

(2006) 12 KAR CK 0030
In the Karnataka High Court
Case No : Writ Appeal No. 911 of 2002

The Karnataka State Handicrafts Development Corporation	APPELLANT
Vs	
The Secretary, Engineering and General Workers Union	RESPONDENT

Date of Decision : 15-12-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Employees State Insurance Act, 1948 — Section 2 (9)
Industrial Disputes Act, 1947 — Section 2 (s)

Citation : (2007) ILR (Kar) 499 : (2007) 2 KCCR 913

Hon'ble Judges : H.L. Dattu, J;A.S. Bopanna, J

Bench : Division Bench

Advocate : B.C. Prabhakar and C.K. Subramaiya, for the Appellant; M.C. Narsimhan, for K.B. Narayana Swamy, for the Respondent

Final Decision : Dismissed

Judgement

1. The facts leading to this appeal are that the respondent-Engineering and General Workers Union (for short "the Union") espousing the cause of artisans and artiste, claiming that the said persons are the workmen of the appellant i.e., The Karnataka Handicrafts Development Corporation (for short "the Corporation") had raised certain disputes as far back as in the year 1976 which related to the demand regarding payment of bonus from the years 1976-77 onwards, payment of lay off compensation to the 15 employees named therein and also with regard to the refusal of employment to the workmen named therein. Since the appellant did not concede to the said demands, the respondent raised a dispute before the Conciliation Officer which resulted in the failure report being sent to the Government. Therefore, the Government by its order dated 15/16th January 1981 referred the points of dispute to the Labour Court, Bangalore. Before the Labour Court, the parties filed their claim and counter statement which resulted in framing of certain additional issues and thereafter the Presiding Officer, Labour Court, after the industrial adjudication, has passed the award dated 7.7.2000 whereunder the claim made by the respondent-Union

on behalf of the sponsored workmen has been upheld by the Labour Court. The appellant/Corporation claiming to be aggrieved by the said award questioned the same before the learned Single Judge of this Court in WP No. 48132/01 (L). The learned Single Judge by order dated 9.1.2002 has upheld the award passed by the Labour Court and has consequently rejected the writ petition. Therefore, the appellant/Corporation questioning the said order dated 9.1.2002 approving the award dated 7.7.2000 is before us in this appeal.

2. Sri B.C. Prabhakar, learned Counsel appearing for the appellant while assailing the order passed by the learned Single Judge would contend that the learned Single Judge has failed to notice that there was no sufficient evidence before the Labour Court to come to the conclusion that the persons in whose favour the dispute had been raised by the respondent-Union were workmen as contemplated u/s 2(s) of the Industrial Disputes Act, 1947. Further, in any event, there was no jural relationship of employer and employee between the appellant and the said persons and therefore the issues raised by the respondent/Union cannot be considered as an Industrial dispute. In elaborating the said contention the learned Counsel would contend that the persons concerned were artisans and artists which was their hereditary profession who were concentrated in the area of Channapatna. They had the skill of making wooden toys and other articles. With the object of preventing exploitation of such skilled artisans, the appellant/Corporation had evolved a scheme for encouraging them by which, whenever the Corporation received bulk orders for supply of such toys and other articles, it would contact such persons, provide them the materials such as Wood, Powder etc, and also permit them to use the lame installed by the Corporation. Such supply of material was being made on a loan basis and after the end product was ready, the same was received by the Corporation and out of the payment for the charges for preparing the same it would be made to them after deducting the cost of the materials supplied. The learned Counsel therefore contends that such persons are independent contractors or entrepreneurs in their own right and they can never be considered as workmen under the Corporation. If they cannot be classified as the workman of the Corporation, then the other question of either paying them the bonus, lay off compensation or any other benefit does not arise and furthermore since there is no jural relationship, the question of refusal of employment as claimed does not arise. In addition, the learned Counsel also sought to contend that the respondent/Union in any event could not have espoused the cause of the said persons. In this regard, the learned Counsel would submit that the tests for determination of the relationship of the employer and employee has been considered by the Apex Court and several other Courts. Merely the right to reject the end product though amounting to supervision, cannot be the only test to determine the relationship. The Labour Court has proceeded at a tangent and has come to a wrong conclusion and further the learned Single Judge without appreciating this aspect of matter has approved the said award and therefore according to the learned Counsel the order passed by the learned Single Judge is not sustainable. In support of the said contention, the

learned Counsel has placed reliance on the decision of the Supreme Court in the case of C.E.S.C. Limited and Others Vs. Subhash Chandra Bose and Others, , Madhanagopal alias Madhan Vs. Rasika Ranjani Sabha and Another, and Ram Singh and Others Vs. Union Territory and Others, .

