

(2010) 06 MAD CK 0138

In the Madras High Court

Case No : Writ Petition No's. 10981 and 16704 of 2001

The Management of Ennore Foundries Limited

APPELLANT

Vs

The Workmen, Ennore Foundries Co-op. Canteen Employees Union, The Management of Ennore Foundries Ltd., Co-operative Canteen and The Presiding Officer, Industrial Tribunal
The Workmen, Ennore Foundries Cooperative Canteen Employees Union Vs The Management, Ennore Foundries Ltd., The Management Ennore Foundries Co-operative Canteen Ltd. and The Presiding Officer, Industrial Tribunal

RESPONDENT

Date of Decision : 08-06-2010

Acts Referred:

Factories Act, 1948 — Section 18(1), 46(1)
Factories Rules — Rule 65, 66, 67, 70, 70(6)

Citation : (2010) 06 MAD CK 0138

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : K.M. Ramesh, in W.P. No. 16704/2001 and Sanjay Mohan, for S. Ramasubramanian and Associates in W.P. No. 10981/2001, for the Appellant; K.M. Ramesh, for Respondent 1 in W.P. No. 10981/2001, Sanjay Mohan, for S. Ramasubramanian and Associates for Respondent 1 in W.P. No. 16704/2001 and R.S. Varadarajan, for R2, for the Respondent

Judgement

K. Chandru, J.—In the first writ petition, the petitioner is the Management of M/s. Ennore Foundries Limited. They have filed the writ petition seeking to challenge the Award of the Industrial Tribunal, Chennai made in I.D. No. 106 of 1998 wherein and by which the workman employed by them through Ennore Foundries Cooperative Canteen Limited to be absorbed in the regular rolls of Management and also fix their salary by a formula after discussing with the representatives of the trade union. That writ petition was admitted on 12.06.2001. Pending the writ petition, an order of interim stay was granted.

2. Thereafter, the Trade Union representing the workman filed application in

WPMP No. 19417 of 2003 seeking for a direction to pay Rs. 48,000/- towards arrears of wages from 01.01.998 to 31.12.2002 and for continued payment of Rs. 800/- per month to each of the employees pending disposal of the writ petition. This Court by order dated 31.01.2004 directed the Management to pay arrears payable up to 31.12.2003 in 10 monthly instalments and a further direction to pay Rs. 800/- for each of the employee commencing from January 2004 pending disposal of the writ petition.

3. Though an interim relief in the nature of a direction to pay Rs. 2000/- per month was sought for in WPMP NO. 28545 of 2001 by the Management, no orders have been passed. Thereafter, the Union filed WPMP No. 28544 to vacate the interim order and WPMP No. 19418 of 2002 for fixing an early date. In those petitions, no orders were passed.

4. Thereafter W.P. No. 13960 of 2001 was filed by the Management of Ennore Foundries Co-operative Canteen Limited represented by its Special Officer, challenging the very same Award. That writ petition was admitted on 02.08.2001. However, the stay application was dismissed as infructuous since there was already a stay operating against the Award. It is the claim of the cooperative society that the workman covered by the order of reference were their employees and not the employees of the principal employer viz., M/s. Ennore Foundries Limited for whose benefit the cooperative Society was run.

5. The workmen who were also aggrieved by the same Award filed W.P. No. 16704 of 2001 and sought for setting aside the Award in so far as it had denied the relief of absorption of the canteen workers on the regular rolls of the foundries from the date of dispute namely 14.07.1994. That writ petition was admitted on 14.09.2001 and directed to be heard along with the other two writ petitions.

6. In view of the interconnectivity among the three writ petitions, they were heard together and a common order is passed.

7. For the sake of convenience, parties are referred to as the Management, Cooperative Society and the Union.

8. The Trade Union representing the workers engaged in the canteen run for the benefit of Ennore Foundries Limited raised an identical dispute that the workers employed in the canteen attached to the factory were to be absorbed on the regular rolls of the company. The dispute raised by them could not be resolved by the conciliation officer and a failure report was sent to the Government. The State Government by G.O. Ms. No. 575 Labour and Employment Department dated 31.07.1998 referred the issue for adjudication by the Industrial Tribunal at Chennai.

9. The Industrial Tribunal took up the dispute as I.D. No. 106 of 1998 and issued notice to the parties. The trade union filed a claim statement on 07.09.1998. On behalf of the Management, a counter statement was filed during April 1998. The

Cooperative Society, which was made as a second respondent before the Tribunal filed their counter statement dated 21.04.1999.

