

(2001) 03 BOM CK 0091

In the Bombay High Court

Case No : Writ Petition No. 1692 of 2000

Sarva Mazdoor Sangh

APPELLANT

Vs

Crompton Greaves Ltd. and Others

RESPONDENT

Date of Decision : 12-03-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices
Act, 1971 — Section 44

Citation : (2001) 4 ALLMR 380 : (2002) 1 LLJ 190

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Advocate : Colin Gonsalvis, for the Appellant; K.M. Naik and Anjali Purav, for the Respondent

Judgement

R. J. Kochar, J.—In its efforts to get butter for the bread of the 120 female workers, the Petitioner Union appears to have caused to disappear the whole loaf of the bread itself. These female workers certainly belonged to a class of have-not poverty struck families, unfortunate and some of them even destitute women of the society. All of them were earning their livelihood under the economic shelter set up and provided by the social organisation viz. Shradhanand Mahila Ashram established by the dedicated social missionaries wholly devoted to the cause of social protection of those women who lose the family protection for one or the other reason and to enable them to become economically and thereby socially self reliant and independent.

2. On a gross guess work in the air the Petitioner Union filed a complaint of unfair labour practice before the Labour Court under Item I Schedule IV of the M.R.T.U. & P.U.L.P. Act, 1971 (hereinafter referred to as the "Act") against the Respondent No. 1 Company, against the Respondent No. 2 Shradhanand Mahila Ashram and the State Government. I fail to understand why the State Government has been dragged in the present litigation. There was neither any allegation against the State Government nor was any relief sought against it.

3. It was a complaint of unfair labour practice under Item I of Schedule IV of the Act which is reproduced below :-

1. To discharge or dismiss employees -

(a) by way of victimisation:

(b) not in good faith, but in the colourable exercise of the employer's rights;

(c) by falsely implicating an employee in a criminal case on false evidence or on concocted evidence;

(d) for patently false reasons;

(e) on untrue or trumped up allegations of absence without leave;

(f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste;

(g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record of service of the employee, so as to amount to a shockingly disproportionate punishment.

According to the Petitioner Union the employees on whose behalf the complaint was filed were the employees of the Respondent No. 1 Company and the Respondent No. 2 Mahila Ashram was its labour contractor inducted with an intention of depriving the workers of wages and benefits and other privileges of the permanent workers. It was further alleged in the complaint that the work done by them was an integral part of the work of the Respondent Company and that the work was supervised and controlled by the Company. It was also averred that the work done by the workers on the premises of the Mahila Ashram was of perennial nature and therefore, they should have been made permanent and regular by the Respondent Company. The Respondent No. 2 Mahila Ashram was dubbed as a fictitious contractor having no existence in the eyes of the law and that on lifting of the veil the true employer-employees relationship between the Respondent Company and the workers would be revealed, the Petitioner Union averred.

4. The Respondent Company denied any employer-employee relationship between itself and the workers. According to the Petitioner Union such a repudiation of the contract of employment by the Respondent Company "tantamount to termination of service in the eyes of law even though the workers actually continue working as before." It was further alleged by the Petitioner Union that after a letter to the Contract Labour Board both the Respondents immediately colluded to terminate the services of the workmen and that the Union further apprehended that though there was plenty of work they would be terminated. It is further alleged that the Supervisor of the Mahila Ashram told the workers that in view of the agitation started by them both the Respondents had taken a decision to stop the work completely. According to the Petitioner Union, therefore, the repudiation of contract made by the principal employer i.e.

the Respondent Company amounted to an unfair labour practice within the meaning of Item I of Schedule IV of the Act and it is sought declaration that all the workers should be directed to be treated as the direct employee of the Respondent Company and they should be paid wages and extended other service conditions with retrospective effect from their initial date of start of work and if they were in the employment of the Company. The Petitioner also sought restraining orders against the Respondents from terminating the services of the workmen.

