

(1997) 08 KAR CK 0050

In the Karnataka High Court

Case No : Writ Appeal No"s. 903 to 910 of 1996

The Karnataka Electricity Board, Bangalore

APPELLANT

Vs

Ananda And Others

RESPONDENT

Date of Decision : 20-08-1997

Acts Referred:

Citation : (1998) ILR (Kar) 27

Hon'ble Judges : S. Rajendra Babu, J;H. Rangavittalachar, J

Bench : Division Bench

Advocate : Sri B.C. Prabhakar, for the Appellant; Sri M.C. Narasimhan, for the Respondent

Judgement

1. Respondents 1 to 8 filed writ petitions before this Court claiming that they are employed in the Karnataka Electricity Board canteen run by the appellant for the benefit of their employees working in Cauvery Bhavan and other Officers of the Board. It is alleged that the canteen caters to the needs of about 800 employees working in the said premises of the Karnataka Electricity Board; that they are paid very low wages; that they are not paid on par with the other employees of the Karnataka Electricity Board in the matter of emoluments; that the petitions were filed seeking a direction to the respondents to treat respondents 1 to 8 herein as regular employees of the Karnataka Electricity Board, entitled to conditions of service similar to the permanent comparable employees or workmen of the Karnataka Electricity Board; that the canteen is run by Respondent 9 consisting of Officers and Employees of the Karnataka Electricity Board; that the Managing Committee though constituted is run under the control and guidance of the Karnataka Electricity Board; the initial capital to run the canteen was provided by the Karnataka Electricity Board; that the premises of the canteen belongs to the Karnataka Electricity Board so also, moveables and other properties; that the accounts of the canteen are audited by the officials of the Karnataka Electricity Board; that the canteen is subsidised as part of the welfare facilities given by the Karnataka Electricity Board; that the wages paid

are too low and appropriate wages have to be paid and employees in the canteen run by the Karnataka Electricity Board are entitled to the benefits of the other employees, who discharge similar duties.

2. The appellant contended that respondents 1 to 8 are employed in the canteen located in the premises of the Karnataka Electricity Board; that they have not been appointed by the Karnataka Electricity Board; that they have been appointed by the Managing Committee-respondent 9 herein; that they cannot claim to be employees of the Karnataka Electricity Board; that the canteen is not being run by the Karnataka Electricity Board, but by the Managing Committee, which is functioning from October, 1986; that the Karnataka Electricity Board provided premises, furniture, power, water and light to the Managing Committee for running the canteen as a gesture of good-will; that a limited amount of seed money has also been granted to the canteen; that the canteen is being run by the Managing Committee and the Karnataka Electricity Board has no responsibility in respect of the management; that the canteen is being run on "no profit and no loss" basis, no control is being exercised by the Karnataka Electricity Board in running the canteen; that respondents 1 to 8 had been appointed some time in 1986 after the canteen was established by the Managing Committee; that respondents 1 to 8 cannot seek parity of wages with the wages prevailing in the Karnataka Electricity Board; it is also disputed that they are entitled to higher emoluments; they have to seek appropriate remedy by raising an industrial dispute and they are paid actually the minimum wages under the Minimum Wages Act.

3. The learned Single Judge after exhaustively examining the concepts relating to the employer and employee relationship; the nature of the activity carried on by the Karnataka Electricity Board; the services provided by the canteen and applying the various tests in the different decisions of the Supreme Court came to the conclusion as follows:

"In the instant case, the presence of the Managing Committee with whom alone, the workers have immediate relationship ex-contract is of no consequences when on lifting the veil and examining the conspectus of factor governing the employment, we discern the plain truth camouflaged in artistic umbrella of legal terminology and we identify the employer. In the background of what is stated above it has to be held that the petitioners are engaged in a work which is incidentally connected with the main activities of the Karnataka Electricity Board and that they by their labour enables the employees of the Karnataka Electricity Board the facility of enjoying the amenities made available to the workers of the Karnataka Electricity Board".

This Court also held that the workers in the canteen run under the aegis of the Managing Committee run by the Karnataka Electricity Board functioning at the premises of the Karnataka Electricity Board Office in Cauvery Bhavan and the employees of the canteen are entitled to be paid equal pay being paid to persons holding similar post under the appellant and directed the appellant to pass

appropriate consequential orders. This appeal is filed against the said order.

