1951 INSC 39

SUPREME COURT OF INDIA

Maharashtra Sugar Mills Ltd.

Vs.

State of Bombay

C.A.No.23 of 1951

(H.J.Kania,CJI., Mehr Chand Mahajan and N.Chandrasekhara Aiyar,JJ.,)

22.05.1951

JUDGEMENT

M.C.Mahajan J. ,

1. The appellants are a company registered under the Indian Companies Act, and have got mills at Tilaknagar, District Ahmednagar, in the State of Bombay, for manufacturing sugar. For the purpose of their business, they employ muster labour and contract labour.

2. By a notification dated 8-1-1948, published in the Govt. Gazette, under S:2 (4), Bombay Industrial Relations Act, 1946 (Bombay Act XI [11] of 1947), the Provincial Govt. applied the provisions of the Act to sugar industry with effect from 12-1-1948. A dispute arose between the employees of the appellants including the seasonal and contract labour and the appellants as regards the demand made by the employees for payment of six months' wages as bonus for the year 1947-48 and as the dispute was not resolved by conciliation, the Govt. of Bombay issued the following notification on 1- 4-1949:

> " Whereas an industrial dispute has arisen between the Maharashtra Sugar Mills Ltd., Belapur Road, District Ahmednagar and its employees (hereinafter referred to as the said industrial dispute') in respect of payment of six months' wages as bonus for the year 1947-48 to all employees including the seasonal and contract labour; And whereas the provincial Govt. is satisfied that the said industrial dispute is not likely to be settled by other means; Now. therefore, in exercise of the powers conferred by S. 73. Bombay Industrial Relations Act, 1946 (Bombay Act XI [11] of 1947), the Govt. of Bombay is pleased to refer the said industrial dispute to the arbitration of the Industrial Court."

. It was urged on behalf of the appellants before the Industrial Court that contract labour was not covered by the definition of 'employee' under the Act and that the Court had, therefore, no jurisdiction to go into the dispute in regard to contract labour. The Industrial Court held that contract labour was within the definition of 'employee' and that it had jurisdiction to

decide the dispute. It made its award on 8-12-1949 whereby it awarded bonus equal to "three-eighths of the total basic earnings" of each worker earned during the year 1947-48 on the condition as stated therein. The award was published in the Govt. Gazette on 29-9-1949 and the appellants were ordered to pay the said bonus both to the seasonal labour and contract labour.

3. The appellants filed a petition in the High Court of Bombay, urging that contract labour were not in fact employed by them nor were they their employees within the definition contained in S. 3 (13) (a), Bombay Industrial Relations Act, 1946, and that being so, there was no industrial dispute between the appellants and the contract labour and the reference to the Industrial Court was without jurisdiction. It was prayed that the award be quashed. The petition was heard by Bhagwati J. and he held that the Industrial Court had no jurisdiction to make the award with respect to the contract labour as that Class of labour was not covered by the definition of 'employee' contained in the Act and he granted a writ of certiorai quashing the award.

4. The State of Bombay appealed against this decision and the appeal Court on 21-11-1950 reversed this decision and held that contract labour was covered by the definition of the word 'employee' contained in the Act and that the Industrial Court had jurisdiction to make the award. The result was that the order of Bhagwati J. was set aside and the petition was dismissed. This is an appeal by special leave from that decision.

5. The sole question for decision is whether the Industrial Court acted with jurisdiction in making the award as regards the bonus to be paid to contract labour. The jurisdiction of the Industrial Court depends on the finding of fact whether contract labour employed by the appellants is covered by the definition of the word 'employees'contained in S. 3 (13) of the Act which is in these terms :

> "Employee' means any person employed to do any skilled or unskilled manual or Clerical work for hire or reward in any industry and includs – (1)a person employed by a contractor to do any work for him in the execution of a contract with an employer within the meaning of Sub- s. (3) of cl. (14)."
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> S.3(14) (e) runs as under:
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> "'Employer' includs. . . (e) where the owner of any undertaking in the course of or for the purposes of conducting the undertaking contracts with any person for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the undertaking, the owner of the undertaking."
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> It has been found by the Industrial Court that contract labour was employed by the contractor to do work for him in the execution of a contract with the appellants. This finding of fact fulfils the requirements of the definition of 'employee' above mentioned. The appeal Court after reviewing the evidence reached the following conclusion :

"Therefore, apart from the fact that contract labour is employed through the intervention or interposition of contractors, there does not seem to he any difference between muster labour and contract labour employed by the Mills."

