
(1977) 08 BOM CK 0031
In the Bombay High Court
Case No : First Appeal No. 502 of 1970

The Garrison Engineer (Projects) Officer	APPELLANT
Vs	
Guttamma Hanmatdas	RESPONDENT

Date of Decision : 12-08-1977

Acts Referred:

Employees Compensation Act, 1923 — Section 12, 2

Citation : (1978) 80 BOMLR 24

Hon'ble Judges : Naik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Naik, J.—This appeal raises the question of interpretation of Section 12(1) read with Section 2(2) of the Workmen's Compensation Act, 1923.

2. It arises as under : The Navy department wanted to abolish its barracks situate at Colaba. For that purpose they entered into an agreement exh. 40 with the firm of auctioneers called "Gandhi and Co." on January 23, 1968. Admittedly one padmanabhan being the highest bidder, he started demolition of the buildings. Among others this Padmanabhan had engaged one Chinnayya (exh. 37) and his since deceased brother Hanmatdas. On April 15, 1968 when this Hanmatdas was engaged in demolishing the walls of the military barracks he fell and sustained injuries as a result of which he died on April 28, 1968.

3. On these facts Smt. Guttamma, the widow of deceased Hanmatdas filed an application for recovering compensation. She impleaded both Padmanabhan and Garrison Engineer-present appellants as opponents. Padmanabhan could not be served and was deleted from, the records.

4. The application was resisted by the Garrison Engineer. It was contended on his behalf that he is not responsible and the entire responsibility was of Padmanabhan.

5. In support of the claim Guttamma examined herself and her brother-in-law Chinnayya who was a co-worker with the deceased and an eye witness to the incident. Chinnayya admitted that the deceased and he were employed by Padmanabhan and were being paid their wages by Padmanabhan. He also admitted that neither he nor the deceased were employed by the Garrison Engineer. At the same time he claimed that Padmanabhan was a sub-contractor.

6. The learned Commissioner by relying on the agreement for appointment of auctioneer between the Government and the auctioneers M/s. Gandhi and Co., took the view that Section 12 of the Act was applicable and that Padmanabhan was a contractor on behalf of Garrison Engineer and in that view of the matter passed an order directing the appellant to deposit Rs. 7,000 plus Rs. 50 as costs within fifteen days and he further observed that the opponent-appellant will be entitled to claim indemnity from Padmanabhan as per the terms of the agreement.

8. It is the correctness of the said judgment which is challenged in this appeal.

9. Mrs. Shenoy, learned Government Pleader has assailed the order of the learned Commissioner by pointing out that the learned Commissioner was in error in interpreting Section 12 and Section 2(2) of the Workmen's Compensation Act, 1923. She also submitted that even if the Commissioner were right in the view he has taken having regard to the provisions of Sub-section (2) of Section 12 of the Workmen's Compensation Act, he could not have directed Padmanabhan to indemnify the opponent-appellant without Padmanabhan being a party to that order. Therefore she submits that even if her submissions on the first part are not accepted, the matter shall have to be sent back to the Commissioner.

10. Mr. Sblkar, learned advocate for the respondent, submitted that having regard to the definition of "workman" in Section 2(n) and the provisions of Section 2(2), the learned Commissioner was justified in holding that the opponent was liable to pay compensation u/s 12(1) of the Act.

11. As I have already stated there is no dispute that the Navy department wanted to get its barracks pulled down and the land cleared; may be for the purpose of erecting some other buildings which is not clear. For that purpose they appointed M/s. Gandhi and Co. as the auctioneers. They entered into an agreement with the said auctioneers. That agreement provides as to what precautions the auctioneers are to take in auctioning out the right to demolish the buildings. It is not disputed before me that one Padmanabhan being the highest bidder it was that contractor who started pulling down the buildings and it was he who had employed the deceased worker Hanmatdas and it was undoubtedly while performing his duties as a workman employed by Padmanabhan that the deceased sustained injuries as a result of an accident and he died. In fact the evidence of Chinnayya, the brother of the deceased shows that the deceased was not employed by the Garrison Engineer. In order,

therefore, the opponent-appellant may be held responsible that could be only by invoking the provisions of Section 12(1) of the Act. Mr. Solkar has laid considerable stress on Section 2(2) of the Act which reads as under:

The exercise and performance of the powers and duties of a local authority or of any department acting on behalf of the Government shall, for the purpose of this Act, unless a contrary intention appears, be deemed to be the trade or business of such authority or department.

