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(2005) 09 AHC CK 0241

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 5972 of 2001

Triveni Sheet Glass Works Limited — APPELLANT

Vs

State of U.P. and Others — RESPONDENT

Date of Decision : 08-09-2005

Acts Referred:
Constitution of India, 1950 — Article 226
Uttar Pradesh Industrial Disputes Act, 1947 — Section 2, 6N

Citation : (2005) 6 AWC 6006 : (2006) 108 FLR 655

Hon'ble Judges : V.C. Misra, J

Bench : Single Bench

Advocate : J.N. Tiwari, assisted by C.B. Gupta, for the Appellant; Shyam Narain, for the respondent No. 3, for the Respondent

Final Decision : Dismissed

Judgement

V.C. Misra, J.—This writ petition has been filed under Article 226 of the Constitution of India by the petitioner M/s Triveni Sheet Glass Works Limited seeking a writ, order or direction in the nature of certiorari quashing the award dated 25.7.2000 (Annexure-12 to the writ petition) given by the labour Court, Allahabad in Adjudication Case No. 49 of 1990 published on 27.11.2000.

2. The facts of the case in brief are that the petitioner is a company registered under the Companies Act, 1956, having its registered office at Allahabad and it runs a factory in which glass is manufactured. The main ingredient for running the glass factory is the furnace oil, which is used in the furnace for melting the glass, which is supplied by the Indian Oil Corporation situated at Subedar Ganj, Allahabad from where it is transported to the factory premises of the petitioner by tankers. One Sri Amar Nath Singh respondent No. 3-workman was assigned the job of taking delivery of the furnace oil on behalf of the company from the Indian Oil Corporation and deliver the same at the factory premises for which authorization letters were issued in his favour by and on behalf of the company. Since the services of the workman had been terminated by the petitioner-

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company without complying with the provisions of Section 6-N of the U.P. Industrial Disputes Act, 1947 therefore, the respondent No. 3-workman raised an industrial dispute.

The following question was referred to the labour Court by the U.P. State Government :-

Whether the termination of the services of the workman Sri Amar Nath Singh son of Sri Ram Adhar Singh, Post-Supervisor by its employer with effect from 5.2.1987 was proper and legal? If not, then to what benefits and reliefs, the concerned workman is entitled to receive and with what other/further details?

3. Before the labour Court the petitioner-company denied the allegations of the workman and stated that Amar Nath Singh was not an employee of the petitioner-company but of the contractor-Sri Dilip Chandra who was the proprietor of the firm M/s Pace Development which was given the contract for bringing the furnace oil from Indian Oil Corporation to the factory. However, subsequently it was also stated by the company that the said workman Amar Nath Singh was the employee of another contractor Wayfare Traders.

The written statements were filed and the evidence documentary as well as oral was led by both the parties before the labour Court which after dealing each and every aspect in detail, found that there was nothing on record to show that the company had entered into any contract with any firm neither any licence as required in terms of Contract Labour (Regulation and Abolition) Act, 1970 for taking work from a workman through any contractor had been produced. The labour Court also found on the basis of extensive evidence on record admitted by the petitioner-company referred to in paras-13, 14 and 15 of its award that the company had been taking work from Amar Nath Singh-respondent No. 3 for its own purpose and for bringing furnace oil through authorization letters regularly issued by the company wherein admittedly the name of the contractor was not mentioned. The workman had succeeded in proving his case whereas the employer-company had failed to prove its case. The labour Court ultimately held that the workman was continuously working for the employer-company and thus, there existed a complete relationship of master and servant, and while illegally removing him from services with effect from 5.2.1987, the provisions of Section 6-N of the U.P. Industrial Disputes Act, 1947 (hereinafter referred to as the Act), had been flouted and the workman was entitled to reinstatement with full back wages along with other consequential benefits.

4. The employer-company has filed the present writ petition challenging the said award passed by the labour Court inter alia, on the ground that the labour Court had erred in holding that the respondent No. 3 was the workman of the petitioner-company inspite of his admission in his statement that he was supervisor and was getting more than Rs. 500/-per month as wages and his name was not found on the attendance register or the wages slips and by misinterpreting the delivery letters issued to the workman for taking delivery of

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the furnace oil as the employee of the company instead of an employee of the contractor whereas the authority letter to take the delivery did not make him an employee of the company.

Learned counsel for the petitioner has submitted that the burden of proof lay on the workman to prove his case that he has been working as an employee of the company and this burden of relationship of master and servant was not discharged and more so, once the workman claimed himself as supervisor on a salary of more than Rs. 500/- per month then the admitted fact need not be proved that he is not a workman in this respect he has referred to definition clause Section 2 (k), (y), (z)(iv) of the Act.

Learned counsel for the petitioner has placed reliance on the decision in the cases of The Range Forest Officer Vs. S.T. Hadimani, and Essen Deinki Vs. Rajiv Kumar, which deals with the claim of the workman having worked for more than 240 days in a year preceding his termination and denied by the employer, it was for the claimant to lead evidence to that effect and filing of an affidavit by him which amounts to only his own statement in his favour could not be recorded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had in fact worked as no other proof of receipt of salary or wages for 240 days or order of appointment or engagement for this period so produced by the workman, on this ground alone the award was liable to be set aside. In the present case, the tribunal has arrived at a finding of fact on the basis of relevant material and evidence that the workman had been admittedly engaged by the employer quite for a long period duly authorized to bring the furnace oil from the Indian Oil Corporation to the premises of the factory.