The appeal Court relied upon the agreement signed by the contractor who recruited harvesting labour. Though there was no such contract or agreement between the contractors and non harvesting contract labour, the High Court found on evidence that the position of non-harvesting labour was more or less the same as that of harvesting labour. The final conclusion of the appeal Court on this point is in these words:

"Therefore, on a review of this evidence it is difficult to hold that the Industrial Tribunal was in error or was not justified in coming to the conclusion that contract labour were employees of the company within the meaning of the Industrial Relations Act . .. It was open to the Industrial Court to review all the evidence and all the circumstances and what we have to decide is whether on such a review the Tribunal was not justified in drawing the conclusion that it did. We really go further and we are of the opinion that even it we were ourselves considering this evidence as a Court of first instance we would have come to the same conclusion."

6. Mr. Chatterjee for the appellants contended that there was no material on the record from which this conclusion of the appeal Court could be supported. He urged that there was no relationship, contractual or otherwise, of any kind between the company and the seasonal labour employed by the contractors who had entered into agreements with the company for carrying out certain operations of a seasonal kind on the company's farms, that the contractors used to collect families and they used to do work along with them collectively and not singly, that the bills were made in the name of the contractors and that it was not known on what basis the remuneration was to be calculated or distributed, that no muster roll was kept by the company in respect of this contract labour and that there is no way in which the company can identify the persons comprised in these family groups, whose number was fluctuating. It was suggested that the true nature of the relationship of these persons with the contractor was that of partners or of sub-contractors and not of employer and employee and that a lump sum payment was made according to the result of the operations conducted by them on acreage basis, the company not knowing what happened to the money after it was handed over to the contractors.

7. We are of the opinion that none of these contentions has force in view of the terms of Ex. I which is a specimen agreement regarding, the operations of sugar cane cutting and transport,, entered into by, the company with the so-called contractors. cls. 4, 12, 13 and 16 of this agreement tell a different tale. These Clauses are in these terms:

"(4) I am to engage, for the purpose of carrying out works according to your instructions and for supervision, responsible servants such as you may approve of, at my cost. And I am not personally to leave the work and go away personally elsewhere without your permission.

(12) I am to distribute wages of the coolies engaged by me and that in your presence, if you do the same, I have no objection. I am not to give occasion for complaint in this respect.

(13) If your officers, distribute wages to the coolies engaged by me, I have no objection. I am not to give occasion for complaint in this respect.

(16) After I have carried out to your satisfaction all pieces of work undertaken hereby, you are to refund the deposit amount in my name either to me or directly to my workers. Neither myself nor the coolies or cartman leaving before the end of the season, without taking previous permission from you in writing will be entitled to the proportionate refund of their deposit. It cannot be seriously disputed that the contractors engaged by the company were under the responsibility of employing responsible servants (as the company may approve of) for carrying on the operation entrusted to them and that these servants or coolies were to be paid wages by the contractor, and if thought necessary by the company directly. The modus operandi of the company with the contractors was that each contractor was asked how much men he could supply. Usually a contractor agreed to supply between 5 to 25 people and according to the capacity, for work of this number he was entrusted with the operations on the farm. The contract labour got the same amenities from the company as the muster roll labour. They got grains at concession rates from grain shops, they were supplied housing material free, they also got concessions with regard to green fodder, sugar cane, green crops; Cloth was also distributed to labour of this type. In the face of this material, it is not possible to uphold the contention raised by Mr. Chatterjee. In these circumstances it cannot be said that the appeal Court was in error in holding that the persons employed by the contractor were his employees within the definition of that expression given in the Act."

8. It was urged by Mr. Chatterjee that in the case of non-harvesting labour no written contract had been put in, and it was not known on what terms non-harvesting contract labour was being employed by the contractor. The High Court drew the inference and in our opinion, legitimately, from the evidence that the position of the non-harvesting contract labour was identical with harvesting contract labour. That labour was also recruited in the same manner through the instrumentality of the contractors. It appears to us that the only difference between muster roll labour and contract labour employed by the company in 1947-48 was that in case of the former there was a direct contract between the company while in the case of the latter the relationship was brought about through the intervention or interposition of a contractor.

9. The result, therefore, is that there are no reasons for interference with the finding of fact arrived at by the Industrial Court and upheld by the appellate bench of the High Court of Bombay. No other point was argued before us. The appeal, therefore, fails and is dismissed with costs.

10. Appeal dismissed.