10. Before the Tribunal, the Trade Union filed 44 documents and they were marked as Exs.W1 to W44. On the side of the Management, 15 documents were filed and they were marked as Exs.M1 to M15. The Tribunal on the basis of these materials and on the basis of certain legal precedents held that the Cooperative Society was only a nominal agency and it was camouflaged to run the canteen though the supervision and control vest with the management. Since it is obligatory on the part of the Management to establish a statutory canteen in terms of Section 46(1) of the Factories Act, 1948 r/w Rule 70 and that the Society was a mere spectator in running the show. It is the Management which makes a wholsum subsidy for running the canteen. There are no Secretary to the society and no bank account was operated by the society. The cheques were issued directly by the Management as found in EXs.W23 to W27. The recovery of subscription was made from the workers solely by the Management and that the society was requested to be wound up by the Management. Thus the Management which had full control over the society. Therefore, they should be directed to absorb the employees on the regular rolls of the Management. Even though there may be a Managing Committee running the society but since there is a statutory obligation to run a canteen in the factory the Management is bound to absorb the workmen.

11. Assailing the Award Mr. Sanjay Mohan, representing M/s. Ramasubramanian Associates contended that the order of reference itself was made against two employers viz., the Management and the Co-operative Society. The order of reference did not indicate that the Tribunal was directed to go into the so called sham and nominal nature of the contract. No oral evidence was let in by the Trade Union to prove that the arrangement between the Management and the co-operative Society was sham and nominal. The Tribunal by simply referring to several decisions passed the Award without referring to the crucial documents which were filed. Merely because the company was subsidizing the canteen that by itself will not make the society either a non-entity or that it was an agency of the Management. The learned Counsel also submitted that u/s 46(1) of the Factories Act, 1948, it is for the Government to frame rules with reference to running of canteen in any factory. Pursuant to the said power under Rule 70 the Tamil Nadu Government has framed the rules relating to setting up a factory canteen. The Rule 70 reads as follows:

70(6) Where the workers of a factory in which a canteen has been provided by the occupier in accordance with Rules 65 to 67 for the use of the workers, desire to run the canteen by themselves or on a cooperative basis with share capital contributed by themselves, the Management may permit them to run the canteen in accordance with bye-laws of the Co-operative Canteen, the Madras Cooperative Societies Act, 1932 and the Rules framed thereunder, subject to such conditions as the Chief Inspector may, in consultation with the Registrar of

Cooperative Societies, Madras, impose.

12. on the strength of Rule 70(6) of the Factory Rules, the learned Counsel for the Management contended that the obligation to run a canteen may be on the Management but it need not be done directly and can be done by a cooperative society as has been done in the present case. Even if any subsidy provided that by itself will not make the society a non-entity in the eye of law. He also referred to the settlement u/s 18(1) reached between the cooperative society and the trade union dated 29.03.1987. This is for the purpose of showing that the society is an independent entity and an employer for all purposes under the I.D. Act. With reference to the grievance projected by the trade union, the cooperative society is being itself an employer has to resolve the dispute raised by the employees working in the canteen. Since they are employees of the co-operative society and they cannot made a claim to get absorbed on the rolls of the Management. The said settlement was marked as Ex.M1. There has been a subsequent settlement dated 11.11.1990 (Ex.M14) and 02.12.1994 (Ex.M5). It was alleged the Tribunal did not even refer to the effect of Ex.M1, M14, M5.

13. The learned Counsel also placed reliance upon the order appointing a special officer to the cooperative society marked as Ex.M3. The counsel also placed reliance upon various balancesheet and Profit and Loss account marked as Exs.M8 and M9 and Trading Account Ex.M10 to show that the cooperative society was having its own independent balance sheet and profit and loss account. The counsel also referred to the registered bylaws under which the cooperative canteen was running as a separate society. The certified bylaws were marked as Ex.M12. These factors were not referred to by the Tribunal in the impugned Award. The learned Counsel stated that in case of a sham or nominal contract, there will be no role at all for an agent. But once it is proved that the agency is an independent body having name, style and succession, then it cannot be considered as a case of a sham and nominal arrangement. He also referred to the line of decisions rendered by the supreme Court to hold that merely because there is a supervision that by itself will not be a test for holding that a person is a employee of a principal employer.

