
(2006) 07 KAR CK 0052
In the Karnataka High Court
Case No : Writ Petition No. 3285 of 2001

Vikrant Tyres Limited

APPELLANT

Vs

Mysore Division Hotel Worker's Union

RESPONDENT

Date of Decision : 14-07-2006

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 10, 10 (1)
Factories Act, 1948 — Section 46
Industrial Disputes Act, 1947 — Section 25 F

Citation : (2007) 1 SLJ 352

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : S.N. Murthy and Somashekar, for the Appellant; M.C. Narasimhan, for T. Narayanaswamy and Syed Basheer, for the Respondent

Final Decision : Dismissed

Judgement

Anand Byrareddy, J.—The facts of the case are:

The petitioner is engaged in the manufacture of tyres. The petitioner had employed over 2000 workmen and over 400 officers. The petitioner has a canteen. This is as provided and required u/s 46 of the Factories Act, 1948 (hereinafter referred to as "the Act" for brevity). During the period 10.6.1984 to 9.7.1986, the said canteen was said to have been run and managed by a contractor by the name of Somayaji G. On 3.9.1986, it appears, the said contractor was murdered outside the factory gate. The workmen employed by the contractor were arrested and thereafter, the contract having been terminated even prior to the death of the contractor, the workmen engaged by the contractor were not allowed into the factory premises, as the petitioner claimed that there was no relationship of "master and servant" as between the petitioner and the said workmen. The workmen had raised a dispute that there was illegal termination and sought reinstatement, apart from other benefits. The conciliation having failed, the dispute was referred to the Labour Court, Mysore (hereinafter

referred to as "the Labour Court" for brevity) for adjudication. The Labour Court, after recording evidence and hearing arguments, passed an award on 12.7.2000 directing reinstatement of 59 workmen of the canteen contractor in the services of the petitioner company with 50% back-wages from 15.7.1988, with continuity of service. It is aggrieved by the said award, the present petition is filed.

2. Shri. S.N. Murthy, Senior Advocate, appearing for M/s. S.N. Murthy and Associates for the petitioner, contends that the only issue for determination before the Labour Court was whether the petitioner was the employer of 59 workmen, who were employed by the contractor in the canteen, though three separate issues are sought to be framed by the Labour Court. He would submit that the Labour Court was patently in error in holding that there was an employer - employee relationship between the workmen of the canteen contractor and the petitioner. The Labour Court, being impressed by the contract between the petitioner and the said contractor, whereby the petitioner had agreed to provide a rent-free building with kitchen and dining hall and also to provide other kitchen equipments and catering materials, apart from water and electricity, could not have been taken into consideration to hold that there was a relationship of employer and employee. The petitioner was obliged to provide these facilities to its workmen in terms of Section 46 of the Act and that by itself did not bring about the relationship and it is plain from the relevant clauses in the agreement that it was the obligation of the contractor to run and manage the canteen. The terms and conditions of employment of the workmen engaged by the contractor was as between the said contractor and the workmen. The counsel would also submit that the petitioner had covered the workmen of the contractor under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the EPF Act" for brevity) and the Employees' State Insurance Act, 1948 (hereinafter referred to as "the ESI Act" for brevity) under its code number and paid contributions on their behalf. He would point out that the Labour Court had failed to appreciate that under both the above enactments, the principal employer is saddled with the duty of covering all contract workmen under their Code. And, therefore, the petitioner was carrying out only those statutory duties cast under those enactments and it is not enough proof to establish the relationship of employer and employee between the workmen and the contractor and the petitioner. He would submit that the material evidence placed on record to establish that there was no tangent relationship of employer and employee as between contractor's workmen and petitioner has been overlooked. In this regard, he would draw pointed reference to the cross-examination of the workman before the Labour Court, wherein there are clear admissions as regards the actual relationship. He would submit that there was no possibility of contravention of Section 25-F of the Industrial Disputes Act, 1947 as there was no relationship of employer and employee and the question of terminating the services of the workmen did not arise. He would submit that the hearing in so far as the reference was concerned, having dragged on for over 14 years and since none of the workmen had shown any interest during the

pendency of the proceedings, the petitioner being saddled with such workmen and also being foisted with the liability to pay back-wages, is wholly unjustified and results in severe hardship and prejudice to the petitioner and therefore, would submit, that the petition be allowed.

