
(1958) 09 BOM CK 0021

In the Bombay High Court

Case No : Reference (I.T.) No. 187 of 1958

Standard Vacuum Refining Company of India Ltd., Bombay
and Another

APPELLANT

Vs

Their Workmen

RESPONDENT

Date of Decision : 05-09-1958

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 18(3), 2, 36(2)

Citation : (1959) 2 LLJ 435

Hon'ble Judges : M.R. Meher, J

Bench : Single Bench

Judgement

1. This is a reference by the Government of Bombay under S. 10(1) of the Industrial Disputes Act, 1947, for adjudication of a dispute between the Standard Vacuum Company of India, Ltd., Bombay, and the workmen employed in refineries under it over the following demand :-

"The contract system for cleaning the premises and plant should be abolished and workers working in the refinery or for the Refinery through the Ramji Gordhan and Company should be treated as workers of the Standard Vacuum Refining Company of India, Ltd., Bombay, and wage-scales, conditions of service, etc., that are applicable to the workers of the refinery be made applicable to them. Past service of these workers should be counted and they should be treated as continuously in the service of the Stanvac Refinery from the date of their entertainment."

2. In the statement of claim, filed by the Petroleum Refineries Employees' Sabha, it is stated that the sabha has as its members a majority of the workmen employed by the company, that on 27 April, 1957, the Sabha made a demand for abolition of contract labour. While the demand was in conciliation the company terminated the contract of one of the contractors, viz., Gowri Construction Company, and replaced them by the Ramji Gordhan and Company. By the termination of contract of the former the company threw out of employment of

about 67 workmen of whom 40 were subsequently taken up as fresh employees through the Ramji Gordhan and Company who have been given the contract for cleaning and maintaining the building and premises within the refinery. The work is of a permanent and continuing nature. Workmen employed through the contractor have no security of service. Their wages are low compared with those of regular workmen of the company and they do not get other benefits such as provident fund, gratuity, privilege leave, medical facilities, subsidised food and housing, etc., for which the regular workmen of the company are eligible. The union has pointed out that various commissions of inquiry have expressed themselves against contract labour. In this case the contractors' supervision over their employees is purely technical, the real employers being the refinery company. 3. The company has by its written statement replied that the work entrusted to the Ramji Gordhan and Company is not germane to the manufacturing process. So it is given to the contractor. The contract specifies the work to be performed and the company is not concerned with the number of persons employed by the contractor or the period of service for which they are engaged. Security of service, wages and other conditions of service are a matter of agreement between the contractor and his workers. A comparison of wages paid by the contractor with those paid in the refinery is irrelevant since the jobs are not comparable. In any case, existing legislation affords adequate protection to labour, whether contract or otherwise. The company is not concerned with any labour that the Ramji Gordhan and Company may engage for the fulfilment of the contract. Commissions of inquiry have not categorically recommended abolition of contract labour. The true test as to when it becomes necessary to employ contract labour is that given in the case decided by the Labour Appellate Tribunal 1957 I L.L.J. 287 , wherein the test laid down is :

"the sum total of the relevant circumstances, principal among which would be the casual or intermittent character of the work, the location of the work, the remoteness or difficulty of the terrain, the difficulty of supervising work in distant places or the necessity of contract labour in certain operations, as where distant lands have to be ploughed or trimmed or otherwise worked upon."

3. The company has further submitted that the nature of the contract makes the contractor responsible for payment of all benefits under legislation, that the company does not exercise any supervision or control over the contractor's employees.

4. The company has also submitted that the reference is incompetent as the dispute is of a nature that cannot be adjudicated on by an industrial tribunal and is not an industrial dispute. In any event, the demand for treating the employees of the Ramji Gordhan and Company as the employees of the refinery company, is beyond the jurisdiction of the tribunal. Assuming that the reference is competent, the adjudication cannot be proceeded with unless the Ramji Gordhan and Company as well as its employees are parties to the dispute.

5. It appeared to me, having regard to the pleadings, that the Ramji Gordhan

and Company should be summoned to appear as a party to this proceeding. Section 18(3)(b) lays down an award shall be binding on all other parties summoned to appear in the proceedings as the parties to the dispute, unless the tribunal records the opinion that they were so summoned without proper cause. Ramji Gordhan and Company have appeared in response to the summons and filed a written statement in which they have contended, inter alia, as there is no industrial dispute between them and their workmen they have been incorrectly made a party to the reference. Without prejudice to this contention, they have raised certain contentions on the merits. In my opinion, the Ramji Gordhan and Company are a proper party, if not a necessary, party to this dispute. Though no relief is claimed against them, the demand is that the workmen employed by the Ramji Gordhan and Company should be treated as workers of the refinery company and that past service of the workmen with the Ramji Gordhan and Company should be counted as service in the refinery company. It is, therefore, evident that the Ramji Gordhan and Company are a proper party, and it would not be proper to consider the demand without hearing what Ramji Gordhan and Company have to say.