5. The case of the Respondent Company was that they had never employed the concerned workers who were the direct employees of the Respondent No. 2 Mahila Ashram which was a social organisation established in the year 1927 for the welfare and benefit of women. On account of certain well meaning social workers and high dignitaries the Respondent Company had agreed to send some work to the Respondent Mahila Ashram to enable the needy women to earn their livelihood. The work of motor winding etc. which could be easily done by the female workers was given to the Mahila Ashram which was sending back the finished product to the Respondent Company and the agreed payment was made to the Mahila Ashram to be paid to the female workers in accordance with the work done by each of such female workers on the basis of piece rate. It was very empathetically pleaded by the Company, that only with a view to help the weaker female workers and at the request and instance of social workers the Respondent Company agreed to get the work done from the female workers solely with a view to help the organisation. The Company has contended that there was never any relationship of any nature between the Company and the female workers, and therefore there was no question of terminating their services and committing any unfair labour practice under Item I of Schedule IV of the Act. As far as the allegation of reduction in work is concerned the Company has pleaded that in view of liberalization and recession in the market the Company was facing acute competition and had no work for their own permanent workmen and therefore there is no deliberate attempt to reduce the work of motor winding sent to the Mahila Ashram. The allegations made by the Petitioner Union in the complaint were totally denied by the Respondent Company.

6. The Respondent No. 2 Mahila Ashram filed an affidavit-in-reply denying all the allegations of unfair labour practice and they also denied that the employees were terminated from employment or that they had any intention to terminate them from service. It was specifically admitted that the concerned female workers were the direct employees of the Ashram working in its economic wing meant for working women known as Parishramalaya. It was pointed out that the Respondent No. 2 is Hindu Women's Welfare Society popularly known as Shradhanand Mahila Ashram founded in the year 1927 with the primary objective of providing shelter and assistance to the Indian women and children in distress regardless of caste or religion. It is registered as a Public Trust with the motto to conduct it for the welfare of the needy and destitute women and children and to rehabilitate them through marriage etc. It carries multifarious social activities

and it helps to provide shelter to children, young girls, unmarried mothers, deserted wives and also to old and destitute women. It further averred that a child care centre is also conducted for the welfare of the new born children upto the age of two years. The Mahila Ashram provides them shelter, food, clothing, education, vocational guidance, healthcare, hospitalisation, etc. free of cost. It has further emphasised that all the children get in the Institution motherly treatment of which they are deprived of and which they need very badly. It has also averred that several new born souls who are either orphaned and disowned and the hapless women who have been wronged or abused are given shelter, food, clothing, healthcare, hospitalisation, etc. free of cost in the Institution. The Ashram has further narrated in minute details its multifarious activities done during the last 70 years. It is also specifically mentioned that it had started activities to help the needy women economically. It had therefore approached various Companies to provide some work to be done by such women who could be assisted to help their lives and the families. According to the Mahila Ashram the Respondent Company came forward to extend its helping hand. There were few other Companies such as Premier Automobiles etc, which were also giving their help by sending some work to be done by such women under the roof of the Parishramalaya. The Parishramalaya has been exempted from the provisions of the Factories Act etc. at the instance of the then Hon"ble Labour Minister Shri Shantilal Shah, who was satisfied that the Ashram was carrying on only welfare activities and not commercial activities. The Mahila Ashram has also tried to explain that on account of the nature of the activities it cannot be said that there was employer-employee relationship between the Mahila Ashram and the women working in the Parishramalaya in the sense in the Labour Laws or in the popular sense. The Ashram was providing its place where women used to go regularly and do their work on piece rate basis and they used to be paid at the prescribed rate by the Ashram. The Mahila Ashram has denied each and every allegation of unfair labour practice, It has also stated that there was no intention to terminate any female worker from employment or to stop giving work to them. The Mahila Ashram has also empathetically denied that it was doing the work for the Respondent Company on contract basis and that they were the labour contractors of the Respondent Company.

7. Both the parties having completed their pleadings adduced their documentary and oral evidence before the Labour Court. The Labour Court by its Judgment of 77 pages held and declared that the Respondents had engaged in an unfair labour practice under Item I of Schedule IV of the Act on and from March, 1997 and it directed the Respondent Nos. 1 and 2 to continue the services of the employees and it further directed the Respondent Company to provide work to the Respondent No. 2 on piece rate basis in the range of Rs. 4000/- to Rs. 5000/- per month or more. The Labour Court in the alternative also directed to pay them wages to the tune of Rs.4000/- to Rs.5000/- per month.

8. The Petitioner Union was aggrieved by the aforesaid order of the Labour Court which was wholly in its favour, for the reasons best known and understood by the

Petitioner Union, it filed a Revision before the Industrial Court u/s 44 of the Act. The Respondent Nos. 1 and 2 who were infact really aggrieved by the said judgment of the Labour Court also filed their Revision Applications before the Industrial Court. The learned Member of the Industrial Court heard all the three Revision Applications together and by his Judgment and Order dated 29.6.2000 allowed the Revisions filed by the Respondent No. 1 Company and Respondent No. 2 Mahila Ashram and dismissed the Revision Application filed by the Petitioner Union and also dismissed the complaint as not maintainable.

