
(2024) 04 BOM CK 0014

In the Bombay High Court

Case No : Writ Petition No.4701, 4702 Of 2005, Civil Application No.621, 648 Of 2006, Interim Application No.16330 Of 2023

Milind Nandkumar Kulkarni And Others

APPELLANT

Vs

All Resideing At And Others

RESPONDENT

Date of Decision : 02-04-2024

Acts Referred:

Constitution Of India, 1950 — Article 227

Citation : (2024) 04 BOM CK 0014

Hon'ble Judges : Sandeep V. Marne, J

Bench : Single Bench

Advocate : Seema Sarnaik, Kiran S. Bapat, Gaurav S. Gawande

Final Decision : Dismissed/Disposed Of

Judgement

Sandeep V. Marne, J

1 These two Petitions are filed by contract workers of Kirloskar Ebara Pumps Ltd. challenging the common Award dated 6 November 2004 passed by the Presiding Officer, Labour Court, Sangli, rejecting the respective References by holding that there is no employer-employee relationship between Petitioners and the Respondent and further holding that the respective contractors of the Petitioners were necessary parties to the References, in whose absence the References could not be adjudicated. The workers involved in Writ Petition No.4701 of 2005 were contract workers of M/s. Shree Datta Agencies, whereas the workers involved in Writ Petition No.4702 of 2005 were engaged by M/s. Allied Engineering Services. The workers however did not implead the said contractors nor sought any relief against them and therefore the Labour Court has held that adjudication of References relating to termination of the workers against Respondent-Kirloskar Ebara Pumps Ltd. was impermissible on account of absence of employer-employee relationship. The References are therefore held to be not maintainable and are accordingly rejected.

2. The factual background of the case is that – Respondent-Kirloskar Ebara Pumps Limited is engaged in manufacture and sale of pumps. It has its Head Office at Pune and factory at Sawantpur Vasahat, Kirloskarwadi, District Sangli. It is the case of the Petitioners that they were engaged by the Respondent since the year 1995 for performing various jobs in machine and assembly sections and that they performed work of perennial nature completing more than 240 days of service in each calendar year. That they were falsely shown to have been engaged through contractors even though the Respondent-Company used to directly control their service conditions as well as allotting work to them and supervising their work. It is their case that Petitioners in Writ Petition No.4701 of 2005 were illegally shown as workers of contractor M/s. Shree Datta Agencies whereas the Petitioners in Writ Petition No.4702 of 2005 were shown as workers engaged by the contractor M/s. Allied Engineering Services.

3. Since the workers were denied benefit of permanency, Complaint (ULP) No.699 of 2001 was filed before the Industrial Court, Kolhapur seeking permanency. In that Complaint, interim order was passed on 21 June 2001 directing the Respondent to maintain status quo with regard to services of the Petitioners. The Interim Application for stay was however rejected by Industrial Court, Kolhapur by order dated 27 August 2001. Immediately thereafter services of Petitioners were terminated by Respondent-Company on 29 August 2001. Later, the Industrial Court dismissed the Complaint (ULP) No.699 of 2001 holding that there was no employer-employee relationship between the Petitioners and Respondent.

4. Aggrieved by the terminations effected on 29 August 2001, Petitioners individually raised demands before Conciliation Officer under the Industrial Disputes Act 1947. Upon failure of the conciliation proceedings, reference order was made by the appropriate Government about termination and reinstatement of Petitioners to Labour Court, Sangli. Petitioners accordingly filed their statements of claim before the Labour Court, Sangli. Petitioners also filed Interim Applications for seeking interim stay on termination. Respondent-Company resisted both by filing Reply to the Interim Applications as well as Written Statement to the Statements of Claim. Petitioners examined themselves as witnesses and the Respondent-Company also examined Mr. Anand Gumaste as its witness.

5. After considering the pleadings and evidence on record, the Labour Court delivered two separate Awards on 6 November 2004 and held that there was absence of employer-employee relationship between the Petitioners and Respondent-Company. It further held that the contractors Shree Datta Agencies and M/s. Allied Engineering Services were necessary parties, in whose absence, references could not be decided. All the references were therefore treated as not maintainable. This is how the references initiated at the behest of the Petitioners came to be rejected.

6. Petitioners have filed the present Petitions challenging the Awards dated 6

November 2004. The Petitions came to be admitted by order dated 15 September 2005. By order dated 1 December 2015, this Court granted liberty to the Petitioners to withdraw the amount deposited in their respective Provident Fund Accounts.

