

(1958) 06 BOM CK 0002

In the Bombay High Court

Case No : Adjudication No. 63 of 1956

Parshuram Pottery Works, Dhrangadhra

APPELLANT

Vs

Its Workmen

RESPONDENT

Date of Decision : 24-06-1958

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Workmens Compensation Act, 1923 — Section 4

Citation : (1958) 2 LLJ 523

Hon'ble Judges : N.L. Vyas, J

Bench : Single Bench

Judgement

1. The following dispute is referred for a adjudication to this tribunal :-

(1) The following workers should be paid Rs. 48-6-0 as monthly salary from February 1955 without prejudice to the grades already demanded for them :

(1) Sri Videshi Hublal.

(2) Sri Karim Kalu.

(3) Abdul Karim Pirmohmed.

(4) Sri Hetumiya Gulofmiya.

(2) Workers Sri Hari Mitha should be paid wages of Rs. 2-15-3 per day from the date from when he is giving production equivalent to that of those of other workers of his own category.

(3) Workers working in the packing department should be paid back one anna wage cut per day from their wages since it is implemented.

(4) The contract of loading and unloading should be stopped and the workers employed for the purpose by the contractor should be considered to be the factory workers for all the purposes in all respects from 1 January 1956.

(5) The names, numbers, rates of wages, departments in which they work, the jobs they handle together with their distinct designation and the wages they get every month should all be clearly mentioned in the attendance passes should be allowed to be retained by the workers with them for their future reference.

(6) A pair of half-shirts and half-pants should be given to the workers working in the slip house, tunnel kiln and moulding every year and a yard of cloth every month to those working in the slip house.

(7) Workers working on trolley loading and unloading should all be given whole boots and leather hand-gloves while working for the protection of their legs and hands.

(8) Taking work of the following jobs by contract system should be abolished and the same should be conducted by the company's own labour :-

(1) filter press cloth washing;

(2) coal supply to boiler,

(3) cinders removing;

(4) broken earthenware sump clearing;

(5) handle moulding mixture supply from slip house;

(6) gravels disintegrating, etc.

(9) A waterman should be permanently posted in the drinking-water room.

(10) A separate urinal and bath-room should be provided for female workers with adequate facility.

(11) At least three bath-rooms should be provided for the male workers with adequate water facility.

(12) Bachu Miyabhai who is doing the work of checking cups and saucers is given an attendance card in which is written Rs. 2-3-0 for 21 bundles which is not right and hence the right designation as per demand 5 above should be mentioned.

Demand 1. * * * [Demand granted.]

Demand 2. * * * [This was dropped by the union at the hearing.]

Demand 3. * * * [This was rejected.]

8. Demand 4. - This demand is for abolishing of the contract of loading and unloading, for considering the workers employed for this purpose by the contractor as employees of the company from 1 January 1956. There is no dispute that the work of loading and unloading is being taken from the very beginning through a contractor. One Juma Alarakha is given this contract. It appears from the evidence of the supervisor and of the manager that the contractor's men unload the wagons at the railway siding near the factory and

bring the raw materials, the coal and other articles to the factory. It is even stated that the articles unloaded from the wagons are being taken by these workmen to the departments where they are required. There is also no dispute that the contractor's men take the finished goods from the factory to the railway siding and load them on the wagons. The contractor is being paid at a fixed rate, and he is not under any obligation to pay his workmen wages previously agreed to between him and the company. It appears therefore that the contractor is free to employ any number of persons he likes and at whatever wages he chooses to pay. There is no agreement between the company and the contractor to pay specific wages to the workmen employed by the contractor. There is therefore no privity of contract between the company and the workmen employed by the contractor. It is stated on behalf of the company that no muster roll is being maintained by the company relating to the workmen employed by the contractor. The company was therefore not in a position to furnish information regarding the number of workmen employed by the contractor for this work. The company was also unable to state as to what wages were being paid to the workmen employed by the contractor. But it was stated by one witness examined by the union that the workmen employed by the contractor are being paid wages which are lower than the than the minimum wages paid to the workmen employed in the factory. It would therefore appear that the contract is not simply for loading and unloading the wagons at the railway siding near the factory, but it is also for transporting the articles unloaded at the railway siding to the different departments of the factory, and also for removing the finished goods from the factory to the railway siding for loading them on the wagons. I have stated these facts because on these facts it will have to be considered whether the work done by the workmen employed by the contractor for loading and unloading can be considered to be ordinarily a part of the industry within the meaning of the definition of "employer" in Clause (g) of S. 2 of the Industrial Disputes Act, 1947, as amended by Saurashtra Amendment Act 28 of 1955.

