

(2012) 09 KAR CK 0128
In the Karnataka High Court
Case No : W.A. No. 1364 of 2006 (L-RES)

M/s J.K. Tyres Ltd., Formerly M/s Vikrant Tyres Limited

APPELLANT

Vs

Mysore Division Hotel, Worker's Union

RESPONDENT

Date of Decision : 14-09-2012

Acts Referred:

Factories Act, 1948 — Section 46
Karnataka High Court Act, 1961 — Section 4

Citation : (2013) 1 AKR 205

Hon'ble Judges : V. Suri Appa Rao, J;K. Sreedhar Rao, J

Bench : Division Bench

Advocate : M.C. Narasimhan for Sri T. Narayanaswamy, for the Respondent

Judgement

V. Suri Appa Rao, J.—Appellant - J.K. Tyres Limited filed this appeal u/s 4 of the Karnataka High Court Act, 1961, challenging the correctness of the order dated 14th July 2006 passed by the learned Single Judge in W.P. No. 3285/2001, whereby the learned Single Judge dismissed the writ petition filed by the appellant and confirmed the award dated 12th July 2000 passed by the Presiding Officer, Labour Court, Mysore in Reference No. 116/1987. The relevant facts leading for filing of this appeal are as follows :

Appellant is engaged in the manufacture of tyres and had employed more than 2000 employees at its factory at Mysore. During the period from 10.06.1984 to 09.07.1986 the appellant had entrusted running of the factory canteen to a Contractor by name Sri. Somayaji G. who was running the canteen through workmen engaged by him. The appellant had secured necessary Registration Certificate for engaging Sri. Somayaji under the Contract Labour Act and the said G. Somayaji had necessary licence issued by the competent authority under the Contract Labour Act to run the canteen. Unfortunately, on 03.09.1986, the canteen contractor Sri. G. Somayaji and his brother who was looking after the canteen were murdered outside the factory gate. The workmen engaged by the Contractor were arrested and criminal case was filed against them. After the

death of Canteen Contractor Sri. G. Somayaji, the appellant entrusted the contract to another party. Therefore, the workmen of late G. Somayaji were not allowed into the factory premises as there was no employer-employee relationship between them. Thereafter, the respondent - Union raised a dispute for the illegal termination of their services and sought for reinstatement with back wages and other benefits. The conciliation is failed. Therefore, the dispute was referred for adjudication to the Labour Court, Mysore. After considering the evidence of both the parties, the Labour Court, Mysore passed the award dated 12th July 2000 directing the appellant to reinstate 59 workmen of the canteen contractor into services with 50% back wages from 15.07.1988 till date of the award.

2. Being aggrieved by the order passed by the Labour Court, the appellant filed a Writ Petition No. 3285/2001 before the learned Single Judge. The learned Single Judge has dismissed the writ petition filed by the appellant.

3. Learned Counsel for the appellant contends that the affairs of the Canteen was governed by the provisions of Factories Act, 1948 cannot be termed as Employees or the Principal Employer and employees of the appellant -Company. It is further contended that the Contractor has no control over the management, administration and functioning of the canteen.

4. Per contra, the learned Counsel for the respondent -Union contended that the canteen is a part of establishment of the management and that the workers in the canteen represents the company as the employees of the appellant's Company. Therefore, they are entitled for reinstatement.

5. Considering the rival contentions of both parties, the learned Single Judge observed that the workmen of the canteen are the employees of statutory canteen. Therefore, they are the employees of the management and dismissed the writ petition filed by the appellant - Company by following the Judgment of Hon''ble Supreme Court in the case of Steel Authority of India Ltd., and others Vs. National Union Water Front Workers and others (2001-II-LLJ 1087)

6. The learned Counsel for the appellant submitted that the employees of non-statutory canteen governed by the provisions of the Factories Act and that they cannot be termed as employees or the principal employer. In support of his contention, the learned Counsel for the appellant - employer has relied upon the following judgments :

a) Haldia Refinery Canteen Employees Union and another Vs. Indian Oil Corporation Ltd., and others (2005-II-LLJ 684);

b) Indian Petrochemicals Corporation Ltd. and another Vs. Shramik Sena and others [1999-II-LLJ 696].

