Ahmedabad Mfg. and Calico Ptg. Co. Ltd.

Vs

Ram Tahel Ramnand and Others

Civil Appeal No. 1044 of 1968

C. A. Vaidialingam, I. D. Dua JJ)

14.04.1972

JUDGMENT

DUA, J. -

1. This appeal has been presented to this Court by the Ahmedabad Manufacturing and Calico Printing Co. Ltd., pursuant to the certificate granted by the Gujarat High Court under Article 133(1)(c) of the Constitution. The Gujarat High Court had, on being approached by the respondents under Article 227 of the Constitution, quashed and set aside the order of the Industrial Court, Gujarat, dated February 5, 1964, which had affirmed the order of the Second Labour Court, Ahmedabad, dated August 9, 1963, and after setting aside that order had directed the Industrial Court to decide the matter afresh in the light of the observations made by the High Court in the impugned order.

2. The respondents in this Court had applied to the Labour Court under Section 79 of the Bombay Industrial Relations Act No. XI of 1947 (hereinafter called the Act) in December, 1962 complaining that the appellant company was liable to pay to the respondents (applicants before the Labour Court) dearness allowance every month according to the Dearness Allowance Award made by the Industrial Court but the same had not been paid for the month of September, 1962 which was distributed in October, 1962. It was alleged that from October, 1962 the company had been committing breach of the Dearness Allowance Award of the Industrial Court. In that application the present respondents had based their claim on the following averments in Para 3 :

> "........the applicants are being paid Rs. 68/- as basic pay by the opponent. The maintenance of the garden is the legal responsibility of the opponent and for the health, welfare, recreation of the employees working in the several departments and for the decency of the adjacent offices the opponents are maintaining it. The applicants are doing the entire work in respect thereof."

3. In the written statement the appellant company raised several pleas in opposing that application. The pleas which were pressed in the Second Labour Court and in the Industrial Court and which are now strongly pressed before us are contained in Paras 3, 8 and 10 which so far as relevant may be reproduced :

> "3. That the applicants not being in the employment of the opponent they have no locus standi to make an approach or to file this application.
>
> # X X X X##

8. That the opponent is not the employer of the applicants and the applicants are not its employees within the meanings of those words in the Act and as such the application is misconceived and not legally tenable.

> # X X X X##
>
> 10. With respect to the allegations and averments made in Paras 1 to 4 of the application it is denied that the applicants are the employees of the opponent within the meaning of that term of the Act as alleged or that they are entitled to the benefits of the dearness allowance as alleged or otherwise. The true fact is that the applicants are not employed in any work which is ordinarily a part of the undertaking and as such they are not the employees within the definition of that word in the Act. The applicants are employed as coolies by a gardening contractor Messrs. Dhiraj Painters and they are paid by the said contractor. The said garden lands include a large area of offices of some other concerns, a Government Post Office and a Museum which are open to the public, some quarters for workers as well as assistants and officers, a hospital. It is for the garden of the area which comprises these buildings and the area round caustic plant factory as well as the field in Dani Limda that this agreement was entered into with the contractor for keeping the trees and plants in proper trim. Hence the work which they are performing has been held to be not ordinarily a part of the undertaking and as such the application is wholly misconceived and not legally tenable and is clearly barred by res judicata."

4. The Second labour Court dismissed the respondent's applications. In that Court's view the real question in issue was whether the appellants did any work which is ordinary part of the undertaking. The plea of re judicata based on the decision of the Labour Appellate Tribunal of India, Bombay (Appeal No. 135 of 1954, reported in 1955 ICR 1105) was negatived but it was observed that the principle laid down in the earlier case would govern the present case as well. After quoting the following passage from the earlier case :

> "Now the Industrial Court was correct in holding that the agreement applied to the area which was outside the factory proper. But to our mind the principal question involved is whether the maintenance of trees and plants can be said to be work which is ordinarily part of the undertaking. In another case, this Tribunal had decided that a ration shop was a part of the work which is ordinarily a part of the undertaking, but the maintenance of these trees and plants stands on a different footing and can hardly be regarded as part of the work of this particular undertaking which in fact is concerned with the production of cloth. We can see no intrinsic connection between the maintenance of the trees and plants and the work which is ordinary part of the undertaking."

