
(1995) 09 BOM CK 0023

In the Bombay High Court

Case No : Writ Petition No. 2563 of 1990

Sakhar Kamgar Union

APPELLANT

Vs

Shri Chhatrapati Rajaram Sahakari Sakhar Karkhana Ltd.
Kolhapur and Others

RESPONDENT

Date of Decision : 01-09-1995

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 30
Trade Unions Act, 1926 — Section 28

Citation : (1996) 2 BomCR 49 : (1996) 74 FLR 1956 : (1996) 2 LLJ 134 :
(1996) 1 MhLj 557

Hon'ble Judges : B.N. Srikrishna, J

Bench : Single Bench

Judgement

B.N. Srikrishna, J.—This Writ Petition under Articles 226 and 227 of the Constitution of India is directed against an order of the Industrial Court, Kolhapur, dated 5th June, 1989 dismissing Complaint (ULP) No. 173 of 1987 under the provisions of Section 28 read with Items 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (Hereinafter referred to as the Act).

2. The 1st Respondent is a Co-operative Society Manufacturing Sugar in Kasaba Bhavada, District Kolhapur. The petitioner is a registered trade union representing the employees working in the 1st Respondent Sugar Factory.

3. The Petitioner filed Complaint (ULP) No. 173 of 1987 on behalf of the employees working in sugar house, godown and delivery departments of the 1st Respondent factory. It was alleged in the Complaint that the concerned employees had been working since the crushing seasons of 1968/69; that the 1st Respondent factory was getting the work done in the sugar house, godown and delivery department through Contractors, though the said work was very much the work of the undertaking itself; that by repeatedly changing the Contractors and disrupting the services of the employees, the employees were deprived of

their legitimate rights. It was claimed in the Complaint that the concerned employees were entitled to be made permanent in service by the 1st Respondent who was deliberately depriving them of the benefits and status of permanency. In these circumstances, it was contented that the 1st Respondent was guilty of unfair labour practices within the meaning of Items 9 and 10 of Schedule IV of the Act.

4. The 1st Respondent appeared and contested the Complaint. The 1st Respondent contended that the Complaint was not maintainable because the employees on whose behalf the Complaint had been filed were not "employees" within the meaning of Section 3(5) of the Act. The 1st Respondent also raised certain defences on merits with which we are not concerned in the present Writ Petition.

5. The Industrial Court by the impugned order has upheld the contention of the 1st Respondent that the Complaint was not maintainable and dismissed the Complaint. Being aggrieved, the Petitioner is before this Court by the present Writ Petition.

6. It is not in dispute that the sugar karkhana of the 1st Respondent is covered by the provisions of the Bombay Industrial Relations Act, 1946 (hereinafter referred to as the "BIR Act"). Sections 3(13) and 3(14) of the BIR Act respectively define the expressions "employee" and "employer". The portions of the definition relevant for our purpose are :

"3(13) "employee" means any person employed to do any skilled or unskilled work for hire or reward in any industry, and includes -

(a) a person employed by a contractor to do any work for him in the execution of a contract with an employer within the meaning of sub-clause (e) of clause (14);

(b)....."

"3(14) "employer" includes, -

(a).....

(b).....

(c).....

(d).....

(e) where the owner of any undertaking in the course of or for the purpose of conducting the undertaking 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 undertaking, the owner of the undertaking".

A combined reading of these definitions suggests that in an undertaking covered by the BIR Act, if any work which is ordinarily part of the undertaking has been entrusted to a contractor for execution by or under him and, for executing such

work, the contractor engages contract labour, then notwithstanding the fact that there is no relationship of employer and employee between the principal employer and the contractor's workmen, for the purposes of the BIR Act, such contract's workmen are deemed to be employees within the meaning of Section 3(13) of the Act.

7. Section 3(5) of the Act defines "employee" in relation to an industry to which the Bombay Act applies, as an employee as defined in clause (13) of Section 3 of the BIR Act. The expression "Bombay Act" is defined in Section 3(1) of the Act to mean Bombay Industrial Relations Act, 1946. Thus, a person who falls within the definition of the expression "employee" as defined in Section 3(13) of the BIR Act, would be an employee within the meaning of sub-section (5) of Section 3 of the Act and would be entitled to maintain a complaint under the provisions of the Act.