3. Per contra Sri M.C. Narasimhan, learned Senior Counsel for Sri K.B. Narayanaswamy, learned Counsel for the respondent in order to justify the award would refer to the points of dispute before the Labour Court which forms the basis for the Labour Court to decide the matter. He would further contend that even with regard to the additional issues which has been framed by the Labour Court, both the parties have adduced evidence and the Labour Court has considered each of the issues framed by it with reference to the points of dispute before it and on such reference to the evidence has come to its conclusion. The learned Senior counsel would contend that the issues which were before the Labour Court are all matters which required evidence to prove a particular fact and based on such evidence, the Labour Court has rendered a finding of fact. Therefore the challenge to such an award in a proceedings under Articles 226 and 227 of the Constitution of India and the scope of examination of the same by this Court is very limited and well defined. Therefore the learned Single Judge, after referring to the evidence available on record, has proceeded to examine as to whether the evidence available before it has been considered by the Labour Court before coming to its conclusion. It is after such satisfaction, the learned Single Judge has approved the award passed by the Labour Court and therefore no fault could be found either with the award passed by the Labour Court or with the order made by the learned Single Judge. In order to answer the contentions raised by the learned Counsel for the appellant with regard to jural relationship, learned senior counsel would point out to the evidence which was available before the Labour Court and the nature of the work and also the fact that the appellant was registered as a factory under the provisions of the Factories Act and would indicate that there was manufacturing process being undertaken in the premises which can only be done with the cooperation of the employer and employee. Therefore any work performed can only be by a workman. Even otherwise, the mere fact that the piece rate wages were being paid to the persons concerned cannot go against the interest of the workman. The learned senior counsel would further contend, that once such a co-operation between the workman and the management is evident, it only follows that the statutory benefits which are liable to be paid are required to be paid by the management and in this regard in fact the Labour Court has awarded the statutory minimum which is payable and therefore, no grievance can be made out by the appellant. With regard to the judgments cited by the learned Counsel for the appellant, the learned Senior counsel contended that they are not applicable to the facts and circumstances of this case since it is well established that when there is such a dispute with regard to the jural relationship, it is the pronounced view of the Hon'ble Supreme Court, even in the cited decision, that it is the factual finding which would be material and therefore the Labour Court having rendered such a

factual finding has come to the right conclusion and hence the same does not require interference. On the contention regarding espousal, the learned senior counsel would point out that the entire group of workmen, who had a grievance, approached the Industrial Adjudication Process. They have been represented by the Union and therefore the same cannot be a grievance and in any event, the appellants cannot raise this issue at this stage since the finding rendered by the Labour Court on that aspect had not been challenged by them while filing the writ petition and as such they have accepted the said finding. For all these reasons, the learned senior counsel urged that the writ appeal requires to be rejected.

4. Having heard the respective learned Counsel appearing for the parties, the basic issue appears to be with regard to the jural relationship of employer and employee. On this factual aspect, the Labour Court has rendered its finding. In order to appreciate the correctness or otherwise of the finding, we deem it proper, at the outset, to advert to the judgments cited by the learned Counsel for the appellant so as to clearly understand the legal position with regard to the nature of control on which the appellant has laid stress by relying on the said judgments. More particularly, since in the case of Nilgiri Co-operative Marketing Society Ltd (2004(II) LLJ 68), the question that arose before the Hon'ble Supreme Court was with regard to the status of the persons who were being engaged for the purpose of unloading, unpacking of gunny bags, stitching the bags etc in the marketing yard belonging to the Society. Though they were carrying out the work in the said premises, the fanners, who brought the product to the yard, would engage such persons for the said purpose and the payments would be made by the persons engaging them and in this regard the fanners had the liberty to engage their own men also and there was no compulsion that only those persons should be engaged. In that context, after detailed consideration, the Hon'ble Supreme Court has held that the said persons cannot be held to be the workmen of the Society. While doing so, the Hon'ble Supreme Court has referred to its various earlier pronouncements on this aspect of the matter to look into the view taken in different circumstances and after analysing the said judgments, the Hon'ble Supreme Court in the facts of the Nilgiri's case has held that they are not the workmen. In the case of Nilgiri Co-operative Marketing Society Ltd (cited supra) the Hon'ble Supreme Court has not laid down any one particular method to be adapted in this regard, but, has indicated that the entire circumstances of each case would have to be considered. In this regard, the following lines would be relevant:

The question in each case has to be answered having regard to the fact involved therein. No single test - be it control test, be it organisation or any other test - has been held to be determinative factor for determining jural relationship of employer and employee.

