

**(2015) 06 BOM CK 0128**

**In the Bombay High Court**

**Case No : Writ Petition No. 1470 of 1998**

The Indian Express Limited

APPELLANT

Vs

P.P. Kothari and Others

RESPONDENT

**Date of Decision : 15-06-2015**

**Acts Referred:**

Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 — Section 17, 17(1), 17(2), 2(d), 2(f)

**Citation :** (2015) 4 ABR 672 : (2015) 6 BomCR 398 : (2015) 147 FLR 650 : (2015) LabIC 3340 : (2016) LLR 58 : (2015) LLR 850 : (2015) 6 MhLj 199

**Hon'ble Judges :** A.S. Chandurkar, J

**Bench :** Single Bench

**Advocate :** R.B. Puranik, for the Appellant

## **Judgement**

A.S. Chandurkar, J.—By the present writ petition the Award dated 28.02.1996 passed by the learned Judge of the Labour Court, Akola in reference proceedings under Section 17(2) of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (for short the said Act) is under challenge by the petitioner. During pendency of the writ petition the original applicant - claimant expired and his legal representatives have been brought on record.

2. According to the original applicant, he was initially working as a Part Time Correspondent with Indian Express Newspaper (Bombay) Private Limited. According to the applicant, he was supplying news item for being published in daily "Indian Express" and daily "Loksatta". This arrangement between the parties however, came to be terminated on 31.07.1980. Thereafter, on 21.08.1980 the predecessor of the petitioners engaged the original applicant as a stringer on lineage basis. Accordingly, agreement between the parties came to be entered into. The original applicant, accepted terms and conditions as prescribed. Subsequently, the original applicant on 02.06.1998 filed an application under the provisions of Section 17 of the said Act claiming the remuneration for the period

from 01.10.1979 onwards till 31.05.1988 in terms of the Palekar Award. Interest on said amount was also claimed. The present petitioners filed their written statement taking the stand that there was no relationship of employer and employee between the parties and that the petitioners were not liable to pay any amount as claimed by the original applicant. The proceedings were referred to the Labour Court under the provisions of Section 17(2) of the said Act in terms of reference made by the State Government. The original applicant examined himself while the petitioners also examined one witness. Ultimately, award was passed by the Labour Court and the petitioners were directed to pay various amount to the original applicant as arrears along with interest. The said award is subject-matter of challenge in the present writ petition.

3. Shri R.B. Puranik, the learned counsel appearing for the petitioner submitted that the learned Judge of the Labour Court erred in granting relief in the proceedings filed by the original applicant. According to him, there was no relationship of employer and employee between the parties. Though the burden to prove such relationship was on the original applicant, the Labour Court wrongly shifted said burden on the petitioners. It was then submitted that there was no positive evidence on record to show that the principal avocation of the original applicant was newspaper journalism. In absence of such evidence, no relief could have been granted to the applicant. The learned counsel referred to various provisions of the said Act and submitted that the Labour Court had erred in granting relief to the original applicant in absence of various jurisdictional aspects. In support of his submissions the learned counsel placed reliance on the following decisions.

[i] Indian Banks Association Vs. Workmen of Syndicate Bank and Others etc. etc., AIR 2001 SC 946 : (2001) 88 FLR 1097 : (2001) 2 JT 542 : (2001) 1 LLJ 1045 : (2001) 2 SCALE 25 : (2001) SCC(L&S) 504 : (2001) 1 SCR 1011 : (2001) 2 UJ 810 : (2001) AIRSCW 749 : (2001) 2 Supreme 119 .

[ii] Ram Singh and Others Vs. Union Territory, Chandigarh and Others, (2003) 8 JT 345 : (2004) 1 SCC 126 : (2004) 1 SLJ 395 .

[iii] Ahmednagar Zilla S.D.V. and P. Sangh Ltd. and Another Vs. State of Maharashtra and Others, AIR 2004 SC 1329 : (2003) 9 SCALE 594 : (2004) 1 SCC 133 : (2003) 5 SCR 265 Supp : (2004) 1 UJ 565 .

[iv] 2004 I CLR 802 Workmen of Nilgiri Co-op. Mtk. v. State of Tamil Nadu and Ors.

[v] 2004 I CLR 822 Indian Petrochemicals Corpn. Ltd. v. Manilal Bhanabhai Vasava.

[vi] National Aluminium Company Ltd. and Others Vs. Ananta Kishore Rout and Others, (2014) AIRSCW 3448 : (2014) 6 JT 153 : (2014) 6 SCALE 540 : (2014) 6 SCC 756 .

[vii] Balwant Rai Saluja Vs. Air India Ltd., AIR 2015 SC 375 : (2014) AIRSCW

6387 : (2014) 9 SCALE 567 : (2014) 9 SCC 407 .

[viii] The Management of Express Newspapers Ltd. Vs. B. Somayajulu and Others, AIR 1964 SC 279 : AIR 1963 SC 279 : (1963) 7 FLR 246 : (1963) 2 LLJ 385 : (1964) 3 SCR 100 .

4. Though the legal representatives of the respondent No. 1 have been duly served, they have chosen not to contest the proceedings. Shri S.M. Bhagde, learned AGP has appeared for the respondent No. 2.

5. With the assistance of the learned counsel, I have gone through the documents filed on record. The appointment of the petitioner as stringer on 21.08.1980 is not in dispute. The principal grounds on which the award of the Labour Court is under challenge are that there was absence of relationship of employer and employee between the parties and that the principal avocation of the original applicant was not journalism. If the pleadings of the parties are perused, this specific stand have been raised by the present petitioners in the written statement filed before the Labour Court.