7. Ms. Sarnaik, the learned counsel appearing for Petitioners would submit that the Labour Court has erred in holding that employer-employee relationship could not be established between Petitioners and Respondent Company. She would take me through compilation of documents, which were produced before Labour Court to prove complete supervision and control by the Respondent-Company over the workers. She would submit that Provident Fund of the workers was deducted and deposited by Respondent-Company that whenever accident occurred, the accident report was prepared by Respondent-Company. That assignment of work to Petitioners was always decided by Respondent-Company. She would take me through various shift charts to prove allocation of work to the workers by the Respondent-Company. She would also place reliance on various communications between Kirloskar Ebara Pumps Limited and Kirloskar Brothers Limited in which various materials/equipment were sent alongwith the Petitioners. That Machines Non-Conformity Reports again demonstrate supervision of work of the workers by Respondent-Company. She would also place reliance on initial engagement of one of the workers by Respondent-company through Employment Exchange.

8. Ms. Sarnaik would submit that the above documents placed before the Labour Court proved beyond any iota of doubt that there was complete supervision and control over Petitioners by Respondent-Company. That they were shown to have been engaged through contractors only on paper with a view to avoid liability under the Labour Laws. That for all practical purposes, Petitioners were always the employees of Respondent-Company. That their services were terminated only on account of vacation of interim stay by the Industrial Court and such termination was ordered to be effected by the Respondent-Company. She would take me through various findings recorded by the Labour Court to demonstrate as to how existence of employer-employee relationship ought to have inferred by the Labour Court. Ms. Sarnaik would therefore pray for setting aside the Awards passed by the Labour Court.

9. Per Contra, Mr. Bapat, the learned senior advocate appearing for the Respondent-Company would oppose the Petitions and support the Awards passed by the Labour Court. He would submit that there are specific admissions in the evidence given by the concerned workmen of they being employees of contractors. That in the light of such specific admissions, the claim of Petitioners of they being employees of Respondent- Company was belied before the Labour Court. He would submit that the Labour Court has recorded its findings by applying its mind to the entire evidence on the record. That the findings recorded by the Labour Court do not suffer from the vice of perversity so as to warrant interference by this court in exercise of writ jurisdiction. Mr. Bapat would further

submit that since the issue of existence of employer employee relationship is already concluded while deciding Complaint (ULP) No.699 of 2001 by the Industrial Court, the Labour Court has rightly answered the references in negative. He would rely upon the judgment of this court in Kalyan Dombivli Municipal Corporation vs. Municipal Labour Union, 2023 SCC OnLine Bom 2266. Mr. Bapat would pray for dismissal of the Petition.

10. Rival contentions of the parties now fall for my consideration.

11. The References in the present Petitions were made by the appropriate Government at the behest of the Petitioners for adjudication of disputes relating to their termination and reinstatement. One of the termination letters is placed on record in Writ Petition No.4701 of 2005. The said letter dated 30 August 2001 is issued by Shree Datta Agencies to Shri Sampath Mahadev Sawant. The letter states that the contract of Shree Datta Agencies with Respondent-Company was over and that the contractor did not have any work available for the workers and accordingly the services were terminated by paying an amount of Rs.24,440/-, which consisted of retrenchment compensation, gratuity and one month notice. Thus the termination letters are issued by the contractors and not by Respondent-Company. Despite this, Petitioners raised disputes with regard to their termination against Respondent-Company and not against the contractors who had terminated their services. This is how Petitioners took the risk of getting their grievance relating to termination adjudicated against Respondent-company, even though termination letters were issued to them by their respective contractors. For Petitioners to succeed in their claims, it therefore became necessary for them to establish existence of employer-employee relationship with Respondent Company. The Labour Court, after considering the evidence on record, has arrived at a conclusion that Petitioners could not establish employer-employee relationship with the Respondent-Company.

12. Ms. Sarnaik has relied on several documents to establish existence of employer employee relationship. I have gone through those documents, which are produced with a view to prove the test of control and management. However, control and management is not the only test to be satisfied for establishing employer-employee relationship. The law relating to establishment of employer employee relationship is crystallized in the judgment of the Apex Court in Balwant Rai Saluja vs. Air India Limited, (2014) 9 SCC 407, in which the Apex Court has prescribed following six factors for establishment of employer-employee relationship in paragraph 65 of the judgment as under:

"65. Thus, it can be concluded that the relevant factors to be taken into consideration to establish an employer-employee relationship would include, inter alia:

- (i) who appoints the workers;
- (ii) who pays the salary/remuneration;

- (iii) who has the authority to dismiss;
- (iv) who can take disciplinary action;
- (v) whether there is continuity in service; and
- (vi) extent of control and supervision i.e. whether there exists complete control and supervision.