14. Per contra Mr. K.M. Ramesh, learned Counsel for the Trade Union submitted that the order of reference made by the Government cannot be understood in a pedantic manner and it has to be construed after knowing the dispute between the parties. He also stated that an application for leading oral evidence was made but that was not considered by the Tribunal. He also circulated the document in Ex.W10 in I.D. No. 14 of 2006 wherein the Management had informed the Deputy Registrar of Cooperative Society, Ponneri that in view of the continued incurring of loss by the Society, the Management cannot continue to subsidize the Canteen. Therefore, they requested the Deputy Registrar to wind up the co-operative canteen. He further submitted that the Chief Executive Officer of the canteen along with four officers of the Management was a dominant party in the society and therefore there is a virtual control over the society. The Tribunal had

taken note of these factors.

15. The learned Counsel for the trade union circulated a recent decision of this Court in *The General Manager, Bharat Heavy Electricals Ltd. v. Canteen Workers of Bhel* in W.P. No. 10861 of 2000 dated 04.01.2010. This is for the purpose of contending that in identical circumstances, this Court had upheld the Award passed by the Labour Court directing the absorption of canteen workers as the employees of the Principal employer BHEL. However in that case in Paragraphs 81,82, this Court in distinguishing the judgment of the Supreme Court in *Haldia Refinery Canteen Employees Union and Others Vs. Indian Oil Corporation Ltd. and Others*, had observed as follows:

81. In *Haldia Refinery Canteen Employees Union* case there was no disciplinary powers to the company against the employees of the Society.

However in BHEL case the management was exercising the disciplinary powers, which was evident from the action taken against an employee of the canteen at the instance of BHEL.

82. The other factor which was taken in *Haldia Refinery Canteen Employees Union* case not to follow the judgment in *Indian Petrochemicals Corporation Ltd.*, was the fact of settlement arrived at between the contractor and the workmen of the canteen in the presence of Assistant Labour Commissioner. The said fact was taken into account by the Supreme Court to decide the point that the workmen were treating themselves to be the employees of the contractor and not that of the management.

(Emphasis added)

In the present case, because here the cooperative society had entered into settlements with the trade union which were also marked as Exs.M14, 1 and 5, and these factors were not considered by the Tribunal.

16. Mr. Sanjay Mohan learned Counsel for the Management placed strong reliance upon the following decision reported in:

1. *Workmen of Ashok Leyland Ltd. and others Vs. Ashok Leyland Ltd. and Others*,
2. *Haldia Refinery Canteen Employees Union and Others Vs. Indian Oil Corporation Ltd. and Others*, and
3. *International Airport Authority of India Vs. International Air Cargo Workers" Union and Another*, .

17. Per contra, Mr. K.M. Ramesh, learned Counsel appearing for the Trade Union placed reliance upon the judgments of the Supreme Court in *Indian Petrochemicals Corporation Ltd. and Anr. v. Shramik Sena and Ors.* reported in 1999 (4) LLN 49 and *The Saraspur Mills Co. Ltd. v. Ramanlal Chimanlal and Ors.* report in 1973 II LLJ 131.

18. Though these matters were elaborately argued, this Court is not inclined to

venture to render a finding on the factual dispute between the parties. While the Tribunal went into the various decisions cited at the bar, it did not render any finding with reference to the actual materials placed before it. The effect of the cooperative society being a separate entity having the name, style and succession as well as its own balance sheet, profit and loss account being prepared and also the fact that it had entered into the settlements under the ID Act with the same trade union was not at all considered by the Tribunal. Even for rendering a finding that the society was only paper arrangement and the real employer was the Management, the Tribunal did not take note of relevant aspects. Hence, the award suffers from mechanical application of mind due to not advertent to relevant factors.

19. Under the circumstances, there is no other option except to remit the matter for fresh disposal by the Tribunal. Accordingly, the impugned Award in I.D. No. 106 of 1998 dated 30.03.2001 is hereby set aside and I.D. No. 106 of 1998 is remitted back to the Industrial Tribunal, Chennai 104 for fresh disposal in accordance with law. Since it is a dispute of the year 2001 and more than 10 years have elapsed, the Tribunal shall give preference to the disposal of the ID after due opportunity to the parties and in any event shall dispose of the same within 4 months from the date of receipt of the order. If parties make request for leading further evidence that may also be granted by the Tribunal.

20. With the above direction, all the three writ petitions are allowed to the extent indicated above. However, there will be no order as to costs. Consequently, connected miscellaneous petitions are closed.