Further the Hon'ble Supreme Court in para 50 of the said judgment has also held as follows:

50. The question whether the relationship between the parties is one of the employer and employee is a pure question of fact and ordinarily the High Court while exercising its power of judicial review shall not interfere therewith unless the finding is manifestly or obviously erroneous or perverse.

5. If the said observations of the Hon"ble Supreme Court is kept in view not only for assessing the fact situation in the case on hand, but also to consider the other two judgments relied on by the learned Counsel for the appellant, what is clear is that in the case of C.E.S.C. Limited and Others Vs. Subhash Chandra Bose and Others, , it was under the provisions of the ESI Act wherein the relationship was to be determined with reference to Section 2(9) of that Act. While considering that aspect under the said provision, normally the relationship of employee either with the principal employer or the immediate employer would be the question. The test would be applied only to find out as to whether the employee is under the direct control of the principal employer or that of the immediate employer. Therefore the test applied in such a situation may not be helpful in considering the aspect in an industrial adjudication where, whether at all a relationship is there or not is to be established. Even otherwise, the said case was in a proceedings under Article 226 of the Constitution of India. Similarly in the case of Ram Singh and Others Vs. Union Territory and Others, , the test was with regard to the contract labour. In the said case, the matter was initially before the Central Administrative Tribunal and thereafter in a writ proceedings under Article 227 of the Constitution. In the said decision itself, the Hon"ble Supreme Court in para 16 has clearly stated mat the question whether the employment through a contractor was genuine or a camouflage was one of fact and had to be raised and proved before an Industrial Adjudicator. As already stated above, the Hon"ble Supreme Court in the case of Nilgiri Co-operative Society has stated that the said vexed question would have to be tested on the facts involved and also regarding the limited power of judicial review when there is a finding on such pure question of fact.

6. In this background, the finding rendered by the Labour Court requires to be examined keeping in view the framework within which the Judicial review is permissible. The points of dispute as noticed by us above has been referred to by the Labour Court in the course of the award and further in view of the contentions taken in the counter statement filed by the appellant-Corporation, the Labour Court has framed as many as 6 issues. In this regard, the third issue reads as hereunder:

3. Whether the second party proves that the artisans are not the "workmen" within the meaning of Section 2(s) of the I.D. Act and mat it is not an Industrial Dispute?

7. We have extracted the said issue since much emphasis was laid on this aspect of the matter by the learned Counsel appearing for the appellant. The Labour Court, after framing the issue and recording the evidence of the parties, has considered the said issue No. 3 as the first point of consideration. In this regard,

the Labour Court has also noticed the importance of the said issue and has examined the same with reference to the evidence on record. While analysing the evidence of MW. 1 who was working as a Manager during the years 1981-84 in the appellant-Corporation, the Labour Court has referred to the nature of the work which was being given to the artisans; thereafter the learned Judge has specifically referred to the cross -examination of MW. 1 wherein he has stated that the second party was registered under the Factories Act; that they were having lathes for the use of artisans and more than 20 persons were working on the production side and the others were doing the other work. The said witness had also admitted that the finished products used to be checked by the Manager or attender and that advance was being given to the workers. He also admits that in Ex.W.28, it has been indicated as wages being paid to the artisans but however, he attempted to explain that it was by mistake and it should be read as "Art charges". The said explanation, according to us, is of no consequence since the document indicates that it is wages. Further, the Labour Court has also noticed the evidence of MW.2 who was working as a Manager in the appellant-Corporation during the year 1992. His evidence is also in the same lines as that of MW. 1 and he also admits that the Centre has been registered under the Factories Act and even though he had attempted to point out that the same had been cancelled thereafter, there is no material whatsoever. Therefore the fact that the centre was registered as a factory remains established. The said witness also admits that the persons concerned in the dispute were working in the centre. Thereafter while assessing the evidence on behalf of the respondents, the Labour Court has referred to the evidence adduced through WW.1, WW.2 and WW.3 in support of the case of the workmen in question. The said WW1 is none other than the Secretary of the Union which has espoused the cause of the workmen. WWs.2 and 3 are the artisans who had stated with regard to the nature of the work performed by them and the manner in which the payment was made. In their evidence Exhibit W2, a receipt was marked regarding the payment and also the vouchers at W22 to W38 were marked to indicate that while paying the wages deductions were made towards the advance amount and the festival advance. Keeping in view the said oral and documentary evidence adduced by the parties the Labour Court proceeded to examine as to whether the artisans concerned would answer the definition of workman as contemplated under the provisions of the Industrial Disputes Act. While doing so, the Labour Court has taken into consideration the entire process whereunder the appellant Corporation would entrust the work to the persons concerned along with the materials required for such work and the work would also be performed in the premises where the lathe is provided and even though certain part of the work would be carried home by the artisans, the end product ultimately would be completed and come to the appellant Corporation and while inspecting the same before receiving, the corporation would have the right to reject any of these articles or toys which are prepared by the said artisans which do not measure up to the specifications given for preparation of the said toys.