7. In the case of Indian Petrochemicals Corporation Limited, the Hon''ble Supreme Court held that the workmen of the Statutory Canteen are the workmen of the establishment for the purpose of Factories Act only and not ipso

facto workmen of the establishment for other purposes like recruitment, seniority, promotion, retirement benefits, etc.

8. In Haldia Refinery Canteen Employees Union case also, the Hon"ble Supreme Court held that the employees in a Statutory canteen, run by contractor are employees of management only for purposes of Factories Act and not for any other.

9. Relying on the above decisions of the Hon"ble Supreme Court, the learned Counsel for the appellant - Company contended that the appellant - Management was not paying wages to the workmen of the canteen contractors, they were not appointed by the Officers of the appellant - Company. The Officers of the appellant Company are not taken any disciplinary action against the canteen workmen at any time. The workmen of the Factory were given coupon to take food in the canteen. Whereas, no such coupon were given to the workmen of the canteen contractors. The above fact was clearly admitted by the workmen of the canteen contractor in the evidence before the Labour Court. Therefore, the findings of the Labour Court are contrary and against to the Company Act. It is further contended that the appellant - Company is not the employer of the workmen of the canteen.

10. Lastly, the learned Counsel for the appellant submitted that except one of the workmen of the contractor none of the workmen of the Canteen contractor appeared before the Labour Court at any time throughout the hearing which lasted for almost 15 years. But the Labour Court has not taken note of the same in passing the impugned order. The workmen of the canteen are gainfully employed and they have not shown interest in the reference. At present the appellant Company running the canteen operated by another contractor who have engaged his own workmen who were suppose to work in the canteen and it was impossible for the appellant to provide work to 59 workmen in question. Therefore, the award passed by the learned Presiding Officer of the Labour Court is liable to be rejected. Therefore, the learned Single Judge was not justified in dismissing the writ petition filed by the appellant-Company.

11. Per contra, the learned Counsel for the respondent - Union submitted that it is a statutory obligation on the part of the appellant to maintain a canteen as there are more than 3600 employees are working in the Factory. The appellant company supervises the canteen as per the provisions of Section 2(1) of the Act and 99 of the Factories Rules. The appellant is responsible for the running of the canteen and that the workers employed in the canteen would be held to be the employees of the appellant Establishment. Therefore, it is submitted that the Labour Court as well as the learned Single Judge rightly taken the concurrent view that the employees of the canteen are the employees of the Management and that there are no grounds to interfere with the order passed by the learned Single Judge.

12. The learned Counsel for the respondent - Union further placed reliance on

the following Judgments :

a) AIR 1995 SC 1617 (National Federation of Railway Porters, Vendors and Bearers Vs. Union of India).

In this case, the Railway Parcel Porters working on contract labour in certain Railway Stations of Indian Railways had claimed a direction to the Union of India and its Railway Administration for their permanent absorption by Indian Railways as Railway Parcel Porters on a regular basis.

13. The Hon''ble Supreme Court directed the respondent - Union of India and its Railway Administration to absorb the Railway Parcel Porters permanently as regular Railway Parcel Porters according to the terms indicated in the judgment and give preference to those who have put in longer periods of work as Railway Parcel Porters as contract labour.

14. In Hussainbhai, Calicut Vs. The Alath Factory Thezhilali Union, Kozhikode and Others, the Hon''ble Supreme Court had an occasion in dealing with the definition of workmen and employer observed that:

Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of 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.

15. In G.M., O.N.G.C, Shilchar Vs. O.N.G.C. Contractual Workers Union (2008 AIR SCW 3996). In this case, the Workers' appointed by O.N.G.C. initially through contractor - claim for regularisation. The Tribunal held that the workmen were employees of ONGC and not contract employees being employees of ONGC workmen would be entitled to all benefits available in that capacity.

