

(2016) 11 BOM CK 0004
In the Bombay High Court
Case No : Writ Petition No.3065 Of 2006

M/s. Livewel Aviation Services Pvt. Ltd.	APPELLANT
Vs	
Bhartiya Kamgar Sena	RESPONDENT

Date of Decision : 29-11-2016

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 2(a)(i)

Citation : (2017) 1 CLR 629 : (2017) 152 FLR 239 : (2017) 2 MhLJ 579

Hon'ble Judges : S.C. Gupte, J.

Bench : Single Bench

Advocate : Ms. Anjali P. Purav, Advocate, for the Petitioner; Mr. M.D. Nagle, Advocate, for the Respondents

Final Decision : Dismissed

Judgement

S.C. Gupte, J. - This petition, filed under Article 226 of the Constitution of India, challenges an order passed by the Industrial Court at Mumbai in a complaint of unfair legal practise under items 1(a), (b) and 6 of Schedule II and items 6, 9 and 10 of Schedule IV of the MRTU & PULP Act, 1971 filed by the union of its employees against the Petitioner. By the impugned order, the Industrial court held the complaint to be maintainable.

2. The Petitioner is in the business of provision of various types of services to airline companies within the airport precincts. These services, which are allied to air transportation, include exterior and interior aircraft cleaning, baggage handling, customer care, etc. Respondent No.1, who claims to be a registered trade union of workmen of the Petitioner, filed a complaint of unfair labour practise against the Petitioner before the Industrial Court at Mumbai, claiming inter alia benefits of permanency and wages as permanent employees for sixty workmen of the Petitioner represented by it. A preliminary objection to the maintainability of this complaint was raised by the Petitioner on the ground that the activities engaged in by the Petitioner being air transport services and the Petitioner thus being an "air transport service industry" controlled by the Central

Government, that Government was the appropriate government for the purpose of disputes between itself and its workmen, and these disputes were beyond the purview of the Industrial Court deciding complaints under the MRTU & PULP Act, 1971. The Industrial Court rejected the preliminary objection, holding that the Petitioner was neither an industry carried on by the Central Government nor under the authority of the Central Government and that the Central Government was not the appropriate government in relation to the dispute forming part of the complaint. The Industrial Court inter alia observed that the services of cleaning of aircrafts and handling of baggage provided by the Petitioner were not air transport services. These findings are challenged in the present petition.

3. Section 2(a) (i) of the Industrial Disputes Act, 1971 defines "appropriate government" to be the Central Government in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government?... or concerning any such controlled industry as may be specified in this behalf by the Central Government or in relation to any industrial dispute concerning..... an air transport service, etc. The central question in this petition is whether the industrial dispute forming part of the complaint herein is concerning an air transport service. It is submitted by learned Counsel for the Petitioner that the word "concerning", which means "relating to, regarding, respecting, about, etc.", is a word of wide amplitude and any industrial dispute affecting or connected with "air transport service" would fall within the definition noted above. Learned Counsel relies in this behalf on the cases of *Transport and Dock Workers' Union v. Khemka Co.*, 1999 I CLR 678 and *Sylvester & Co. v. Their Workmen through Transport & Dock Workers' Union*, 2008 I CLR 173. Learned Counsel further relies on a line of cases including *Olyster Marine Inc. v. Chandrakant R. Ugale*, 2001 III CLR 873, *D. Sarkar alias Dipak Sarkar v. State of Bihar*, Cr.M.No.3367/1990 (R) dated February 13, 1997 High Court, Patna, J.R. Jugele, Rly. Contractor v. Smt. Sitabai Atamaram, WP No.3077/1979, dated 23 January 1989 High Court, Bombay (Nagpur Bench) and *The General Employees' Association v. Union of India & Ors.*, WP NO.918/1987 dated July 17, 1990 High Court, Bombay and contends that if the appropriate government, as in the case of Section 2(1) (a) of the Contract Labour (Regulation and Abolition) Act, 1970, is the Central Government in respect of the principal employer, even for a contractor working for such principal employer it has to be the Central Government. It is submitted that the principal employer of the Petitioner is an airline company, for which the appropriate government is admittedly the Central Government, and therefore, on the principle of the above referred to cases, even for the Petitioner the Central Government ought to be considered as the appropriate government.