3. He relies on the following judgments in support of his case:

Indian Petrochemicals Corpn. Ltd. and Another Vs. Shramik Sena and Others, : He would point out that the Supreme Court has held the question whether on the material on record the workmen of the statutory canteen (managed by a contractor) could be held to be workmen of the establishment for all purposes, was a question of fact. And, in view of Sections 2(1) and 46 of the Factories Act, 1948, the Management would treat the respondent-workmen as employees for purposes of the Factories Act, 1948. The said Act does not govern the rights of employees with reference to recruitment, seniority, promotion, retirement benefits, etc. These are governed by other statutes, rules, contracts or policies. Therefore, the workmen's contention that employees of a statutory canteen ipso facto become the employees of the establishment for all purposes, cannot be accepted. And, therefore, the Senior Counsel would submit that the Labour Court having proceeded to arrive at a finding contrary to the material on record, would necessarily warrant interference by this Court to quash the award.

A further reference is made to the case of Haldia Refinery Canteen Employees Union and Others Vs. Indian Oil Corporation Ltd. and Others, : Wherein, the employees of a canteen in a factory governed by the Factories Act, run by a contractor, claimed regularisation in services of the company. On facts it was held not sustainable and that employees in a statutory canteen run by a contractor, are employees of the Management only for the purposes of Factories Act and not for any other purposes. It was found as a fact in that case that the Management was not reimbursing to the contractor, the wages of a workman and secondly that settlement had been arrived at between the contractor and the canteen workmen where the respondent was not a party to either of these transactions.

Workmen of the Canteen of Coates of India Ltd. v. Coates of India Ltd. and Ors. : (2004)3SCC547 : which is to the same effect that workmen in a canteen run by a contractor could be considered as the workmen of industrial establishment only for the purposes of Factories Act.

Dena Nath and others Vs. National Fertilisers Ltd. and others, : Wherein, the Supreme Court has held that labourers employed by a principal employer through a contractor, cannot be deemed to be direct employees of principal employer, in the absence of any notification u/s 10 of the Contract Labour (Regulation and Abolition) Act, 1970, prohibiting the employment of contract labourers in the establishment concerned.

He also places reliance on Surendranagar District Panchayat and Another Vs. Jethabhai Pitamberbhai, : Wherein it was held that a daily wager, whose services were terminated, was required to lead evidence to show that he had worked for

240 days in a year and that the burden could not be placed on the employer and therefore, the award directing his reinstatement under the Industrial Disputes Act, 1947 was bad in law.

4. Shri. M.C. Narasimhan, Senior Advocate appearing for Shri. T. Narayanaswamy for the respondent, would, on the other hand, contend, that the finding of the Labour Court as to the relationship of employer and employee, as between the workmen and the petitioner is concerned, is a finding of fact. It is incorrect to contend that there was no basis for the finding. As is demonstrated from the material on record, namely, that at page 34 of the paper book, there is a clear admission by the petitioner that the Management of the factory constitutes a Committee to supervise the functioning of the canteen and it is called the Canteen Committee and that it is a statutory obligation for the petitioner to have a canteen, as there are more than 3600 employees. It is also admitted at page Nos. 35, 36 and 37 of the paper book as regards the other obligations that are to be discharged by the petitioner in so far as the workmen are concerned and he would submit that on an overall view, the distinguishing features that would be highlighted are that, firstly, the petitioner Management supervises the canteen and in this regard, no matter the language in which the agreement between the petitioner and the contractor engaged to operate the canteen is couched, it would not be tenable to contend that it is an independent contract. Secondly, as it is admitted, the petitioner is obliged to maintain the canteen u/s 46 of the Act and the said Section refers to maintenance of the canteen by the Occupier. And, a reading of Section 2(1) of the Act and Rules 93 and 99 of the Factories Rules, would clearly indicate that it is the Occupier who is responsible for the canteen and the workers.