6. Before the Labour Court, the applicant had examined himself on oath in which he stated that he had not been paid salary of Part Time Reporter as per the Palekar Award. In his deposition, he had not made any positive statement that his principal avocation was newspaper journalism. In his cross-examination it was stated that he also did business as well as politics for earning. He however, denied the suggestion that journalism was not his main profession. He admitted the document dated 21.08.1980 entered into between the parties.

The petitioners examined their Senior Personnel Manager in support of their defence. The said witness stated that he had no control over the working of the applicant nor did he had any fixed working hours. It was specifically stated that journalism was not the principal avocation of the applicant.

7. The Labour Court on consideration of aforesaid evidence observed that as the applicant had denied the suggestion that newspaper journalism was not his principal avocation the burden shifted on the petitioners. It further held that as the earlier agreement between the parties came to be terminated on 31.07.1980 it was clear that the applicant was a Part Time Correspondent with the petitioners. Accordingly, it was held that there was a relationship of employer and employee between the parties. On that basis the claim of the applicant was allowed and relief was granted to the original applicant.

8. At this stage, it is necessary to refer to the judgment of the Supreme Court in the Management of Express Newspaper Limited (supra). While considering the expression "Working Journalists" as defined by provisions of Section 2(d) of the said Act prior to its amendment, it was held that the object of said provision was to make it clear that the employees specified in said clause were journalists and nothing more. In para 8 of the report it has been observed thus:

"In other words, the position is that whenever an employee working in the

newspaper establishment claims the status of a working journalist he has to establish first that he is a journalist, and then that journalism is his principal avocation and he has been employed as such journalist. In proving the fact that he is a journalist, the employees specified in the latter clause need not prove anything more than this that they fall under one or the other category specified in the said clause. But that only proves their status as journalist; they have still further to show that their principal avocation is that of a journalist and that they have been employed as such by the newspaper establishment in question."

After the definition was amended and Section 2(f) was incorporated, the requirement of a working journalist being a person whose principal avocation was of a journalist was retained.

In the present case, as noted above except for the statement in the statement of claim that journalism was the principal avocation of the applicant, there is no positive evidence led on record by the applicant in that regard. In his examination-in-chief the applicant did not state anything about newspaper journalism being his principal avocation. On the contrary, in the cross-examination he admitted that he also did business and politics for earning. In the light of the law as laid down referred to aforesaid it cannot be said that in terms of provisions of Section 2(f) of the said Act, the applicant had proved that journalism was his principal avocation. It is to be noted that the jurisdiction under the provisions of Section 17(1) of the said Act can only be invoked by a working journalist as defined by Section 2(f) of the said Act.

9. In so far as, the relationship of employer and employee is concerned, in *Workmen of Nilgiri Cooperative Marketing* (supra) various tests have been laid down for determining such relationship. In para 38 of aforesaid decision it has been observed thus:

"The control test and the organization test, therefore, are not the only factors which can be said to be decisive. With a view to elicit the answer, the court is required to consider several factors which would have a bearing on the result: (a) who is appointing authority; (b) who is the pay master; (c) who can dismiss; (d) how long alternative service lasts; (e) the extent of control and supervision; (f) the nature of the job, e.g. whether, it is professional or skilled work; (g) nature of establishment; (h) right to reject.

Similarly, in a recent decision in *Balwant Rai Saluja* (supra) the Supreme Court has reiterated aforesaid law by referring to the aspect of administrative control. It was further held that such burden was required to be discharged by the person who claimed existence of such relationship.

10. In the light of aforesaid law if the facts of the present case are considered, it is clear that the two vital jurisdictional aspects regarding relationship of employer and employee between the parties and the principal avocation of the applicant being newspaper journalism are not satisfied by the original applicant. Burden to prove both these aspects was on the applicant but the evidence led by him can in

no manner lead to the conclusion that such burden was duly discharged in accordance with law. On the contrary, there is no evidence on record to indicate journalism as the principal avocation of the applicant. The learned Judge of the Labour Court by holding that the burden to prove principal avocation of the applicant shifted on the present petitioners completely misdirected itself in that regard. In absence of any basic material to show that newspaper journalism was the principal avocation of the applicant, such burden could not have been shifted on the petitioners. Similarly, the material on record does not satisfy the requirements of proving the relationship of employer and employee between the parties in the light of the law laid down in *Workmen of Nilgiri Co-op.* (supra).

11. As the applicant had invoked the provisions of Section 17(1) of the said Act for seeking relief, it was necessary for the applicant to discharge the burden placed on him and to satisfy both the jurisdictional aspects. It is in that background that the material on record has been examined only for the purposes of being satisfied that the jurisdiction of the Labour Court had been rightly invoked under Section 17(2) of the said Act and not for the purposes of re-appreciating the same. Absence of such jurisdictional aspects therefore, disentitle the original applicant for any relief whatsoever.

12. In view of the aforesaid discussion, the following order is passed:

[i] The award dated 28.02.1996 passed by the learned Presiding Officer, Labour Court, Akola is set aside. The application filed by the original applicant under Section 17(1) stands rejected.

[ii] The petitioners are entitled to receive the amounts deposited by them pursuant to various interim orders passed in this writ petition. Similarly, in terms of order dated 07.12.2010 passed in Contempt Petition No. 193/2004, the petitioners are also entitled to receive back the amount of interest that was paid by them in execution proceedings.

[iii] Rule is made absolute in aforesaid terms. No order as to costs.