4. The Petitioner carries on the business of handling of passengers and bags and baggages of airlines, and cleaning of aircrafts. It carries on this business for an airline company, namely, Jet Airways. Going by the plain nature of its activities, it cannot be said that the Petitioner is rendering any air transport service. In plain terms, no dispute concerning the service rendered by the Petitioner can be said

to be a dispute concerning air transport service, however, widely one were to interpret the word "concerning". Such dispute neither "relates to" nor is it "relating" or "respecting" or "about" air transport service. The Petitioner may be providing services to an industry or establishment providing air transport service, but the Petitioner itself is not providing any air transport services. Its services may be allied to, or auxiliary to, air transport services. But for that reason, the dispute between itself and its workmen does not concern air transport service. We are not considering whether the Petitioner's business concerns air transport service, but whether a dispute at its establishment concerns air transport service. That it certainly does not.

5. In *Khemka Co.'s case* (supra), the question was whether the dispute (i.e. a dispute between a shipping agency working only within the port of Mumbai and its workmen) was "concerning a major port" within the meaning of Section 2(1) (a) of the Industrial Disputes Act, 1971. A learned Single Judge of our Court (A.P. Shah, J) held that the intention of the legislature was to make the Central Government the appropriate government in relation to industrial disputes concerning "works" in major ports, and in that view, any industrial dispute affecting or connected with a major port (in that case, the port of Mumbai) would fall within the definition. A Division Bench of our Court in a later judgment, in *Sylvester & Co.'s case* (supra), explained the position further. The Division Bench held that the expression "concerning a major port" emphasized the existence of a nexus between the industrial dispute and the major port and a major port had to be defined with reference to the ambit of its operations. These decisions have no bearing on our facts. In our case, the industrial dispute would be covered only if it affects or is connected with air transport service. It would have been another matter if the definition had included a dispute concerning an airport, as in the two cases referred to above, where the definition included disputes concerning a major port. In that case, any works within the precincts of an airport would be covered in the definition, and that would include the Petitioner who renders services within the airport. In our case, the definition requires a nexus between the industrial dispute and air transport service, and not between the industrial dispute and airport.

6. The reliance on the line of judgments rendered in the context of the Contract Labour (Regulation and Abolition) Act, 1970, is also out of place here. What this line of judgments holds is that when the principal employer's establishment is covered in clause (1) of Section 2(1) (a) of that Act, that is to say, when the appropriate government is the Central Government qua the principal, even qua the contractor the appropriate Government would be the Central Government. The reason is obvious. The appropriate Government under Section 2(1)(a) of that Act is to be reckoned in relation to "any establishment" and such "establishment" has to be with reference to the principal employer. The rationale of these judgments is that it is in the fitness of things that the appropriate Government should be the same in relation to an establishment both for the principal employer and the contractor. This has no bearing on the facts of our

case. The definition clause of the Industrial Disputes Act, Section 2(a), defines the appropriate Government in relation to "any industrial dispute". Such industrial dispute must be concerning the industries mentioned in clause (i). In our case, the relevant industry is "air transport service". What, therefore, needs to be examined is whether the Petitioner is an industry rendering air transport service. The Petitioner and the air transport service to which it renders service, are in any event not contractor and principal employer, respectively, within the meaning of the Contract Labour (Regulation and Abolition) Act, 1970. The analogy of the cases arising under that Act concerning the contractor and the principal employer cannot be stretched to cover the facts of our case, where the Petitioner is rendering services to the airline on a principal to principal basis, and not as a contractor to the principal employer.

7. There is, thus, no infirmity in the impugned order. Accordingly, the petition is dismissed. No order as to costs.