9. I have heard all the learned Counsel for the three parties. I have also carefully perused the proceedings and the documents. At the outset I must observe that the Petitioner Union is guilty of throttling a noble cause taken up by the Social Missionaries who dedicated their life to the sublime aim of uplifting the Indian women. I must also express that a woman cannot be socially independent unless she is first economically made independent. I, therefore, appreciate the efforts of the Shradhanand Mahila Ashram to make the women economically independent and self-reliant by providing them work and opportunity to earn their own livelihood for the welfare of the family. The Mahila Ashram has not confined itself only to look after the disabilities of the women but it has taken a positive step to enable the women to stand on their own feet. There is absolutely no doubt in my mind from the record that in its endeavour to make the women economically self-reliant it has approached various Companies to provide work to be done by such women in their Parishramalaya. The Mahila Ashram could not have started its own factory or its own commercial activity to give employment to the working women. To achieve its aim to make the women economically strong it begged from different Companies to assign some such work which could be done by the women with some guidance and training under the roof of Parishramalaya. Amongst others the Respondent Company came forward to allot work of motor winding etc. to the Parishramalaya to be done by the female workers. There is no dispute that personnel of the Respondent Company did impart training and guidance to the women as to how to do the work and how to acquire better skill. Wherever and whenever possible a kind of supervision to Improve the working of such women was also a necessity. I do not subscribe to the view that the moment some supervision or some control over the workers doing some work is whispered the employer-employee relationship existed. We have to consider the totality of the circumstances Including the nature of the organisation, its aims and objectives. It is crystal clear from the activities of the Mahila Ashram that its aim is not commercial but wholly social and to exclusively help the weaker womenfolk for the betterment of their families. In my opinion the female workers doing the work under the roof of the Parishramalaya by no stretch of imagination can be called the employees of the Respondent Company. There is not only no documentary evidence but even by remote process of logic it cannot be said that the Respondent Company had the employer- employee relationship with the said women workers and there is. therefore, no question of discharge or dismissal or termination of the female workers from the employment of the Respondent

Company. Merely because the Respondent Company has stated the truth that the female workers were never employed by it, it cannot be termed as repudiation of the employer-employee relationship. Since the Petitioners have miserably failed to establish that there did exist any such relationship. The Respondent Company has stated the fact of absence of any such relationship, the Petitioner Union has termed it as repudiation of employment contract and therefore, according to it, it "tantamount to termination of employment". The Respondent Company has clearly stated that the relationship which existed between the Company and the Parishramalaya because it had obliged the Parishramalaya at the request and instance of some social dignitaries by providing some work to the needy women in the Parishramalaya it does not become the employer of these needy employees. I, therefore hold and declare that there is no employer-employee relationship between the Respondent Company and the female workers working in the Parishramalaya under the roof of Mahila Ashram I also hold and declare that the Mahila Ashram or the Parishramalaya are not the labour contractors of the Respondent Company. There is absolutely no evidence to establish this allegation made by the Petitioner Union.

10. As far as the Respondent No. 2 Mahila Ashram is concerned the Petitioners have not sought any relief from them. Besides, it is also on record that the Petitioners Union never claimed the employer-employee relationship between the Mahila Ashram and the female employees and therefore, there could not be any allegation of unfair labour practice against the Mahila Ashram. The Petitioners Union's whole attack was on the Respondent Company and it has miserably failed to substantiate any unfair labour practice within the meaning of Item I of Schedule IV. of the Act. I further fail to understand how there was discharge, dismissal or termination of the employment by the Respondent Company when it is an admitted fact that the concerned female workers were actually doing the work on the premises of the Parishramalaya. The Petitioners' complaint was wholly misconceived which was in the form of anticipatory relief against the anticipatory but so-called termination.