8. While examining the said nature of transaction in order to find out as to whether the said transaction would amount to jural relationship of employer and employee in addition to the artisans being workmen, the Labour Court has taken into consideration the entire gambit of the matter and a comprehensive test has been applied and not merely the supervision test as contended by the learned Counsel for the appellant. After noticing the nature of relationship, the Labour Court has referred to the pronouncement of the Hon'ble Supreme Court in the case of Hussainbhai, Calicut Vs. The Alath Factory Thezhilali Union, Kozhikode and Others, , the case of Shining Tailors v. I.T.V.P. 1983 SCC (L& S) 533 and in the case of Silver Jubilee Tailoring House and Others Vs. Chief Inspector of Shops and Establishments and Another, and by applying the principles laid down in the said judgments has proceeded to hold that the artisans named in the reference are workmen as defined u/s 2(s) of the ID Act and since there is a dispute between the said workman and the management, the same constitutes an Industrial Dispute.

9. Since Sri B.C. Prabhakar, learned Counsel for the appellant was very vehement in his contention that such a view taken by the Labour Court cannot be sustained, we have also referred to the oral evidence of the parties and also to the documentary evidence placed on record only to examine whether any evidence available has been omitted by the Labour Court, or if anything is considered without evidence. The appellant-Corporation had marked two registers as Ex. M1 and M2. The said registers indicate that the names of the persons are mentioned therein; the material supplied to them and in fact in certain entries, it is also seen that out of the wood, which is given to the workman, the excess quantity after manufacture of the article or toy has been received back. Further the sand paper and powder are given to the said persons for the use in the manufacturing of the items. The mere production of the said register and the said entries contained therein would not discharge the heavy burden of proof which was placed on the appellant-Corporation vide issue No. 3 since the said register can only indicate that since it is a skilled work where particular type of material has to be used, the same has been supplied by the management and the fact that excess material is returned probabilities this and the same cannot lead us to any conclusion in the line of argument addressed in that regard by the learned Counsel for the appellant regarding entrepreneurship. On the other hand, the documents marked on behalf of the workmen would indicate that the said issue is being raised on behalf of the artisans concerned ever since the year 1976 and even though in the counter statement filed before the Labour Court, the appellant has attempted to make out a case that there is no relationship whatsoever, what requires to be noticed is the first reply which was issued by the Managing Director of the appellant-Corporation to the Labour Officer dated 28.9.1978 which is marked as Ex.W.40. In the said reply, the appellant-Corporation has not contended in this tenor but it states that they are not their permanent employees and that the bonus had been disbursed to only permanent employees of the Corporation and not to others which indicates that