The Labour Court observed that the "applicants" gardeners or malis who are contractor's employee cannot thus invoke the statutory definition of the employer".

5. On appeal by the aggrieved malis the Industrial Court in the course of its judgment observed that there was no dispute that the appellants in that court had been working as gardeners or garden mazdoors and had been employed through a contractor and not directly by the mill. After referring to the decision of this Court in J.K. Cotton Spg. and Wvg. Mills Co. Ltd. v. Labour Appellate Tribunal of India, [(1964) 3 SCR 724] and to the decision of the Madras High Court in Thyagaraja

Chettiar v. Employees' State Insurance Corporation, [1963-II LLJ 207] the Industrial Court observed :

> "Shri Jyotikar had urged that the term 'mill premises' as interpreted by the courts would include even places around the factory and so the question whether the appellants were working in one compound or the other would not be material. But it is not necessary to consider this contention because looking to the nature of the work done by the appellants and to the fact that they were not directly employed by the employer but through a contractor, it has been held that they cannot be covered within the scope of Section 3(13). Shri Jyotikar had also argued that under the Standing Orders, the term 'operative' has been defined to include persons employed through contractor; but the Standing Orders would apply to a particular person only if he is an employee as defined under the Bombay Industrial Relations Act. The definition under the Standing Orders cannot, therefore, be of any help in considering whether a person is covered within the scope of the Bombay Industrial Relations Act or not. Shri Jyotikar had then urged that in view of the fact that matters concerning health, safety and welfare of the employees are included in Item 3 of Schedule III, maintenance of gardens would be an ordinary part of the work of the undertaking. It is true that maintenance of gardens may be a matter concerning health or welfare of the employees, but there is no legal obligation to maintain such gardens. Had any such obligation been created under any provision of law, the position might have been as urged by Shri Jyotikar; but, as the facts stand at present, it is not mandatory on a management of a cotton textile undertaking to maintain any garden and hence the work of maintenance of a garden cannot be said to be a work which is a part of the ordinary work of a cotton textile mill.
>
> It is clear from the above that the appellants cannot be held to be employees as defined under the Bombay Industrial Relations Act and so the Labour Court was right in dismissing the applications."

6. The High Court, on being approached by the aggrieved malis under Article 227 of the Constitution, went into the matter at considerable length and after copiously quoting from the decision in the case of J.K. Cotton Spg. and Wvg. Mills case (supra), the High Court found it difficult to agree with the reasoning of the Industrial Court that the work of maintaining the garden was not a part of the ordinary work of a cotton textile mill. Earlier in the course of its judgment the High Court, after referring to the definitions of the term "employee" in Section 3(13) and of the word "industry" in Section 3(19) of the Act had observed :

> "......... The definition of the term 'industry' is thus wide enough to include a workman employed in any calling, service, employment, handicraft, or industrial occupation or avocation of employees and it would not be correct to assume that simply because a workman happened to be engaged as a gardener, he would not fall within the definition of the term 'employee' as given in the Bombay Industrial Relations Act. A garden when attached to a mill is an amenity that is provided to the workers employed in the mill and it is not necessary that an amenity should arise from a statutory requirement of obligation and it hardly makes any different if the garden was provided for voluntarily or under a statutory obligation. The activities in an undertaking such as a textile mill are not confined purely to factory work of manufacturing textile fabric within the mill premises, but various other incidental and