5. He places reliance on a large number of judgments, which are as follows:

The The Saraspur Mills Co. Ltd. Vs. Ramanlal Chimanlal and Others, : Wherein it was held that since the Factories Act casts a duty on the appellant to run and maintain a canteen for use of its employees. The workers employed in the canteen which was being run by a co-operative society could be held to be the employees of the industrial establishment.

The Elphinstone Spinning and Weaving Mills Co. Ltd. v. Sri S.M. Sable and 9 Ors. Clerks (The Bombay Textile Clerks' Union) 1953ILLJ 752 : Wherein, the establishment of a grain-shop in a textile mill had been statutorily imposed as legislative recognition of an emergency to provide easily available food-grain to workmen and where the mill is required by a statute to do something, that becomes "ordinarily part of the undertaking" for the simple reason that the mill may not decline to give effect to the enactment; and so long as that enactment lasts, it becomes part of an undertaking. And, in a given case, it was held that a clerk employed by a contractor in a ration ship is an employee within the meaning of the Act.

The Ahmedabad Manufacturing and Calico Printing Co., Ltd. (Calico Mills) etc. v.

Their Workmen (Habib Hussain) and Ors. 1953 ILLJ 647 : Wherein, it was held that the workmen employed in a statutory canteen, though run by an independent contractor, are employees of the mill.

Parimal Chandra and Others Vs. Life Insurance Corporation of India and Others, : Wherein it was held that a canteen had become part of the establishment and the Canteen Committees, the Co-operative Society of the employees and the contractors engaged from time to time are, in reality, the agencies of the establishment and were only a veil between the Corporation and the canteen workers and the canteen workers are in fact the employees of the establishment.

Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers' Union and Another, : wherein it was found as a fact that in a case where the Management of a Bank were running canteens for the needs of its employees and provide for the infra-structural facilities, in a dispute the Industrial Tribunal having held that there was a relationship of master and service as between the canteen employees and the bank, and the High Court having interfered with such findings, the Supreme Court held that the findings recorded by the Tribunal could not have been interfered by the High Court on the ground that it is a "case of no evidence".

V.S.T. Industries Ltd. v. V.S.T. Industries Workers' Union and Ors. 2001 ILLJ 470 : Where in it was held that in respect of a statutory canteen, the canteen employees would be the employees of the industrial establishment.

He would also rely on the following authorities:

G.B. Pant University of Agriculture and Technology, Pantnagar, Nainital Vs. State of Uttar Pradesh and Others, .

Barat Fritz Werner Ltd. Vs. State of Karnataka, .

Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., .

Ram Singh and Others Vs. Union Territory and Others, .

Bharat Heavy Electricals Ltd v. State of U.P. and Ors. 2004 SCC (L & S) 506.

Secretary, H.S.E.B Vs. Suresh and Others etc. etc., .

Mishra Dhatu Nigam Ltd., Vs. M. Venkataiah and Others, etc. etc., .

National Thermal Power Corporation Ltd. v. Karri Pothuraju and Ors. 2003 LLR 1007.

J.H. Jadhav Vs. Forbes Gokak Ltd., .

Gujarat Electricity Board, Thermal Power Station, Ukai Vs. Hind Mazdoor Sabha and Others, .

And, he would submit that in so far as the judgments cited by the petitioner are concerned, Indian Petrochemicals Corporation Ltd.'s case (supra) is clearly

distinguishable having regard to the ultimate finding at paragraphs 24 and 25 of the said judgment at page 450 which is the ultimate finding which matters and not the opinion expressed in the first portion of judgment which is relevant.