12. Section 12(1) is to this effect:

Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person (hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the workman under the employer by whom he is immediately employed.

13. What is argued by Mr. Solkar in support of the order passed by the Commissioner is that after all the defence department of the Government of India has to do many things to defend the borders of the country. It has necessarily to construct barracks and pull down the barracks and, therefore, he argues pulling down the barracks must be deemed to be the trade or business of the defence department as mentioned in Section 2(2) of the Act.

14. There is no denying that having regard to the deeming provision of Section 2(2) it may be held that there is force in the submission of Mr. Solkar, that even the work of pulling down the buildings may be said to be the business of the department, of the Government. But the important question to be considered is whether that could be said to be "ordinarily part of the trade or business of the department of Government" as that expression is used in Section 12(1) of the Act. Apart from authorities it appears to me that it could not be said to be ordinarily part of the trade or business of the Government, to pull down buildings or to erect buildings though incidentally and necessarily the defence department may be required to undertake these jobs for the defence of the country. The main business of the defence department of the Government is to defend the country. In fact this expression in Section 12(1) was, considered by a division Bench of this Court consisting of Marten C.J. and Murphy J. in the case reported in *Rabia Md. v. G.I.P. Ry* AIR[1929] Bom. 179 : 31 Bom. L.R. 211. In that case the Commissioner had decided in favour of the representative of the workman on the basis that G.I.P. Railway being a State railway, the definition of Section 2(2),

was attracted. Dealing with that question it was observed by Marten C.J. as under (p. 181):

...The object of this definition Section 2(2), however, was to prevent any contention to the effect that a Government department does not carry on a trade or business. But I am quite unable to accept the deduction which the Commissioner draws from those premises. In my judgment the word "ordinarily" in Section 12 applies just as much to a Government department as it does to any other principal. Consequently, assuming that the running of the G I P. Railway and the construction of these steel towers are part of the trade or business of the Government department in question, yet it still remains to be considered whether the particular work contracted out to these contractors is ordinarily part of the trade or business of the principal. For the reasons already given, in my judgment, it is not ordinarily part of their trade or business. Consequently, in this respect, the decision of the Commissioner cannot, I think, be upheld.

15. In that case the G.I.P. Railway in connection with the electrification of their line were building a Power Station near Kalyan and were constructing a transmission line to carry electric power to various sub-stations on the railway. The work of constructing this transmission line had been entrusted on a contract to Messrs. W.T. Henley's Telegraph Works and the deceased was employed by the said contractor. The work of the deceased was to assist in the erection of the steel towers which would carry the overhead cable. Those towers were not erected on the railway track but on land adjacent thereto, the distance from the railway lines varying from 400 to 700 feet. While carrying material from the store near Kalyan station to the site of the work the deceased was knocked down by a train and killed. On these facts it was contended that it was a trade or business of the railway and, therefore, of the Government to have a transmission line to carry electric power to various sub-stations on the railway. This Court; held that that could not be said to be "ordinarily part of the trade or business of the Government." With respect I am in entire agreement with that decision.

16. So also a division Bench of the Kerala High Court has taken a similar view of the interpretation of the word "ordinarily part of the trade or business" occurring in Section 12, in the case reported in Vijayaraghavan Vs. Velu and Another, .

17. It would, therefore, appear that on the admitted facts" of this case simply because Padmanabhan, the contract according to the terms of the auction had kept by way of deposit with the Government some moneys and undertaken to indemnify the Government in case of loss sustained by the Government, he could not be said to be a sub-contractor and much less the deceased who was a workman engaged by him could hold the appellant responsible by relying on Section 12(1) of the Act.

18. In the result, the appeal is allowed. The order of the Commissioner dated July 14, 1970 is set aside.