4. The contentions on either side are reiterated in the same manner as has been done before the learned Single Judge.

5. Sri Subba Rao, learned Counsel for the appellant, citing the two decisions of the Supreme Court in *Parimal Chandra and Others Vs. Life Insurance Corporation of India and Others*, and *Employers in relation to the Management of Reserve Bank of India Vs. Their Workmen*, , submitted that in the light of the enunciation of law in the aforesaid decisions, it is not necessary for this Court to re-examine the position in law as to the relationship between the employer and employees in a situation of this sort where a canteen is being run by a committee on a non-statutory basis and in the absence of a legal obligation thereto, the first two principles stated in *Parimal Chandra's* case, would apply and as per the dicta laid down in the *Reserve Bank of India's* case, the canteen employees do not become the workmen of the establishment in which the canteen is run by the committee. He further elaborated that the memorandum of settlement entered into between the parties referred in order dated 30th August, 1986 did not give rise to any obligation on the part of the appellant to run a canteen. All that is stated was that certain recommendations had been made by the ad hoc Committee constituted to make recommendations to the Board for running the canteen on no profit-no loss basis; to improve the quality of service in the canteen and to avoid loss of time by the staff going out during office hours. It is also suggested therein that the canteen would be run by a Managing Committee with the Public Relation Officer of the Karnataka Electricity Board as its Chairman. The ad hoc Committee solicited that the Managing Committee may be provided with the facilities of premises, free power, water supply, available furniture, cooking utensils, crockery, cutlery, etc., and for sparing to the canteen Committee, the help of an assistant. The canteen duly constituted could operate from a particular date. On 30th August, 1986 the Board made an order sanctioning the running of the Karnataka Electricity Board canteen by a Committee appointed by the Board as a staff welfare measure and the type of facilities provided were indicated in the course of the order, such as those which are already adverted to in the recommendations made by the ad hoc Committee. It was also made clear therein that in the event the Managing Committee being unable to carry on the objectives satisfactorily, the Managing Committee shall be jointly and severally accountable for all the furnitures and equipments provided, which shall be returned to the Board. It was clarified that the canteen shall be an institution run by the Managing Committee. The Management of Karnataka Electricity Board shall have nothing to do or be responsible for any liabilities created or for the staff employed by the Managing Committee or for any other matter.

6. In the face of these facts, we have to examine as to what would be the law that would be applicable to the present facts of the case.

7. The law on the matter has been stated by the Supreme Court with reference to *Parimala Chandra Raha's* case in *Reserve Bank of India's* case, as follows:

"What emerges from the statute law and the judicial decisions is as follows;

(i) Where, as under the provisions of the Factories Act, it is statutorily obligatory on the employer to provide and maintain canteen for the use of his employees, the canteen becomes a part of the establishment and, therefore, the workers employed in such canteen are the employees of the management.

(ii) Where, although it is not statutorily obligatory to provide a canteen, it is otherwise an obligation on the employer to provide a canteen, the canteen becomes a part of the establishment and the workers working in the canteen, the employees of the management. The obligation to provide a canteen has to be distinguished from the obligation to provide facilities to run canteen. The canteen run pursuant to the later obligation, does not become a part of the establishment.

(iii) The obligation to provide canteen may be explicit or implicit. Where the obligation is not explicitly accepted by or cast upon the employer either by an agreement or an award etc., it may be inferred from the circumstances, and the provision of the canteen may be held to have become a part of the service conditions of the employees. Whether the provision for canteen services has become a part of the service conditions or not, is a question of fact to be determined on the facts and circumstances in each case.

Where to provide canteen services has become a part of the service conditions of the employees, the canteen becomes a part of the establishment and the workers in such canteen become the employees of the management.

(iv) Whether a particular facility or service has become implicitly a part of the service conditions of the employees or not, will depend, among others, on the nature of the service/facility, the contribution the service in question makes to the efficiency of the employees and the establishment, whether the service is available as a matter of right to all the employees in their capacity as employees and nothing more, the number of employees employed in the establishment and the number of employees who avail of the service, the length of time for which the service has been continuously available, the hours during which it is available, the nature and character of management, the interest taken by the employer in providing, maintaining, supervising and controlling the service, the contribution made by the management in the form of infrastructure and funds for making the service available etc.

Counsel for the appellant Mr. Salve submitted that propositions Nos. 3 and 4 contained in paragraph 27 of the judgment are very wide and require reconsideration and appropriate modification, whereas Mr. Tarkunde, Counsel for respondents submitted that propositions Nos. 3 and 4 lay down the law correctly. It is unnecessary on the facts of this case, to consider to what extent propositions Nos. 3 and 4 require to be clarified or modified, since in this case the Tribunal has proceeded only on the basis that the instant case clearly falls within the ratio laid down by this Court in M.M.R. Khan and others etc. Vs. Union of India and others, etc., , which we have held is a totally wrong perspective. In

these circumstances, we are not called upon to consider the rival pleas regarding the scope and ambit of proposition Nos. 3 and 4 contained in para 27 of JT : para 9 of AIR, of the judgment in Parimal Chandra Raha's case, supra".

8. We have to examine the facts available in the case with reference to the law stated as above. There is no statutory obligation on the part of the Karnataka Electricity Board to run the canteen. Therefore, the first proposition referred to in Parimala Chandra's case, would not be attracted.