2. The preliminary objection was urged on behalf of the company that it was not open to the union to raise this demand on behalf of the workmen employed by the contractor, as these workmen were not the members of the union, and also because they were not the workmen of the company within the meaning of the definition of "workmen" in the Industrial Disputes Act, 1947. But after the decision of the Supreme Court 14 F.J.R. 41, it is well settled that an industrial disputes can be raised about persons who are not strictly workmen of the employer as defined in the Industrial Disputes Act, 1947. According to that decision, an industrial disputes can be raised about any person provided the workmen who have raised the dispute have direct or substantial interest in the dispute. Even, if therefore, it be assumed that the workmen employed by the contractor are not the workmen of the company as defined in the Act, the workmen who have raised the dispute are interested in raising the dispute about the abolishing of the contract system inasmuch as all the workmen employed in the factory have a vital interest in the question as to whether the contract

system should be allowed to continue in any department if by continuing such system the employer is allowed to resort to unfair labour practices, or is allowed to pay wages below the minimum wages payable in the factory. It can hardly be said that the workmen as a class would not be interested in seeing that the workmen employed for some work which has intimate connexion with the work of the factory are paid wages so that there may not be lowering of wages in the industry by permitting labour to be employed for alleged and similar works at lower wages. Even therefore assuming that the workmen employed by the contractor for this work are not the workmen of the company as defined in the Act, the workmen who have raised this dispute being admittedly the workmen of the company have a right to raise it, because, as I have stated, they are closely interested in the question about the continuation or otherwise of the contract system for loading and unloading.

3. The question whether the workmen employed by the contractor for this work are the employees of the company has also to be considered in the light of the amendment made in the definition of "employer" and "employee" in Cls. (g) and (s) of S. 2 by the Saurashtra Amending Act No. 28 of 1955. According to the amended definition of the "employer" contained in Clause (g) of S. 2, the employer means also

"where the owner of any industry in the course of or for the purpose of conducting the industry contracts with any person for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the industry, the owner of the industry."

It would appear from this amended definition of the employer contained in Clause (g) that the employer would also be the owner of the industry vis-a-vis the workmen employed by the contractor for execution of the whole or any part of any work which is ordinarily part of the industry. If, therefore, for execution of any part of work which is ordinarily done in any industry the owner of the industry contracts with someone, the persons employed by the contractor for execution of such work would also be the workmen of the owner of the industry. This would be clear from the amended Clause (s) of S. 2. The definition contained in Clause (s) would also cover any person employed by a contractor to do any work for him in the execution of the contract with an employer within the meaning of Sub-clause (3) of Clause (g). If therefore both these amended Cls. (g) and (s) are read together, it is clear that if under a contract from the owner of the industry any person employs workmen for execution of the whole part or any part of any work which is ordinarily part of the industry such workmen would also be the "workmen" as defined in Clause (s) of the owner of the industry. Therefore, after this amending Act No. 28 of 1955 has come into force from 28 May 1955, the workmen employed through the contractor have also become the workmen of the owner of the industry, provided they are employed for execution of the whole or any part of any work which is ordinarily part of the industry. If therefore any dispute is raised by a body of workmen employed in any industry

about the abolishing of the contract system, or about the employment, non-employment, or conditions of service of any workmen employed through the contractors, that dispute would be an industrial dispute between the employer and the workmen as defined in the amended Cls. (g) and (s) of S. 2.