16. The appeal by the appellant before the Hon''ble Supreme Court, the Hon''ble Supreme Court upheld the award passed by the Tribunal and confirmed the judgment of the Division Bench and set aside the order passed by the learned Single Judge.

17. In Gammon India Ltd. and Others Vs. Union of India (UOI) and Others, - In this case, the Hon''ble Supreme Court observed that:

The expression "employed in or in connection with the work of the establishment" does not mean that the operation assigned to the workmen must be a part or incidental to the work performed by the principal employer. The contractor is employed to produce the given result for the benefit of the principal employer in fulfillment of the undertaking given to him by the contractor.

Therefore, the employment of the contract labour, namely, the workmen by the contractor is in connection with the work of the establishment. The petitioners are contractors within the meaning of the Act. The work which the petitioners undertake is the work of the establishment.

18. In *Steel Authority of India and others Vs. National Union Water Front Workers and others* (2001 AIR SCW 3574), the Hon''ble Supreme Court analysing the case law at para 105 observed that:

(i).....

(ii).....

(iii) Where in discharge of a statutory obligation of maintaining canteen in an establishment the principal employer availed the services of a contractor and the Courts have held that the contract labour would indeed be the employees of the principal employer.

Relying on the above observations of the Hon''ble Supreme Court, the learned Single Judge has taken a view that in the instant case the workmen would be the employees of the Management.

19. In *R.K. Panda and Others Vs. Steel Authority of India and Others*, the Hon''ble Supreme Court held that:

Contract labourers engaged for long periods (10 to 20 years) subsequently continuing in employment on account of interim orders of the Court for a further period of about 8 years - entitled for absorption.

20. In the above case, the Hon''ble Supreme Court directed the Management to absorb the workers who have been continuously working with the Management for the last 10 years on different jobs assigned to them in spite of the replacement and change of the contractors, shall be absorbed by the respondent, as their regular employees subject to being found medically fit and if they are below 58 years of age, which is the age of superannuation under the respondent. The Hon''ble Supreme Court imposed certain guidelines for absorbing the workmen who have completed 10 years of continuous services.

21. Relying on the above decisions, the learned Counsel for the respondent - Union submitted that though the canteen workers engaged by the Contractor, they shall be treated as employees of the appellant - Company/Factory, in spite of replacement and change of the contractors and they shall be treated as their regular employees.

22. It is further submitted that it is mandatory on the part of the appellant - Factory to run a canteen when it was employed more than 250 workers, the workers in the canteen are discharging the statutory obligation u/s 46 of the Factories Act. Therefore they are connected with the work of the establishment. It is further submitted that the functioning of the statutory canteen is not only incidental but necessary for the proper running of the Factory by virtue of

statutory requirement.

23. Admittedly, in the instant case, the appellant -Company provided a canteen in the factory premises as required u/s 46 of the Factories Act. During the relevant period i.e. on 1984 to 1986 the said canteen was run and managed by a Contractor by name Somayaji. On 03.09.1986 the said Contractor was murdered outside the factory gate. Some of the workmen employed by the Contractor were arrested in that connection and Police filed charge sheet against some of the workers. It is also admitted fact that the Contract between the appellant - Company and the Contractor has been terminated even prior to the death of the Contractor. Therefore, the workmen engaged by the Contractor were not allowed into the factory premises. Hence, the workmen raised a dispute alleging that there was illegal termination and sought for reinstatement.

24. The appellant - Company contended that there was no relationship of Master and Servant between the appellant -company and the workmen engaged by the Contractor. Therefore, the question of illegal termination does not arise and that the workmen are not entitled for reinstatement and other benefits.

25. When the dispute was referred to the Labour Court, Mysore, the Labour Court after considering the evidence of both parties, directed the appellant - Company for reinstatement of 59 workmen of the Canteen Contractor in the service of the appellant -Company with 50% of back wages. The learned Single Judge confirmed the order passed by the Labour Court on the ground that the workmen working in the canteen are employees of statutory canteen they would fall under the category of employees falling under Clause 3 of the judgment of the Hon''ble Supreme Court in the case of General Manager (OSD), Bengal Nagpur Cotton Mills, Rajnandgaon Vs. Bharat Lal and Another, .

