

**(2008) 10 MAD CK 0056**

## In the Madras High Court

**Case No :** Writ Petition No. 8281 of 1998

Tamil Nadu Handicrafts Development Corporation Limited and  
The Superintendent, Brass Artware Production Centre

APPELLANT

 $V_S$ 

The Inspector of Factories, Range No. II, Madurai General  
Workers' Union and S. Sundaramoorthy

RESPONDENT

**Date of Decision : 17-10-2008**

**Acts Referred:**

Constitution of India, 1950 — Article 38, 39, 42, 43, 43A

Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen)

Act, 1981 — Section 2, 3

**Citation :** (2008) 10 MAD CK 0056

**Hon'ble Judges : K. Chandru, J**

**Bench :** Single Bench

**Advocate :** C. Saravanan, for the Appellant; A. Arumugam, Spl. G.P. for R1, for the Respondent

**Final Decision :** Dismissed

## Judgement

K. Chandru, J.—The writ petitioners are State owned Tamil Nadu Handicrafts Development Corporation Limited represented by its

Secretary and Personnel Manager and also the Superintendent, Brass Artware Production Centre at Madurai.

2. Aggrieved by the order passed by the first respondent, who is an Inspector of Factories, under the Tamil Nadu Industrial Establishments

(Conferment of Permanent Status to Workmen) Act, 1981 (for short, Tamil Nadu Act 46 of 1981), dated 21.5.1998, the present writ petition has

been filed.

3. The third respondent in this writ petition was employed as a workman in the unit run by the second petitioner. He was represented by the

second respondent trade union, which made a complaint to the first respondent on 18.5.1998 that inspite of Tamil Nadu Act 46 of 1981, the

services of the third respondent was not made permanent. On the basis of the said complaint, the first respondent - Inspector of Factories, Range-

II, Madurai, inspected the premises of the second petitioner. This inspection was made in the presence of the Superintendent, who is the second

petitioner and also in the presence of the third respondent. The records relating to the attendance of the third respondent was summoned and was

perused by the first respondent. As a matter of fact, the first respondent found that the third respondent, from June 1995 till April 1998, had

worked for more than 480 days and, therefore, he was eligible to be made permanent in terms of Section 3 of the Tamil Nadu Act 46 of 1981.

Therefore, he has passed an order, dated 21.5.1998 directing conferment of permanent status in favour of the third respondent and report

compliance of the same to his office.

4. Aggrieved by the said order, the present writ petition has been filed. In the writ petition, notice of motion was ordered on 19.6.1998 and a

direction was issued suspending conferment of permanent status in favour of the third respondent for a period of eight weeks. Subsequently, on

24.2.2003, this Court refused to extend the interim order and also directed the continuance of the service of the third respondent.

5. Today, when the matter was taken up for final disposal, the learned Counsel for the petitioners submitted that the order of the first respondent

suffers from several infirmities. First and foremost, the third respondent is not a "workman" under the provisions of Tamil Nadu Act 46 of 1981 as

he had been engaged on a specific assignment and there is no supervision or control over the activities of the third respondent and hence he cannot

be held to be a "workman" under the provisions of the Tamil Nadu Act 46 of 1981. With reference to the employment and the number of days

worked by him, there is no dispute by the petitioners.

6. A perusal of the provisions of the Tamil Nadu Act 46 of 1981 clearly shows that it applies to all Factories as well as to the Establishments under

the Tamil Nadu Shops and Establishments Act. The first petitioner is a Corporation involved in promoting handicrafts for sales. For this purpose,

they are having several captive units and the second petitioner is one such unit

at Madurai. Therefore, it cannot be said that the Act, which covers industrial establishments of various types set out u/s 2, will not cover the petitioner establishment. It is surprising that the petitioner establishment being a State Owned Corporation, itself has chosen to deny the welfare provisions of Labour Legislation made by the State Government without any justification. In any event, the only question that is raised is whether by the nature of service rendered by the third respondent whether he can be termed as a "workman" within the provisions of Tamil Nadu Act 46 of 1981.

7. The Supreme Court, in the case of Silver Jubilee Tailoring House and Others Vs. Chief Inspector of Shops and Establishments and Another, has categorically laid down that there cannot be a single test for determining the relationship of a Master and Servant in an establishment and no single test is foolproof in this regard. The Supreme Court has also held that the organisational test can be pressed into service. If the workman's livelihood solely depends upon the earning by the service rendered in favour of particular organisation, then he could be termed as a "workman" within the provisions of the said Act.

8. The same view was also reiterated by the Supreme Court in Hussainbhai, Calicut Vs. The Alath Factory Thezhilali Union, Kozhikode and Others, . The following passage found in paragraphs 4 to 6 may be usefully extracted below:

Para 4: This argument is impeccable in laissez faire economics "red in tooth and claw" and under the Contract Act rooted in English Common Law. But the human gap of a century yawns between this strict doctrine and industrial jurisprudence. The source and strength of the industrial branch of Third World Jurisprudence is social justice proclaimed in the Preamble to the Constitution. This Court in Ganesh Beedi case has raised on British and American rulings to hold that mere contracts are not decisive and the complex of considerations relevant to the relationship is different. Indian Justice, beyond Atlantic liberalism, has a rule of law which runs to the aid of the Rule of life. And life, in conditions of poverty aplenty, is livelihood, and livelihood is work with wages. Raw societal realities, not fine-spun legal niceties, not competitive market economics but complex protective principles, shape the law when the weaker, working class sector needs succour for livelihood through labour. The conceptual

confusion between the classical law of contracts and the special branch of law sensitive to exploitative situations accounts for the submission that

the High Court is in error in its holding against the petitioner.

Para 5: The true test may, with brevity, be indicated once again. Where a worker or group of workers labours to produce goods or services and

these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers"

subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate

contractors with whom alone the workers have immediate or direct relationship ex contractu is of no consequence when, on lifting the veil or

looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that

the real employer is the Management, not the immediate contractor. Myriad devices, half-hidden in fold after fold of legal form depending on the

degree of concealment needed, the type of industry, the local conditions and the like may be resorted to when labour legislation casts welfare

obligations on the real employer, based on Articles 38, 39, 42, 43 and 43A of the Constitution. The court must be astute to avoid the mischief and

achieve the purpose of the law and not be misled by the maya of legal appearances.

Para 6: If the livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefit and satisfaction of

an enterprise, the absence of direct relationship or the presence of dubious intermediaries or the make-believe trappings of detachment from the

Management cannot snap the real life-bond. The story may vary but the inference defies ingenuity. The liability cannot be shaken off.

9. Therefore, it is too late in a day for the petitioners to contend that the Act will not apply to the case of the third respondent. The question of lack

of notice by the first respondent does not arise. Under the Scheme of the Tamil Nadu Act 46 of 1981, Section 3 itself declares the right of a

workman to be made permanent in case of completion of 480 days" of service within a period of 24 calendar months. The Inspector under the

Act, by virtue of Rule 6, is empowered to enter into any establishment and verify the records and make appropriate notice in the records of the

employer. In the present case, the records were verified only in the presence of the second petitioner and there is no dispute regarding the number

of days worked by the third respondent. In fact, there is no averment in the affidavit that such a factual finding was not borne out by records. When

the power of the first respondent is delineated by Rule 6(4) of the Rules, no further enquiry is contemplated in terms of the Act.

10. In the light of the same, the challenge to the impugned order is misconceived and devoid of merits and, accordingly, the writ petition will stand

dismissed. The petitioners are directed to implement the order within a period of eight weeks from the date of receipt of a copy of this order.

There shall be no order as to costs.