the VISL. They are working for the benefit of the VISL under the supervision of the VISL and the right to take disciplinary action is also vested with the petitioner-Company.

Hussainbhai, Calicut Vs. The Alath Factory Thezhilali Union, Kozhikode and Others, The Supreme Court has held that the presence of the 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 true test with brevity indicated in the decision is whether the worker or group of workers labour to produce goods or service and these goods or services are for the business of another, that other is, in fact, the employer, the employer has the economic control over the workers' subsistence, skill and continued employment. If he, for any reason, chokes off, the worker, the presence of intermediate contractor with whom alone the workers have immediate or direct relationship ex contractu is of no consequence.

In Shivnandan Sharma Vs. The Punjab National Bank Ltd., The Supreme Court has held thus;

"(14) The Appellate Tribunal held that on a reading as a whole of the clauses of the agreement aforesaid the appellant was an employee of the Treasurers and not of the Bank. It did not address itself pointedly to the question as to what was the exact relation between the Bank and the Treasurers. It did not also consider the question as to what would be the position of employees of the Cash

Department "vis-a-vis" the Bank if it were held that the Treasurers themselves were the servants of the Bank and not independent contractors. Before the Appellate Tribunal both parties appear to have concentrated their attention on the question as to whether the employees of the Cash Department were servants of the Bank or of the Treasures.

In our opinion, that was not a correct approach to the determination of the controversy between the parties. If the Treasurers' relation to the Bank was that of servants to a master, simply because the servants were authorised to appoint and dismiss the ministerial staff of the Cash Department would not make the employees in the Cash Department independent of the Bank. In that situation the ultimate employer would be the Bank through the agency of the Treasurers. It was argued on behalf of the respondent that even if it were held that the Treasurers were the servants of the Bank and not independent contractors, the legal position of the employees of the Cash Department "vis-a-vis" the Bank would be the same, namely, that they will be in law the servants of the Treasurers.

In our opinion, there is no substance in that contention. If a master employs a servant and authorizes him to employ a number of persons to do a particular job and to guarantee their fidelity and efficiency for a cash consideration, the employees thus appointed by the servant would be equally with the employer, servants of the master. It is not always correct to say that persons appointed and liable to be dismissed by an independent contractor can in no circumstances be the employees of the third party. This would be clear from the following observations of Lord Esher, M.R., in the case of - "Donovan v. Laing, Wharton, and Down Construction Syndicate" 1893 I QB 629 at p. 632(B):

" It is true that the defendants selected the man and paid his wages, and these are circumstances which, if nothing else intervened, would be strong to show that he was the servant of the defendants. So, indeed, he was as to a great many things; but as to the working of the crane he was no longer their servant, but bound to work under the orders of Jones and Co, and if they saw the man misconducting himself in working the crane or disobeying their orders, they would have a right to discharge him from that employment."

Those observations have been approved in the latest decision of the House of Lords in the case of - "Mersey Docks and Harbour Board v. Coggins and Griffith (Liverpool) Ltd." 1947 AC 1 (C) The House of Lords distinguished that ruling on facts but did not depart from the general rule laid down in the earlier decision that the determinative factor is as to which party had control over the workers as how they would do their job from day to day. Lord Macmillan in his speech at p. 14 has observed as follows:

"Many reported cases were cited to your Lordships but where, as all agree, the question in each case turns on its own circumstances, decisions in other cases are rather illustrative than determinative. So far as attempts have been made to

formulate a criterion of general application, it cannot be said that these attempts have been very successful."

(15) It would thus appear that the question as to whose employee a particular person was has to be determined with reference to the facts and circumstances of each individual case. Lord Porter in the course of his speech in the reported case (*supra*) at P. 17 has observed as follows:

"Many factors have a bearing on the result Who is paymaster, who can dismiss, how long the alternative service lasts, what machinery is employed, have all to be kept in mind. The expression used in any individual case must always be considered in regard to the subject- matter under discussion but amongst the many tests suggested I think that the most satisfactory, by which to ascertain who is the employer at any particular time, is to ask who is entitled to tell the employee the way in which he is to do the work upon which he is engaged."

One of the tests laid down in this decision is whether the employer at any particular time has the power to tell the employee in which way he has to do the work upon which he is engaged.

In the instant case, workmen used to work under the complete control and supervision of the VISL officials.

In *D.C. Dewan Mohideen Sahib and Sons Vs. The Industrial Tribunal, Madras*, The Supreme Court has held that the correct approach to decide the question of master and servant relationship is to consider whether having regard to the nature of the work there was due control and supervision by the employer.

In *Mangalore Ganesh Beedi Works and Others Vs. Union of India (UOI) and Others*, The Supreme Court has held that the principal employer means a person for whom or on whose behalf any contract labour is engaged or employed in an establishment. The principal employer is the real master of the business. He has real control of the business. He is held liable because he exercises 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. The principal employer is liable for acts of the independent contractor. When a contractor engages labour for or on behalf of another person that other person becomes the principal employer. In such an instance there is no question of agency on behalf of another person. In the present case, it is not material to find out as to who can be called an independent contractor. It can be said that independent contractors are those who employ labour for and on behalf of themselves. So long the workers are not employed on their behalf but for the benefit of and for the work of the petitioner, the employer is the petitioner and the petitioner and the petitioner has also got the right to control the manner of work.