6. On the merits Ramji Gordhan and Company contended that the refinery company invited tenders for a contract for cleaning office and plant premises and the housing colonies; that they (Ramji Gordhan and Company) submitted tenders which were accepted from 1 October, 1957. They are to get a stipulated monthly sum from the refinery company. They have employed 39 workmen to carry out the contractual obligations. Working conditions are better than those obtaining in the area for similar jobs. The employees are paid Rs. 3 per day as against the stipulated minimum of Rs. 2.37 nP. per day. The work of sweepers and cleaners engaged by them does not bear comparison with that of special yardmen employed by the refinery company. The work done by the contractor's workmen is not germane to the refining process. Railways and the Life Insurance Corporation engage contractors for cleaning and maintenance jobs, etc. The system of contract is recognized by law and commercial practice. It is further stated :

"The demand for abolition of contract system, which is our sole livelihood, therefore, violates our fundamental right to carry on our legitimate business, and as such any award in this behalf will infringe Art. 19 of the Constitution."

They have further denied that supervision over their workmen is purely technical and have stated that they have complete control over their workmen. The terms and conditions of service are a matter between them and their workmen. The contract with the refinery company has been produced and is for a period of one year commencing from 1 October 1957.

7. Before dealing with the various issues in this case, I shall first deal with a short point which was raised at the first hearing. The union representative objected to the appearance of Sri G. B. Pai for the company on the ground that he is a legal practitioner. Sri Pai is a lawyer practising in Delhi and Madras. He

has stated that he is an officer of the Employers' Federation of South India since six years and a member of the committee of that federation, that almost all oil companies in India except this refinery company are members of the federation. Sri Pai has further stated that he has appeared for oil companies before other tribunals. Taking all the facts into consideration, I disallowed the objection and ruled that having regard to the provision of S. 36(2)(c) of the Industrial Dispute Act, Sri Pai was entitled to appear for the refinery company.

8. I shall now deal with the contention that the dispute is not one cognizable by an industrial tribunal and that conceding of the demand would infringe the fundamental right to carry on business. Reliance is placed on a decision of the Supreme Court in *Saghir Ahmed and another v. State of U.P. and others* 1954 S.C.J. 819. That decision has no bearing on the present case. The other decision relied on is *N. K. Sen and others v. Labour Appellate Tribunal and others* decided by the Bombay High Court 1953 I L.L.J. 6, wherein it was held that the term "industrial dispute" excluded any ideological differences or theoretical or metaphysical or philosophical differences, but must be a controversy in which the workmen are substantially interested and which the employer is in a position to remedy. That was a case in which the question was whether the industrial tribunal had jurisdiction to adjudicate with regard to the scales of pay and the right of bonus of employees who were not workmen within the meaning of the Industrial Disputes Act, and the ratio decidendi of that case has no bearing on the facts in the present case. On behalf of the union, it is stated that it has as its members the workmen employed by Ramji Gordhan and Company who are concerned in this reference as well as a large majority of the workmen employed by the refinery company. It is difficult to appreciate the argument that the dispute in this case concerns ideological or metaphysical differences and is therefore not cognizable by an industrial tribunal. Next reliance has been placed on the decision of the Supreme Court in the case of the *Workmen of Dimakuchi Tea Estate Vs. The Management of Dimakuchi Tea Estate*, in which it was held that the expression "any person" in S. 2(k) of the Act means a person in whose employment or non-employment or terms of employment or conditions of labour the workmen as a class have a direct or substantial interest. I do not think this decision supports the contention of the company that the present dispute is not an industrial dispute. There have been cases in which tribunals have directed an employer to abolish contract labour and engaged workmen themselves. In the case of the *Narbada Valley Chemical Industries, Ltd., and their workmen* 1957 I L.L.J. 128 the learned adjudicator, Sri P. D. Sawarkar, directed the company to abolish the system of getting the cutting of chair wood done through contract labour. In the case of *Thomas Cook & Sons* 1953 I.C.R. 1384 the learned adjudicator, Sri P. D. Vyas, directed the company to treat certain mazdoors as its own employees. In that case, the learned adjudicator observed;

"The controversy now before us is obviously of a character which the employer is in a position to remedy and the workmen who are parties to the reference are directly and substantially interested in the same. The continuance or

encouragement of any such anomalous practice of engaging contract labour is bound to have its adverse reactions at any time on the other workers, inasmuch as the company may, as it has done in the present case, just substitute contract labour for its regular work in the name of economy in expenditure. The aforesaid letter Ex. U. 9 leaves no doubt in our mind as to how the company may at any moment cut down its permanent labour strength by employing contract labour or regular work in any department. As already shown by me above, the system of contract labour may be permissible in exceptional cases for carrying out the work of a casual nature but is certainly objectionable if it were to be worked by way of a substitute arrangement for the purpose of doing away with all necessity to maintain any permanent strength or workers. In this manner it can hardly be allowed to stand or be availed of and it is certainly in the interest of all the workers to oppose the same with united voice."