4. But it was urged on behalf of the company that the work of loading and unloading of wagons should not be considered to be ordinarily part of the industry. It was urged that the industry is of manufacture of earthenware articles, and it can hardly be said that the work of loading and unloading of wagons at the railway siding would be ordinarily part of the work of manufacture of earthenware articles. It is true that no industry would be able to function without raw materials or without marketing its produce. If the contract given by the company would have been simply for loading and unloading wagons at the railway station or at the railway siding, and if it had not been the part of the contract to bring the raw materials from the railway siding to the factory premises, it can possibly be urged that the work of loading and unloading of wagons either at the railway siding or at the railway station would not be ordinarily part of the undertaking, which in this case is that of manufacturing earthenware articles. But in this case there is evidence to show that the workmen not merely unload the wagons at the railway siding, but they bring the unload articles to the different departments of the factory and stack them wherever they are required for the manufacturing processes. Similarly, if merely selling agents had been appointed, or if as part of the contract of sale articles had been removed from the factory by the purchaser or by the selling agents, that work would not ordinarily be part of the industry. But here the men employed by the contractor remove the finished articles from the factory to the railway siding and then load them on the wagons. Now this operation is a necessary operation for running the industry, because without marketing the finished goods, no industry can function. On the particular facts of this case, therefore, the work of loading and unloading given to the contractor was considered in my order, dated 9 May 1958, to be prima facie the work which is ordinarily part of the industry. Consequently the company was directed to supply certain information relating to the nature and volume of this work.

5. In the Bombay Industrial Relations Act definitions of "employer" and "employee" contained in Sub-secs. (13) and (14)(e) of S. 3 are similar. In several decisions under the Bombay Industrial Relations Act it has been held that the workmen employed by a contractor for running a canteen or a ration shop should be considered as the employees of the owner of the undertaking. In a recent decision of the Bombay High Court, in *Umedsingh Hamirasingh and Others Vs. The Marsden Mills, Limited and Others*, distinction is made between a contractor to run a canteen and a license for running a canteen. But even in this decision it has been held that if there is a contract given for maintaining a canteen, the workmen employed by the contractor would be the employees of the owner of the undertaking. In the decision it is further observed that if the contract with the owner of the undertaking is for the execution by or under the contractor of

the whole or any part of the work which is ordinarily part of the undertaking, the workmen employed by the contractor would be the employees of the owner of the undertaking. Consequently what has to be considered is, whether the work of loading and unloading is part of the work which is ordinarily part of the undertaking. As pointed out earlier, if the work of loading and unloading at the railway siding or at the railway station is wholly unconnected with the manufacturing processes, and is done either by selling agents or by clearing agents, it may not be considered ordinarily part of the industry. It appears from the statements, Exs. 41 and 42, submitted by the company that the work is of intermittent nature. Sometimes several wagons are received at the siding on one day and have to be unloaded within five hours, and sometimes several wagons have to be loaded on one day. For nearly fifteen days in a month no wagons are either to be loaded or unloaded. On an average it appears that the work of loading and unloading has to be done for about fifteen days in a month. It also appears that the number of workmen required for this work would not be constant, because when a greater number of wagons are received more workmen have to be employed in order to unload the wagons within a stipulated period of five hours. It is therefore clear from the statements Exs. 41 and 42 that the contractor would have to employ varying number of workmen as required. It would be difficult for the company to obtain adequate labour force at a moment's notice. It would not, therefore, be possible to direct the company to discontinue the practice of getting this work done through a contractor.

6. This being the nature of work, I have to reconsider my order, dated 9 May 1958, in the light of the evidence produced before me thereafter. Considering the nature of work and the practice so far of getting it done through a contractor, it would be difficult to treat the workmen employed by the contractor for this work as company's employees. My attention was also drawn to the decision of the Bombay High Court in *Rabia Mahomed Tahir v. G.I.P. Railway* AIR 1929 Bom. 179. That was a case under the Workmen's Compensation Act, but the wordings of the section in that Act are almost similar to those of the definition of "employer" in Clause (g) of S. 2 of the Industrial Disputes Act, 1947, as amended by the Saurashtra Act XXVIII of 1955. In that case compensation was claimed for the death of a workman employed by a contractor. The contract was given by G.I.P. Railway for erection of steel towers for the purpose of carrying the overhead cable from Kalyan Power Station to various sub-stations for supplying electric current to the running track. Though it was found that erection of these towers was necessary for the scheme of electrification of the railway line, it was not considered to be part of the ordinary trade or business of the railway company. Reliance was placed for taking this view on some English decisions. Reference was particularly made to the case of *Wringley v. Bagley & Wright* (1900) 1 K.B. 780 where headnote is as follows :

"A firm of engineers contracted with the owners of a cotton-spinning factory to put a new driving wheel into the steam-engine belonging to the factory. While engaged in the work of fixing the new wheel, workman employed by the

engineers met with an accident which caused his death :

Held : that the work being merely ancillary or incidental to, and no part of, or process in, the business of the owners of the cotton-spinning factory, the case did not come within S. 4, Workmen's Compensation Act, 1897; and therefore that a dependant of the deceased workman was not entitled to compensation under the Act against the owners of the cotton-spinning factory."