6. By way of reply, the counsel for the petitioner would contend, that all the cases cited by the petitioner are cases arising under the Contract Labour (Regulation and Abolition) Act, 1970, and that the question involved was whether the contract labourers would become employees of the principal employer. He would submit the law as laid down by the Supreme Court in the Indian Petrochemicals Corporation Ltd.'s case (supra), which has been followed in Haldia Refinery Canteen's case (supra) is the law and accordingly the petition deserves to be allowed.

7. On these rival contentions, the point that would arise for consideration is whether the law as contended by the counsel for the petitioner is settled, by reference to Indian Petro-Chemicals Corporation" case (supra). As pointed out by Shri. M.C. Narasimhan, Senior Advocate, that findings of facts were rendered by the Supreme Court itself in the particular case on the basis of affidavits and other material produced before the Supreme Court and it was held that the workmen in that case were not of the establishment, but of the Shramiksena, which was representing the workmen and that though the canteen in the said establishment was being managed by engaging a contractor and that the canteen had been in existence from inception, it was an admitted fact that the employees who were initially employed, had continued to work uninterruptedly. The continuity of the employment of employees inspite of there being a change of contractors was due to an order made by the Industrial court, wherein the court had held that the workmen were entitled to continuity of service in the same canteen irrespective of change in the contract and accordingly a direction was issued to the Management to incorporate appropriate clauses in the contract to ensure continuity of employment. And, the order of the industrial court was not challenged and it had become final. The court ultimately held that the workmen were the workmen of the appellant Management. The said judgment does not however refer to and consider the earlier judgments of the Supreme Court, which have been referred to by the counsel for the respondent and the judgment in the case of Haldia Refinery (supra) also does not refer to the earlier judgments, but merely follows the opinion expressed in the first part of the judgment in Indian Petro-Chemical Corporation's case. And further, the Coates India case (supra) which has been relied upon by the petitioner was a case decided in the year 1996 but was reported in the year 2004.

8. In Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., (hereinafter referred to as "the SAIL case" for brevity), while referring to The Saraspur Mills Co. Ltd. Vs. Ramanlal Chimanlal and Others, and while noting that the question in that case whether the respondents engaged for working in the canteen run by the co-operative society of the appellant company were employees of the mills and the respondents

having initiated proceedings before the Bombay Industrial Relations Act for payment of D.A. in terms of the award of the Industrial Court, and the objection having been raised that the workmen were employed by the society and not by the appellant, and the case having been decided to the effect that the workers were in fact employees of the Management and the Supreme Court in SAIL case proceeding to analyse the case law has held that the cases discussed would fall under three clauses as follows:

(i) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the Industrial Adjudicator/Court ordered abolition of contract labour or because the appropriate Government issued notification u/s 10(1) of the CLRA Act, no automatic absorption of the contract labour working in the establishment was ordered;

(ii) where the contract was found to be sham and nominal rather a camouflage in which case the contract labour working in the establishment of the principal employer was held, in fact and in reality, the employees of the principal employer himself. Indeed, such cases do not relate to abolition of contract labour but present instances wherein the court pierced the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited;

(iii) where in discharge of a statutory obligation of maintaining canteen in an establishment the principal employer availed the services of a contractor and the courts have held that the contract labour would indeed be the employees of the principal employer.

and has further held that the factual matrix as pertaining in The Saraspur Mill's case (supra) would fall under Category (iii), and has concluded at Para 113 that unless a workman falls within the definition of "contract labour" and unless he falls within the clauses mentioned at para 101, (extracted above) he cannot be treated as a regular employee of the principal employer. In the instant case, on admitted facts, since the workmen were employees of a statutory canteen, it can be safely said that they would fall under category of employees falling under Clause (iii) as stated by the Supreme Court and therefore, since the said judgment and the later judgment have referred to Indian Petro-Chemical Corporation's case, it should be understood that the Supreme Court was aware of the opinion expressed in Indian Petro-Chemical Corporation's case and therefore it is to be held that having regard to the facts and circumstances of the instant case, the workmen would be employees of the management.

9. Hence, the petition stands dismissed.