In the case of *Sakharwadi Kamgar Union v. Phaltan Sugar Works, Ltd.*, and others 8 F.J.R. 173, Sri S. H. Naik, late member of the industrial court, held that a demand by workmen in a certain industry that the system of contract labour should be abolished does not offend the employer's fundamental right to carry on business under Art. 19(1) of the Constitution as Clause (6) of that article allows reasonable restrictions being imposed on the fundamental right. With respect I agree with this view. In the case of the *Jagdishwar Printing and their workmen* 1956 I L.L.J. 597 the Labour Appellate Tribunal observed :

"It is also said that no industrial dispute can arise in respect of workmen who are not the employees of the concern but employees of the contractors. It is, however, abundantly clear that one of the principal objectives of labour is to eliminate the system of contract labour, so that labour might not be exploited by reason of such a system and there have been very many references and decisions of the industrial tribunals on this subject; but as far as we know, this is the first occasion on which it is said that an order directing the stoppage of contract labour to be regarded as a breach of fundamental rights and a subject outside the purview of the Industrial Disputes Act. In effect, the permanent workers of the concerns who have raised this industrial dispute contend that the system of working in the concern should be altered; they maintain that it is wrong that persons working in the same premises side by side with them, may be not doing the same type of work but nevertheless doing work which is part of the business of the concern of publishing, should be employed through contractors on lower wages and with no security of service. We cannot see any violation of fundamental rights in a direction as to how workmen should be engaged and they should be paid, for that is the essence of the question and it is a subject which affects industrial relations."

The Royal Commission of Labour observed as follows in regard to contract labour :

"We have found it to be generally true that workmen employed by salaried managers, who are personally responsible for their workers, receive more

consideration than those employed by contractors ... We believe that, whatever the merits of the system in primitive times, it is now desirable, if the management is to discharge completely the complex responsibilities laid upon it by the law and by equity, that the manager should have full control over the selection, hours of work and payment of the workers."

The Bihar Labour Enquiry Committee and the Bombay Textile Labour Enquiry Committee referred to the evils of contract labour. In the case of the Kolhapur Sugar Mills, Ltd. v. Their employees [Bombay Government Gazette, Part I-L, dated 13 September, 1956, p. 3292] the Labour Appellate Tribunal stated with reference to the observations of the Royal Commission and other Committees :

"The opinion expressed by these bodies are entitled to respect but, as we have observed, the employers must be allowed to urge anything they wish to put forward regarding the proper interpretation of these reports, their applicability to the facts of the present case and so on, and these arguments must be considered by the Court ..."

"The industrial court's test as to when it becomes necessary to allow employment of contract labour, based on whether the operations are essential or not, is open to obvious objection. It is a test which can not be supported without qualification. The true test should be based on the sum total of the relevant circumstances, principal among which would be the casual or intermittent character of the work, the location of the work, the remoteness of difficulty of the terrain, the difficulty of supervising work in distant places or the necessity of contract labour in certain operations, as where distant lands have to be ploughed or trimmed or otherwise worked upon. These are merely instances and do not exhaust the subject. But each claim must be adequately considered by the industrial court before giving a decision. It may well be that the industrial court while allowing contract labour may insist upon particular safeguards or may require that the workmen involved should not receive less than a certain wage, but these are matters for the industrial court to adjudge."

With respect I agree with the above view.

9. It is curious to find that while the refining company has in its written statement placed reliance on the above decision of the Labour Appellate Tribunal in regard to the true test, at the same time it has gone on to say that the security of service and conditions of service are entirely a matter of agreement between the contractors and the workers, that the company is not concerned with the number of person engaged by the contractor or the period of service for which they are engaged, and that existing legislation affords adequate protection to contract labour. These contentions have absolutely no substance.

10. At the hearing it was admitted that the men engaged by the contractor work in two shifts 8 a.m. to 4 p.m. and from 4 p.m. to 12 midnight. It is, therefore, clear that the work they do is not of a casual or intermittent nature. Cleaning of the latrines and sweeping in the office building and at canteens and toilet rooms

in the refinery areas has to be done regularly and daily. At the hearing it was stated that the Burmah-Shell Refinery engages its own sweepers but the Caltex Refinery gets the work done by contract. When such work is done through contractors by annual contracts, the workmen have no benefits of security of service, provident fund, privilege leave, etc. The work is necessary for the refinery company and has to be done daily. It is not a material circumstance that it is not part of the manufacturing process. In my opinion, this is a proper case in which a direction should be given to the refinery company to abolish contract labour with regard to this work and get the work done through its own workmen. The company will no doubt lay down fair conditions of service having regard to the practice in regard to such class of workers in other companies, and if there is a dispute about the conditions of service for this class of workmen, it can also be resolved by the machinery provided by the Industrial Disputes Act. As regards the demand that past service of the workers should be counted as service in the refinery, I am of the opinion that this demand should not be granted. There have been different contractors from year to year, and records may not be available for determining the days or the months in which each workman has worked. In any case, there is no good case for conceding the demand even if records are available.

11. I direct that with effect from 1 November 1958 the company should discontinue the practice of getting the work of cleaning of the premises and plant done through contract labour workmen, but get this work done through workmen, engaged by itself. In engaging the workmen, those workmen who have been working for the refinery under the contractors, Ramji Gordhan and Company, should be given preference. The demand that wage-scales and conditions of service should be the same as for other workmen in the refinery and that past service of these workers should be counted as service in the Stanvac Refinery is rejected.