We have adverted to the memorandum of settlement dated 31st December, 1980, which provided for the recommendations of the ad hoc Committee. Based on the recommendations made by the ad hoc Committee, the Board made an order on 30th of August, 1986 making it clear that the Karnataka Electricity Board shall have nothing to do or responsible for any liabilities created or for the staff employed by the Managing Committee or for any other matter. This clearly indicated the nature of relationship between the Karnataka Electricity Board, the Managing Committee and the employees in the canteen. Therefore, there is no obligation statutory or otherwise under any law or contract arising therefrom. The obligation to provide a canteen has to be distinguished from the obligation to provide facilities as noticed in proposition No. 2 in Parimala Chandra's case. It is made clear therein that the canteen being run pursuant to the latter does not become part of the establishment. Tested on this basis and advertent to the decision in Reserve Bank of India's case, we must state that as in the present case, the canteen was run by a canteen Committee consisting of 12 representatives, 3 of them are from the bank and rest from the employees. The bank had relieved 4 employees who are in the Committee, two for full day and two for half day to supervise the day-to-day affairs of the canteen. It was made clear that the Committee could not increase the strength of the canteen employees without the permission of the bank and the rates of the eatables also could not be revised without the consent of the manager. They could not effect wage revision without the approval of the bank. The bank was also reimbursing the expenses incurred over the periodical medical check-up of the employees attached to the kitchen and counters. It was noticed in spite of these facts that the bank does not exercise any "remote control", that it has only a limited role to play regarding the functioning of the Committee and do not have any control whatsoever on the employee engaged by the Committee so far as taking any disciplinary action being taken against the particular employee concerned. The role played by the bank in the running of the canteen was a nomination of the members to the Committee. The canteen run by the Committee was not under any legal obligation at all to bank. There was no right in the bank to supervise and control the work of the persons in the Committee nor the bank had any right to direct the manner in which the work should be done by the various persons. The Supreme Court was of the view that in the absence of any obligation, statutory or otherwise, regarding the running of a canteen by the bank and the absence of obligation relating thereto similar to Factories Act or the Railway Establishment Manual and in the absence of any effective or direct control in the

bank to supervise and control the work done by various persons, the workers in the canteen run by the canteen Committee cannot come within the ratio of the decision in M.M.R. Khan's case. The position in the present case is identical, except to facilitate to start and running of a canteen, the canteen was in no manner run by the Board and that position was made explicit in the order made by the Board on 30th of August, 1986, when it was stated that the canteen shall be run by the Managing Committee and Karnataka Electricity Board, will not be responsible either towards the staff employed by the Managing Committee or for any other matter. These aspects were lost sight of by the learned Single Judge and the learned Single Judge proceeded to consider the matter on the basis of the reasoning adopted other than in Reserve Bank of India and Parimal Chandra cases. The decision in Parimal Chandra's case and Reserve Bank of India's case, *supra*, have direct application to the facts of this case and therefore it is not permissible for us to look to any other decision rendered by the Supreme Court in other context.

9. Sri M.C. Narasimhan, learned Counsel for respondents 1 to 8 very vehemently and strenuously contended after adverting to the decisions in Shivnandan Sharma Vs. The Punjab National Bank Ltd., ; Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra, ; Silver Jubilee Tailoring House and Others Vs. Chief Inspector of Shops and Establishments and Another, ; Mangalore Ganesh Beedi Works and Others Vs. Union of India (UOI) and Others, and Hussainbhai, Calicut Vs. The Alath Factory Thezhilali Union, Kozhikode and Others, , to explain that the concept of master and servant under the law of torts cannot be imported to industrial law and a degree of economic reality will have to be borne in mind and the Board having appointed the Managing Committee of the canteen, the Managing Committee will have to be treated as the agent of the Board and does not have any independent existence and in the context of the industrial law welfare measures adopted are concomitant to service conditions and provision for a canteen is one such welfare measure. But, we are afraid that it will not be possible for us to examine the ratio laid down in the aforesaid decisions. The Supreme Court has examined the purport of these decisions in the said two decisions of Parimal Chandra's case and Reserve Bank of India's case. Therefore, we have no option, but to follow the dicta laid down by the Supreme Court in the aforesaid two decisions. The law laid down by the Supreme Court in Parimal Chandra's case, being that if no statutory or other legal obligation arises to run a canteen, but merely provides facilities to run a canteen, such a canteen does not become part of the establishment.

10. Therefore, we are of the view that the learned Single Judge was not justified in passing the order under appeals. On the face of the material on record we have no hesitation to hold by applying the ratio laid down in Parimal Chandra's case and Reserve Bank India's case, that respondents 1 to 8 are not employees of the appellant and thus the question of granting them the other reliefs would not arise.

11. The appeals are thus allowed, the order made by the learned Single Judge is set aside and writ petitions shall stand dismissed.