As regard extent of control and supervision, we have already taken note of the observations in Bengal Nagpur Cotton Mills case (2011) 1 SCC 635, International Airport Authority of India case (2009) 13 SCC 374 and Nalco case (2014) 6 SCC 756."

13. True it is that the Labour Court did not have the benefit of judgment of the Apex Court in Balwant Singh Saluja (*supra*), which has been delivered in the year 2014. However, considering the material placed on record by the Petitioners and the evidence led by them, it cannot be said that the above tests are satisfied by them for establishment of employer-employee relationship. Perusal of the cross-examination of Petitioners would leave no manner of doubt that there was no employer-employee relationship with Respondent-Company. By way of illustration, cross-examination of Shri Shahaji Shankar Farane recorded in Reference (IDA) No.47 of 2002 is reproduced below:

"Cross-examination by Shri.R.G. Bhakare, Adv.

In my affidavit I have mentioned that I was working as Fiter however I do not possessing certificate of I.T.I. It is true that I have not produced any document to show that I was in the employment W.E.F. 1-6-96. I do not know whether I have produced any document to show that I was employee of the Ist part company. It is not true that I was employee of the Ist part company. It is not true that I was employed by contractor Datta Agency and

I was working under the supervision and control of Shri. Pujari of Datta Agency. It is not true that Pujari used to me pay wages. It is true that Shri Pujari of Datta Agency used to look after our sanctioning leave, arrangement of shifts, granting our holidays and other our services. It is true that for us there was a separate cards whereas for the regular employees of the Ist party there used to be separate attendance register. It is not true that the uniform colour as regards ourselves and employees of the Ist party company was different.

It is true that the Ist party co. manufactures Fuel pumps for Chemical factories. It is true that in the work of manufacturing Pump there should not be any slightest mistake, and therefore it is true that the Ist party has employed highly skilled employees on his muster roll. I do not know whether the Ist party co. has appointed contractors to get the work done which is of temporary and misc. nature. It is not true that the nature of work which is done us and nature of work done by Ist party employees was different. It is not the true that there used to be separate different facilities and service condition to the regular employees of

the Ist party which are not provided with us. It is true that the supervisors officers of the Ist party were supervision and controlling the work of its regular employees only.

It is true that in case we are required to go the near by Kirloskar Bro. alongwith regular employees of the Company the Ist party used to give a letter in which the name of the regular employees as well as ourselves names are mentioned. It is true that we filed a complaint in the Industrial court for absorbing us permanently in the Ist party company. It is true that from the date of our appointment till we approached industrial court we never made request or complaint to the Ist party company to absorb its employment. It is true that the said complaint was dismissed by the Industrial court, Kolhapur. I do not know whether while the complaint in Industrial court pending we made any application to the Labour office. We have filed the present references to become permanent in the employment of the Ist party company. I am not in the employment from 29-8-2001. My services were terminated by the company. But I did not receive any letter from the Ist party company about my resignation. I received my legal dues amounting Rs.27,000/- by post, by cheque. There was a letter indicating termination of my services along with cheque. It is true that on the said termination letter was on the letter head of Datta Agency and the same was signed by the Pujari, similarly the cheque was also signed by Shri Pujari. After receipt of the termination letter and cheque we did not inform the Ist party that the said letter is not acceptable to us.

It is true that through General Mazdoor Union we made application to the Govt. Labour office to abolish the contract system prevailing in the Ist party company. I do not know what happened to the said application.

It is true that the pending these references we became member of Kamgar Kalyan Sena, Tasgon, It is true that through the said Union we demonstrated and resorted to a hunger strike before the gate of the Ist party company. It is not true that our said act were to pressurize the Ist party company.

3 It is not true that the Ist party involved unable to us get benefit of P.F.made temporary arrangement to get deposited the contribution to the P.F Trust of the company. It is true that Shri Pujari used to deduct our contribution from our wages and passed on to the Ist party to get it deposited with the P.F. company Act, Pune. It is not true that we were not directly connected with the work of the Ist party company. It is not true that my statement in affidavit that the officers of the Ist party used to supervise our work is false. It is not true that my statement in affidavit that I was working on permanent pest and that shift arrangement used to be made by the officers of the company is false. It is not true that my statement in my affidavit that the company pay me wages and contract is bogus is false, It is not true that just to extract huge amount from the Ist party and to harass the Ist party company we have filed this false references.