8. A perusal of the impugned order would show that the learned Judge of the Labour Court accepted that a person employed through a contractor within the description of clause (d) of Section 3(14) would answer the definition of employee in Section 3(13) of the BIR Act. Nonetheless, by purporting to rely on the provisions of Section 30 of the Contract Labour (Regulation and Abolition) Act, 1970, the Industrial Court took the view that the provisions of the latter Act would override the provisions of the BIR Act, and, therefore, the concerned employees would not be employees for the purpose of Section 3(5) of the Act.

9. In my judgment, the view taken by the Industrial Court is not only erroneous, but also contrary to the intendment of the Parliament. The Contract Labour (Regulation and Abolition) Act, 1970, is an Act brought on the statute book "to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith", as indicated in the Preamble of the said Act. In the Statements and Objects and Reasons attached to the Bill moved in Parliament, the following reasons are given for moving the Bill and for bringing the statute on the statute book :

"(1).....

(2) The proposed Bill aims at abolition of contract labour in respect of such categories as may be notified by appropriate Government in the light of certain criteria that have been laid down, and at regulating the service conditions of contract labour where abolition is not possible. The bill provides for the setting up of Advisory Boards of a tripartite character, representing various interests, to advise Central and State Governments in administering the legislation and registration of establishments and contractors. Under the Scheme of the Bill, the provisions and maintenance of certain basic welfare amenities for contract labour, like drinking water and first-aid facilities, and in certain cases restrooms and canteens, have been made obligatory. Provisions have also been made to guard against details in the matter of wage payment". (See in this connection, Gazette

of India, 31-7-1967, Pt. II, S. II, Ext. p. 634).

10. From the aforesaid, it is clear that the Contract Labour (Regulation and Abolition) Act, 1970, was enacted by the Parliament to get over the abuses resulting from the system of employment of contract labour. It was not the intention of the Parliament to perpetuate system of contract labour even when contract Labour were entitled to deemed status of employees by virtue of the State legislation. The Industrial Court has emphasised the provisions of Section 30 of the Contract Labour (Regulation and Abolition) Act, 1970, which reads as under :-

"30. The provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law in terms of any agreement or contract of service, or in any standing orders applicable to the establishment whether made before or after the commencement of this Act".

In my view, the provisions of Section 30 of the Contract Labour (Regulation and Abolition) Act, 1970, cannot be read as overriding the benefits which were already conferred on the contract labour under a cognate statute like the BIR Act. The trust of Section 30 is towards over-riding, "anything inconsistent therewith" contained in any other law. It is not possible to accept as correct the view of the Industrial Court that the benefit of direct employment conferred upon the contract labour by virtue of the conjoined effect of Sections 3(13) and 3(14) of the BIR Act was something "inconsistent" with any of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970. It is not possible to read Section 30 of the Contract Labour (Regulation and Abolition) Act, 1970 as taking away better benefits already enjoined by contract labour under the provisions of any other law. It is unfortunate that the Industrial Court used Section 30 in a benevolent piece of legislation to bring about a result directly contrary to the intendment of the Parliament. It is not in dispute that the concerned workmen were employed on work which was part of the work of the undertaking of the sugar mill and that the work being executed by the contractor would fall within the description in Clause (d) of Section 3(14) of the Bombay Industrial Relations Act, 1946. Consequently, all such persons were entitled to the benefit of clause (a) of Section 3(14) of the Bombay Industrial Relations Act, 1946. Hence, they would deemed to be "employees" for the purposes of the Act.

11. In my view the impugned order is erroneous and causes injustice to the concerned employees by misinterpretation of the provisions of the applicable statutes. Hence, the said order is liable to be quashed and set aside. Since the Complaint has been dismissed only on the preliminary objection, it would be necessary to restore the Complaint and remand it to the Industrial Court for trial in accordance with law.

12. In the premises, this Writ Petition is allowed. The impugned order of the Industrial Court, Kolhapur dated 5th June, 1989 dismissing Complaint (ULP) No. 173 of 1987 is hereby quashed and set aside. The Complaint is restored to the

file of the Industrial Court, Kolhapur and the Industrial Court is directed to dispose of the same, as expeditiously as possible, in accordance with law and the observations made in this judgment. Rule is accordingly made absolute. No order as to costs.

13. Issuance of certified copy of this judgment is expedited.