Learned counsel for the petitioner has also relied upon the case of Workmen of Nilgiri Coop. Mkt. Society Ltd. Vs. State of Tamil Nadu and Others, This case deals with the employer and employee through contractor relationship in terms of Contract Labour (Regulation & Abolition) Act, 1970 and the discharge of burden of such proof of relationship being pure questions of fact are required to be decided by the tribunal on the basis of evidence on record and the findings of tribunal would not normally be interfered with by High Court in exercise of power of judicial review. Learned counsel for the petitioner has also placed reliance on the decision in the case of Ram Singh and Others Vs. Union Territory, Chandigarh and Others, which also deals with the nature of employer and employee through contractor relationship, and the employer retains control over the means and work to be done by the contractor, in such circumstances the creation of contract labour would be considered, as sham and camouflage and the employer would not be relieved of his liability in terms with the Contract Labour (Regulation & Abolition) Act, 1970. The tribunal in the present case has based his finding of fact on existence of relationship of employer and employee on the basis of material evidence on record in detail.

Learned counsel for the petitioner has placed reliance on the decision in the case of UP. State Sugar Co. Ltd. v. Om Prakash Upadhyay, reported in 2002 (3) FLR

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600. This case deals with retrenchment of an apprentice and Section 2(oo)(bb) of the Central Industrial Disputes Act would not be attracted in the case of the State Act since the operation of the State Act will not be affected by the Central Act.

These decisions relied upon by the learned counsel for the petitioner do not apply to the present facts of the case.

5. Shri Shyam Narain learned counsel for the respondent No. 3-Amar Nath Singh-workman, has referred to Section 2(i) (iv) of the Act under the provisions of which the petitioner-company becomes the employer of the workman and has referred to the case of Basti Sugar Mills Ltd. Vs. Ram Ujagar and Others, and Bharat Heavy Electricals Limited v. State of U.P. and Ors. reported in 2003 (98) F.L.R. 826 . He has also placed reliance on the case of National Engineering Industries Ltd. Vs. Shri Kishan Bhageria and Others, in respect with the designation of a supervisor. He has relied on a case reported in Arkal Govind Raj Rao Vs. Ciba Geigy of India Ltd. Bombay, wherein it has been held that the salary was immaterial. Shri Shyam Narain has also submitted that even if it is assumed that the respondent No. 3 was provided by the contractor to the petitioner still the respondent No. 3 would be treated as an employee of the petitioner and the provisions of the Act would be attracted in case the termination is made flouting the procedure laid down u/s 6-N of the Act. Apart form the case of M/s Basti Sugar Mills Limited (supra), he has relied upon the case of Indian Farmers Fertilizer Cooperative Ltd. Vs. Industrial Tribunal I, Allahabad and Others, , wherein it is held:

"(6). Section 2(i) of the Act contains an inclusive definition of employer. The effect of Sub-clause (iv) of Section 2(i) is that where the owner of any industry in the course of or for the purpose of conducing the industry contracts with any person for the execution by or under such person of the whole or any part of any work which is ordinarily a part of the industry, the owner of such industry is an employer within the meaning of the Act. Mr. Pathak''s suggestion that the effect of this definition is that the owner of the industry becomes the employer of the contractor is wholly untenable and can even be described as fantastic to deserve serious consideration. The obvious purpose of this extended definition of the word ''employer'' is to make the owner of the industry, in the circumstances mentioned in the sub clause, the employer of the workman engaged in the work which is done through contract. The words used in the sub clause are clearly sufficient to achieve this purpose.

(7)....The position thus is: (a) that the respondents are workmen within the meaning of Section 2(z), being persons employed in the industry to do manual work for reward, and (b) they were employed by a contractor with whom the appellant company had contracted in the course of conducting the industry for the execution by the said contractor of the work of removal of press-mud which is ordinarily a part of the industry. It follows therefore from Section 2(z) read with Sub-clause (iv) of Section 2(i) of the Act that they are workmen of the

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appellant company and the appellant company is their employer....

(12) We have therefore come to the conclusion that the words ''employed by a factory'' are wide enough to include workmen employed by the contractors of factory also."

In the case of Indian Farmers Fertilizer Corporation Limited (supra), the Hon''ble Apex Court has held that, since the question that the workmen in question were not the employees of the company was raised the tribunal had to deal with the question whether they were the employees of the company or not and if on due appreciation of evidence the tribunal came to the conclusion that they were the employees of the company, the said findings of fact by the tribunal being based on evidence could not be assailed.

In the case of M/s Bharat Heavy Electricals Ltd. (supra), the Apex Court has held in para-11 as follows :-

"(11) The definition of ''employer'' given in Section 2(i)(iv) of the Act is an inclusive definition. If the respondents-workmen as a matter of fact were employed with the appellant to work in their premises and which fact is found established after removing the mask or facade of make-believe employment under the contractor, the appellant cannot escape its liability."

6. I have looked into the record of the case, and heard learned counsel for the parties at length and find that, admittedly the petitioner- company had been taking work from Amar Nath Singh-respondent No. 3 for the purpose of bringing essential ingredient, i.e. furnace oil required by the company for running its factory without which the glass cannot be manufactured. Even if it is assumed that Sri Amar Nath Singh was the man of the contractor, even then as per settled law, for all purposes, the petitioner-company is his employer in terms of the provisions of Section 2(i)(iv) of the Act.

I also find that the labour Court has, after thorough examination and critical scrutiny of the pleadings and material on record and the relevant evidence, arrived at a well-reasoned award dated 25.7.2000 (Annxure-12 to the writ petition) on the basis of the findings of fact. More so, the said findings of fact arrived at by the respondents on the basis of which the impugned award has been passed being based on relevant material on record are not open to challenge before this Court under Article 226 of the Constitution of India while exercising its extra ordinary jurisdiction. The petitioner has also not been able to demonstrate before this Court that the findings of fact recorded in the impugned award suffers from any illegality or error apparent on the fact of the record.

In view of this, the writ petition is dismissed. The stay order, if any, stands vacated. No order as to costs.

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