No. R.E.”

14. Thus the above cross-examination would indicate that the employer-employee relationship existed between the contractor and concerned workers. Though Ms. Sarnaik has made strenuously efforts to demonstrate that supervision and control over the workers was that of Respondent-Company, Petitioners admitted during the course of their cross-examination that the Supervisors and Officers of Respondent-Company used to supervise and control the work of regular employees only and that Shri Pujari of M/s. Shree Datta Agencies used to look after sanctioning of leave, arrangement of shifts, granting of holidays, etc relating to Petitioners.

15. In fact, it appears that Petitioners first made an attempt to seek abolition of contract labour system by filing complaint through their Union. The very fact that demand was made for abolition of contract labour would indicate that Petitioners were never direct employees of Respondent-Company. Such application filed by Petitioners through their Union would contain an implicit admission that they were contract workers engaged by the contractors.

16. Though deduction of Provident Fund contribution by Respondent-Company is highlighted for establishment of employer-employee relationship, this aspect is sufficiently explained. It appears that the contractors had engaged less than 20 workers and were not equipped with 'Code' for deposit of Provident fund contributions and therefore the contractors used to deduct Provident Fund contributions from the concerned workers and used to hand it over to Respondent-Company for being deposited with the office of Provident Fund. This aspect is again admitted by one of the Petitioners in the cross-examination. Therefore, mere deposit of Provident Fund contribution in respect of Petitioners by Respondent-Company did not ipso facto made them direct employees of the Respondent-Company.

17. Reliance of Ms. Sarnaik on various other documents such as accident reports, shift charts, etc. are not sufficient to prove establishment of employer employee relationship. If a contract worker suffers an accident in the factory premises, the company is bound to prepare a report and provide necessary medical treatment to that worker. The same would however not make that worker a direct employee of the company. Similarly mere occasional shift allotment/placement by Respondent for better utilization of manpower, again would not make Petitioners employees of the Respondent-Company. Once a contractor places its workers at the disposal the principal employer, it may happen that for better output, the principal employer gives certain instructions to the workers of the contractors. This issue has been dealt with by this court in its judgment in Kalyan Dombivli Municipal Corporation (supra) where mere supervision of work of contract workers engaged for collection and disposal of municipal solid waste by an official of Municipal Corporation is not held to be sufficient for establishment employer employee relationship.

18. Even if the test of supervision and control is held to be proved by giving any benefit of doubt to the Petitioners, they are unable to satisfy the balance five

tests. There is no appointment letter on record issued by the Respondent-Company. The salary/remuneration is always paid by the contractor. There is nothing on record to indicate that Petitioners were ever dismissed or subjected to disciplinary action by Respondent-Company. This is not a case where same worker is continued through different contractors over a period of years. In my view therefore, Petitioners have failed in discharging a burden of proving existence of employer-employee relationship in the facts and circumstances of the present case.

19. After considering the overall conspectus of the case, I am of the view that no patent error can be traced in the findings recorded by the Labour Court. Petitioners took a calculated risk of getting the dispute relating to their termination adjudicated against Respondent-Company, who was not their employer. They did not implead the contractors who used to pay them remuneration and also who terminated their services, as party Respondents to References. Though it is sought to be suggested that the Reference order is made by the appropriate Government and that the Petitioners did not have any control over the entity against whom the reference was directed, the entity against whom demand was initially raised by Petitioners assumes importance. Petitioners never demanded anything against the contractors and their demands were directed only against Respondent-Company. Petitioners are therefore clearly responsible for non-impleadment of the contractors as party Respondents to the disputes. Having taken the risk of seeking adjudication of references only qua Respondent-Company, Petitioners must face the consequences arising out of non-establishment of employer-employee relationship with Respondent-Company. It therefore cannot be stated that the findings recorded by the Labour Court are so perverse that this Court's interference, in exercise of jurisdiction under Article 227 of the Constitution of India, is warranted.

20. I therefore do not find any valid ground to interfere in the well-reasoned Awards passed by the Labour Court. Both the Writ Petitions are devoid of merits and are accordingly dismissed without any orders as to costs. Rule is discharged.

21 In view of the dismissal of both the Writ Petitions, nothing would survive in the Civil Applications and the Interim Application and the same are disposed of accordingly.