11. In my opinion the learned Member of the Industrial Tribunal has correctly appreciated the facts and the law and has rightly dismissed the Petitioner Union's complaint. The findings recorded by the Industrial Court that the Respondent Company could not be held guilty of unfair labour practice under Item I of Schedule IV of the Act, being not an employer is correct and cannot be faulted with. The Industrial Court has rightly observed that the Union had not approached for any reliefs against the Shradhanand Mahila Ashram and that no master and servant relationship was claimed and existed between them and therefore, no complaint could lie against the Shradhanand Mahila Ashram and therefore it was also not guilty of unfair labour practice, as alleged. According to me, the Industrial Court has rightly held that the Labour Court had committed patent and grave error of law and therefore the impugned order of the Labour Court is rightly held to be unsustainable. The Industrial Court has further significantly mentioned that even according to the finding of the Labour Court no

relationship of employer-employee existed between the Respondent Company and the female workers. The Industrial Court has therefore rightly pointed out the basic error of law in the Judgment of the Labour Court. No relief against Respondent Company could be given after recording its positive findings that the Respondent Company was not the employer of the female workers. The Industrial Court has rightly faulted with the direction of the Labour Court that under Item I of Schedule IV of the Act no relief of permanency and regularisation can be granted. The Industrial Court has agreed with the findings recorded by the Labour Court that Respondent Company was not the principal employer nor the concerned female employees as the contract labour. The Industrial Court has further rightly observed that in a haste to give some relief to the concerned female workers the Labour Court had overstepped the contour of Item I of Schedule IV of the Act which was a grave error of law warranting correction under the powers of superintended jurisdiction contemplated u/s 44 of the M.R.T.U. & P.U.L.P. Act.

12. I. therefore, wholly uphold the well considered and reasoned judgment of the learned Member of the Industrial Court and there is absolutely no reason for me to exercise my extra ordinary jurisdiction under Article 226 of the Constitution of India to interfere with the same. The Industrial Court has rightly dismissed the complaint.

13. Shri Colin Gonsalvis has cited some judgments which I have gone through. In the peculiar facts and circumstances of this case I did not find any one of them to be relevant. All these judgments were on the facts of the each of the cases. I have not decided the present Petition which can be said to go against the ratios of the judgments cited by the learned Counsel for the Petitioner Union. These judgments dealt with the question of contract labour. In our case both the Courts below have concurrently given finding of facts that there was no employer-employee relationship between the Respondent Company and the female workers and that female workers were not the contract labour of the Respondent Company and that Manila Ashram was not a labour contractor for the Respondent Company. In the peculiar facts and circumstances of the present case the judgments cited by Shri Gonsalvis do not have any bearing and do not assist the case of the Petitioner Union.

14. The Petition therefore fails. Rule is discharged. Interim orders, if any, stands vacated. Neither the Petitioner Union nor the concerned female employees are entitled to any reliefs under the complaint or under this Petition.

15. Though the Respondent Company has succeeded in the above Petition, Shri K. M. Naik, the learned Counsel for the Respondent Company at the request of this Court has made the following statement after taking instructions from the management of the Respondent Company :

"Purely out of deference to the suggestions made by the Hon''ble Court and with the object of continuing to support the social cause and without there being any

legal obligation, the Respondent No. 1 Company i.e. M/s. Crompton Greaves Limited, subject to the availability of skills and varying business considerations, will endeavour to continue to assign some Jobs from its factory at Worli to the Respondent No. 2 Shradhanand Mahila Ashram within 20 days from the date of disposal of the above Petition as this time is required to enable the Respondent No. 1 Company to mobilize the resources including withdrawing of some jobs from the existing vendors. To start with, the Respondent No.1 Company will endeavour to assign approximately 50 (fifty) Jobs per day from its factory at Worli to the Respondent No. 2 Ashram. This is subject to the Petitioner Union withdrawing the Contempt Petition Lg. No. 6 of 2001 in Appeal No. 686 of 2000 in Writ Petition No. 1692 of 2000 between Sarua Mazoor Sangh v. K. K. Nohria and Anr. filed by the Petitioner in the Hon"ble High Court.

The Respondent No. 1 Company will also render assistance for training the employees/workers of the Respondent No. 2 Ashram as and when required."

Though Shri Naik wanted the above statement to be conditionally made dependent on the Petitioner Union withdrawing the Contempt Petition Lg. No. 6 of 2001 in Appeal No. 686 of 2000 in Writ Petition No. 1692 of 2000 between the Sarua Mazoor Sangh v. K. K. Nohria and Anr.," Shri Naik fairly dropped the said condition and made it clear that he would meet the contempt petition independently In accordance with law.

16. Shri Naik has further shown grace of the management that the above efforts would be minimum and immediate and they would try to do much more as and when possible without making the issue of complaint as prestige issue considering the welfare of the 120 female employees under the roof of Parishramalaya of the Shradhanand Mahila Ashram Respondent No. 2.

17. Stay of the order as prayed by the Petitioners is refused. Certified copy is expedited.