the denial was regarding permanency. Further the workmen can work at the centre at their convenience and that the artisans are working as piece rate contractors and not as employees of the Corporation is the other contention. The said contention would indicate that although it is admitted that they have been working on piece rate basis, there is no fixed hours of work. The stand appears to be that they are not permanent employees but would work when there is excess work available. This also has to be borne in mind while examining whether the Labour Court has come to a proper conclusion. Further Ex.W.41 dated 1.4.1977 is an office order which has been issued by the appellant-Corporation which indicates that incentive has been fixed depending on the wages earned by the artisans which would also indicate that apart from the piece rate wages, certain incentives were also paid for getting the work done which would not have been the case if they were independent persons doing the job on payment of art charges. Yet another exhibit in W42 indicates that in the letter addressed on behalf of the appellant-Corporation on 9.5.1979 to the Labour Officer with regard to the lay off wages, it is indicated that the artists referred to are working in the Centre on piece rate basis which goes to show the contradictory contentions being taken by the appellant-management. Therefore, looking to the said evidence which was available before the Labour Court on the question as to whether the artisans answer the definition of workmen, the Labour Court has not committed any error in arriving at a finding of fact nor is there any perversity. That apart, while examining this aspect of the matter, the decisions relied on by the Labour Court in the case of Silver Jubilee Tailoring House and Shining Tailors have in fact been referred to by the Hon'ble Supreme Court while considering the case of Nilgiri Cooperative Marketing Society and the same have not been commented upon but the principles therein have been taken note of by the Hon'ble Supreme Court. The Labour Court has appropriately placed reliance on the said decision and arrived at its finding and since the said decisions still hold the field even after Nilgiri case, the Labour Court cannot be faulted.

10. Thus the Labour Court after having come to the conclusion that the persons concerned were workmen of the appellant-Corporation has proceeded to examine the other points of dispute. While doing so, with regard to the issue of refusal of employment, the Labour Court has once again referred to the relevant portions of the evidence of the witnesses and has come to the conclusion that there has been refusal of employment in respect of 5 persons named in the award and the others have left on their own. Further with regard to the dispute regarding bonus, the same had been raised in issue No. 5 and while considering the same, the Labour Court has once again referred to the evidence of the parties.

Even though the claim for bonus was at 20%, the Labour Court has appropriately come to the conclusion that when once the relationship is established, the bonus would have to be paid and that the management had not produced any materials to show that the management had incurred losses during the relevant years. Thereafter the Labour Court has rightly awarded only the statutory minimum of

8.33% for me said years. With regard to the lay off compensation also, the Labour Court, after referring to the evidence, has come to the conclusion that the second party has not disputed laying off the said workmen during the said period. One another aspect which we notice is that even though the management had put forth the case that when they had received orders for such work from their clients, such orders were being executed by the said artisans and that it was not a regular feature, they have not placed any material to indicate the order position during the said period. In any event, since the Labour Court has come to the conclusion that they are the workmen of the appellant-Corporation, it was justified in awarding lay off compensation for the period in question.

11. Regarding the submissions of the learned Counsel for the appellant questioning the right of the respondent/Union to espouse the cause of workmen concerned, the Labour Court has considered this issue and has come to the conclusion that the respondent being General Workers Union was justified in espousing the cause of the workmen concerned. That apart, even though the said finding had gone against the appellant-Corporation, the same was neither raised as a ground in the writ petition nor was it argued before the learned Single Judge. Hence, that issue does not require detailed consideration by us since what has not been questioned or argued before the learned Single Judge, cannot be allowed to be raised in this appeal. Even otherwise the said contention cannot be accepted for the reason that this issue relating to the dispute which was referred for adjudication had arisen in the year 1976 itself and from then onwards, the respondent/Union has addressed several letters to the appellant-Corporation which are at Exhs.W.1 to W16(a). Despite receipt of all these letters as per the postal acknowledgements marked, at no point of time has the appellant Corporation replied and disputed the right of the Union to address such letters. Further, even in the first reply which was filed before the labour Officer, the right of the Union to raise the said issues has not been questioned by the appellant-Corporation. Therefore, the conduct of the appellant-Corporation prior to the filing of the Counter statement before the Labour Court and the conduct after the issue was decided against them by the Labour Court would indicate that they had accepted the espousal to be in order. Further even before the Labour Court, it has been stated that there is a resolution to represent the said persons and this has not been seriously challenged by the appellant. Therefore the contention in this regard requires to be rejected.

12. In this background, a perusal of the order dated 9.1.2002 passed by the learned Single Judge in the writ petition would indicate that the learned single Judge has looked into the award in detail and has noticed that the Labour Court had referred to the evidence which was available before it and after referring to the said evidence had come to its conclusion. Therefore, the learned Single Judge had thought it fit to reject the writ petition. We do not see any error in the reasoning or conclusion reached by the learned Single Judge.

In the result the writ appeal is devoid of merits and the same is rejected with no

order as to costs.