Lord Justice Collins there said (p. 783) :

"The reason of such a provision (namely, S. 4) obviously is that, if a person substitutes another for himself to do that which is his own business, he ought not to escape the liability which would have been imposed upon him, if he had done it himself, towards the workmen employed in that business. The concluding part of the section is inserted to show clearly that it is not intended to apply to a case where a contractor is employed by a person to do that which forms no part of, or process in, that person's business."

And the judgment ends :

"Putting a new driving wheel into an engine used in a cotton-spinning factory cannot, I think, be described as part of, or process in the business of cotton-spinning."

Romer, L.J., in agreeing says :

"Putting a new driving wheel into an engine cannot be said to be part of, or a process in, the business of cotton-spinners any more than building the factory in which they intend to carry on their business can be said to be a part of, or process in, that business."

7. If this decision of the Bombay High Court were to be followed, as I am bound to do, I must hold that though the work of loading and unloading of wagons at the railway siding is essential for running the factory, it is not part of the ordinary work of manufacturing the earthenware articles in the factory. If construction of factory building cannot be considered to be ordinarily part of the industry, the work of transporting the raw materials or coal or stores to the factory or of transporting finished goods from the factory, cannot be considered to be ordinarily part of the industry, as this work can very well be done by outside agency. In this view I cannot hold that the workmen employed by the contractor for this work must be deemed to be employees of the company.

8. But it appears that the contractor is paying wages lower than those paid in the factory. The company should therefore enter into a contract with the contractor for payment of stipulated wages to the workmen employed for doing this work. If, therefore, the company enters into such agreement with any contractor, and maintains the muster roll relating to the workmen employed by the contractor, and enforces the payment of minimum wages to such workmen, there would be no objection to the company giving this work on contract to any person. But it

appears to me that it would be difficult to extend this benefit to the workmen employed for this work by the contractor from 1 January 1956, as no muster rolls have been maintained relating to these workmen, and as the company has made payments to the contractor at certain rates so far. It would be therefore equitable to direct the company to see that minimum wages fixed for the workmen of the factory are paid to the workmen employed by the contractor for this work. For this purpose the company, if necessary, may enter into a new contract with the contractor after terminating the present contract. I have adopted this course, because the dispute is not raised by the workmen employed by the contractor. The workmen employed by the contractor had also not appeared to give evidence before me. The contractor had also not remained present and had not given any evidence. It would not therefore be right to allow benefits retrospectively to the workmen who have not claimed them. Only on general principles, and in order that fair wages may be paid to all classes of workmen, and there may be security of service, that at the instance of the workmen employed in the factory, I have considered this demand and partially granted it, so that in future the rights of this class of workmen may be properly safeguarded. This demand is partially granted on the ground that the workmen of the factory have the right to raise this demand for contract labour, as they have vital interest in ensuring fair wages to the workmen employed through a contractor for work intimately connected with the industry. The company shall ensure payment of minimum wages to the workmen employed for loading and unloading through contractor within three months from the date this award becomes enforceable.

Demand 5. * * * [The requests of the workers were agreed to by the management except that the passes will be allowed to be retained by it the workers upto the 7 of the next month.]

Demand 6. * * * [Rejected.]

Demand 7. * * * [Granted.]

Demand 8. * * * [Rejected.]

Demand 9. * * * [It was directed that either a waterman shall be appointed for the water-room or two coolers shall be installed in the factory at convenient places and shall be kept in working condition.]

Demand 10. * * * [Recommended to the company to consider sympathetically any reasonable suggestion for making alterations to the room.]

Demand 11. * * * [A room with five taps and with suitable partitions was directed to be constructed.]

Demand 12. * * * [Directed that the entry about the rate of a packer shall be deleted from the card of Bachu Miyabhai.]