In *Sankar Mukherjee and Others Vs. Union of India (UOI) and Others*, the Supreme Court at paragraph 6 has held thus (P 445):

"6. It is surprising that more than forty years after the independence the practice of employing labour through contractors by big companies including public sector companies is still being accepted as a normal feature of labour-employment. There is no security of service to the workmen and their wages are far below than that of the regular workmen of the company. This Court in *The Standard-vacuum Refining Co. of India Ltd. Vs. Its Workmen and Others*, and *Catering Cleaners of Southern Railway Vs. Union of India (UOI) and Another*, has disapproved the system of contract labour holding it to be "archaic" "primitive" and of "baneful nature". The system, which is nothing but an improved version of bonded-labour, is sought to be abolished by the Act. The Act is an important piece of social legislation for the welfare of labourers and has to be liberally construed."

8. The learned Counsel for the workmen lastly contended that the Labour Court considered all the material before it and its view does not call for interference, since it is based on evidence and contended that unless it is perverse, even if it is the case of error, this Court under Article 226 normally should not interfere, and brought to my notice the decision reported in *The Custodian of Evacuee Property, Bangalore Vs. Khan Saheb Abdul Shukoor, etc.*, *The Custodian of Evacuee Property, Bangalore v. Saheb Abdul Shukoor and Ors.*, at paragraph 15:

"15. The result of the view we have taken is that the High Court was not justified in looking into the order of December 2, 1952, as an appellate court, though it would be justified in scrutinizing that order as if it was brought before it under Article 226 of the Constitution for issue of a writ of certiorari. The limit of the jurisdiction of the High Court in issuing writs of certiorari was considered by this Court in *Hari Vishnu Kamath v. Ahmad Ishaque* AIR 1953 SC.233 and the following four propositions were laid down:

- (1) Certiorari will be issued for correcting errors of jurisdiction;
- (2) Certiorari will also be issued when the Court or Tribunal acts illegal in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice;
- (3) The Court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the Court will not review findings of fact reached by the inferior Court or tribunal even if they be erroneous;
- (4) An error in the decision or determination itself may also be amenable to a writ of certiorari if it is a manifest error apparent on the face of the proceedings, e.g., when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by certiorari but not a mere wrong decision.

In the present case, the Custodian had jurisdiction to decide the matter once it is held that the Custodian-General had jurisdiction to set aside the order of August 22, 1950. The main question for decision in these cases was whether the respondents were evacuees within the meaning of Section 2(c) of the first Mysore Act. The questions (that fall for decision u/s 2(c) are questions of fact and as pointed out in Hari Vishnu Kamath's case, (supra) it is not open on a writ praying for certiorari to review findings of fact reached by an inferior court or tribunal even though they may be erroneous. Further, unless there is a patent error of law there can be no interference by a writ of certiorari. While dealing with the writ petitions the main argument that appealed to the High Court was that the Custodian-General had no jurisdiction in revision to reopen the earlier proceedings and in consequence all subsequent proceedings were null and void. The High Court was further aware of the fact that the ordinary remedy of the respondents in these cases against the order of December 2, 1952, was to appeal to the Custodian-General u/s 24 of the Act, but as it was of the view that the order of the Custodian-General u/s 27 was without jurisdiction it held that it should interfere and set aside the order of December 2, 1952, which was also without jurisdiction and restore that of August 22, 1950. In the view we have taken, the order of the Custodian-General was with jurisdiction and therefore there was in our opinion no reason for the High Court to interfere in the exercise of its jurisdiction under Article 226 of the Constitution with the order of December 2, 1952, as this is a case where only a writ of certiorari could issue and that is not justified in view of the decision in Hari Vishnu Kamath's case." (supra):

9. The circumstances referred to by the Labour Court to record a finding that there existed a relationship of master and servant are as under:

- (1) As per M. 12 VISL agreed to pay retrenchment compensation;
- (2) Contractors have no material to show that these workmen are their employees;
- (3) M. 1 to M. 15 cannot be said that these workmen are not workmen of VISL;
- (4) Ex.W.1 dated April 7, 1979 VISL permitted the contractors to increase the labour strength by 30 employees. This indicates supervision and control of labour strength vested with the VISL;
- (5) Ex.W.2 dated April 5, 1979 Management appointed an Officer to hold enquiry against the worker by name G.H. Thimmaiah;
- (6) Ex.W.4, W.31, 32 and 33 providing rent free quarters;
- (7) Ex.W.5 to 11 issued identity cards;
- (8) Exs.W.8 to 11 pay covers;
- (9) Exs.W.12 to 14 agreement between the workers and VISL as long back as March 27, 1976 and Management increased their wages.

- (10) Ex.W.14 working norms fixed;
- (11) Ex.W.17 to 18 - advance, bonus, festival advance;
- (12) Ex.W.20 letter by the Assistant Labour Commissioner to the Management on March 23, 1983;
- (13) Ex.W.21 VISL admitted as its workers;
- (14) Ex.W.24 to 26 compensation paid to employee's family when he died in an accident;
- (15) Ex.W.37 letter of Chennakeshava;
- (16) Ex.W.40 Memo to Chennakeshava to settle the dues.

10. All these circumstances put together show that the appointment was made by VISL, the workers worked for the benefit of the VISL under their supervision and disciplinary control vested with the VISL and the compensation paid to the workmen and disciplinary action taken against the workmen and advance, bonus paid by the VISL. Added to that Ex.W21 admitted as workmen and all the correspondences marked on behalf of the workmen bear the signature of the officials of the VISL.

11. Therefore, coupled with the oral evidence when the Tribunal has recorded a finding on reference to the above mentioned circumstances, the findings of the Labour Court cannot be held unreasonable, unjust or perverse and it docs not call for interference under Article 226 of the Constitution of India.

12. Petition is dismissed

13. Parties to bear their own costs.