26. In the above case, the Company entered into a security service agreement dated 02.12.1975 with the 2nd respondent for its Mills premises, governed by the provisions of the Contract Labour (Regulation & Abolition) Act, 1970. The 1st respondent was one of the persons appointed by the 2nd respondent and he was deployed for guard duties at the appellant's Mill on 15.12.1980. the 2nd respondent discharged the 1st respondent from service on 27/28.07.1982. Thereafter, the appellant - Company terminated the security service agreement with the 2nd respondent on 16.08.1982. The 1st respondent therefore filed an application u/s 31(3) of the Madhya Pradesh Industrial Relations Act, 1960 for a declaration that his termination from service was illegal. He also sought a consequential direction to the appellant and 2nd respondent to extend all the benefits which the employees of the appellant were being extended, from the date of termination, alleging that he was unemployed and without income. The Labour Court by an order dated 28.10.1991 allowed the application in part and directed the appellant to reinstate the 1st respondent in his previous post and pay him all arrears. The Company therefore filed an appeal before the Industrial Court against the award of the Labour Court. the Industrial Court also directed the appellant -Company to comply with Section 65(3) of the Madhya Pradesh

Industrial Relations Act. The appellant -Company complied the orders of the Industrial Court. Subsequently, the Company Mill was closed on 31.10.1992 after it was declared to be a sick Industry by the Board for Industrial and Financial Reconstruction. The Industrial Court dismissed the appeal filed by the Company holding that the workmen employed by the Contractor was a workman of the principal employer and that the workmen should be treated as a direct employee of the Company.

27. The Company challenged the order of the Industrial Tribunal by way of filing Writ Petition in the High Court. The High Court also dismissed the writ petition. The Company thereafter challenged the order passed by the High Court by way of SLP before the Hon"ble Supreme Court of India. The Hon"ble Supreme Court held that the employee has to prove that he was paid salary directly by the principal employer and not by contractor and the employee did not establish that he was working under direct control of the principal employer, the application of the contract worker is liable to be rejected.

28. In the present case also the workers engaged by the canteen contractor were not appointed by the appellant Company, they were employed by the contractor. The contract having been terminated even prior to the death of the contractor and subsequently, the canteen of the Company was run and managed by another contractor by appointing his own workmen. It is thus clear that the workmen belonging to the respondent Union were not directly appointed by the appellant Company, they were not paid salary directly by the appellant Company i.e. principal employer. The workmen appointed by the canteen contractor did not establish that they were working under direct control and supervision of the appellant - Company.

29. In International Airport Authority of India Vs. International Air Cargo Workers" Union and Another, the Hon"ble Supreme Court of India explained the expression "Control and Supervision" in the context of contract labour as under :

If the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor.

The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned / allotted / sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/ allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the

supervision and control of the principal employer but that is secondary control. The primary control is with the contractor.

Thus, in the above referred Judgment, the Hon''ble Supreme Court of India clarified the word expression "control and supervision" in the context of contract labour.

30. Relying on the observation of the Hon''ble Supreme Court, we are of the considered view that the workmen being employees of canteen contractor who are not working under the direct control and supervision of the principal employer are not entitled for reinstatement in the appellant - Company as there were no relationship of Master and Servant between the appellant -Company and the respondent - Union. The workmen in Factory canteen run by the Contractor are employees of the management only for the purpose of Factories Act but not for any other purpose.

31. For the reasons stated above, we are of the considered view that the workmen employed by the Contractor are not entitled for reinstatement or regularisation as employees of the appellant - Company since they were employees of the canteen contractor who ran the canteen only for short period. Therefore, the workers of the respondent - Union are the workmen in a statutory canteen only for the purpose of Factories Act, but not for any other purpose. In the result, the appeal is accordingly allowed in part.