> connected institutions such as hospital, a canteen, a play-ground and a garden might be maintained by the mill to provide amenities to its workers and these activities could be considered as the activities made in relation to and in the usual course of conducting the affairs of the mill. Not merely within the turning of the wheels of the machine which, no doubt, is directly responsible for the production of the article for which the plant of the particular industry was installed and not merely in utilizing the power to move the machine to action, the field of activities of the undertaking is restricted and exhausted, but there are many more varieties though allied and complementary activities which are being carried on by the management and which help, though in an indirect manner, in creating a healthy atmosphere of well being and co-operation amongst the workers by providing essential facilities such as means for treatment of their ailments, for general entertainment and care not only of the workers but of the children who are left unattended while their parents are engaged in their work in the factory. While, therefore, constructing the words 'in the course of' and 'ordinarily a part of the undertaking' we must give them a meaning which is natural and consistent with the working of a factory as it exists in the present times and while doing so, our approach should not be theoretical and academic but pragmatic and practical. The activities that are usually conducted as a part of an undertaking by which not only workers participate in the actual running of the machinery but also activities which conduce to the smooth working of the plant as a whole must be considered to fall within the ambit of the definition. We are, therefore, unable to agree with the contention of Mr. Patel that the application of the Act must be restricted to only those workers who are directly engaged in the manufacture of textile fabric."

While commenting on the order of the Industrial Court where it is stated that the maintenance of gardens though a matter concerning health or welfare of the employees was not mandatory on the management of a cotton textile mill undertaking and hence the work of maintenance of a garden could not be said to be part of the ordinary work of such mill, the High Court observed that :

> "An activity undertaken as a part of the undertaking and in the course of its conduct may be undertaken voluntarily or as a result of a statutory duty or obligation but what is necessary is that the activity must reasonably be attributable to the undertaking in its usual and ordinary course in the conduct of the business or undertaking, and if that be so then such an activity could be considered as the activity of a worker who would fall within the definition of employee within Section 3(13) of the Act."

7. It was, however, contended in the High Court on behalf of the present appellant that the garden in which the present respondents had been working as gardeners was not situated within the premises of the mill and that the garden area included office of some other concerns, a Government post office and a museum which was open to the public and, some quarters for workers as well as assistants and officers of the hospital. The garden area, according to Mr. Patel who represented the present appellants in the High Court, comprised of the buildings just mentioned and the area round the caustic plant factory as well as the field at Dami Limda in respect of which an agreement had been entered into with the contractor for keeping the trees and plants in proper trim. This contention having not been considered by the Industrial Court the High Court, as already observed, sent the case back to the Industrial Court for a fresh decision in the light of the observations of the High Court.

8. In this Court Shri Desai on behalf of the appellants contended that the High Court, while exercising its jurisdiction under Article 227 of the Constitution, was not empowered to reverse the findings of the Industrial Court and the Labour Court because under that article it could not perform the functions of an appellate or a revisional court. On the merits also he contended that having regard to Section 2(3) of the Act read with the notification, dated May 30, 1939, the Act only applied to cotton spinning and cotton weaving department, mechanics shops, dyeing and bleaching and printing departments and offices of the appellant, and to no other activities of the appellant-company. The counsel further contended that clauses (13) and (14)(e) of Section 3 of the Act have to be read together and when so read they could not take within their fold a person employed by an independent contractor because such a person could by no means be considered as an employee of the appellant-company unless the work done by him can be described as "ordinarily part of the textile undertaking". While developing this point the learned counsel said that the word "ordinarily" occurring in the context "work which is ordinarily a part of the undertaking" in Section 3(14)(e) conveys the idea that the work should be in the line or in the regular or normal course of the textile undertaking or any part of it. The work it was explained, should be such as, in the regular or normal course, is part and parcel of the textile undertaking and not merely having some sort of incidental connection with the same. The work of gardening, added the counsel, cannot be considered to have been done in "execution" of any "work" which is "ordinarily" part of the textile undertaking.

9. Before considering these points it would not be out of place to mention that in the certificate of fitness granted by the High Court there is no indication about the precise point or points which induced the High Court to certify the case to be fit for appeal under clause (c) of article 133(1). This clause though couched in general terms is intended to apply to special cases in which the question raised is of such great public or private importance as deserves appropriately to be authoritatively settled by this Court. This clause of course does not in terms say so but it has always been so constructed. The question whether or not to certify a given case to be fit for appeal under this clause is a matter for the judicial discretion of the High Court. The word "certify" used in this clause suggests that the High Court is expected to apply its mind before certifying the case to be fit for appeal. The mere grant of a certificate would, however, not preclude this Court from determining whether the conditions pre-requisite for the grant are satisfied. It is, therefore, always desirable and expedient for the High Court to give its reasons for granting the certificate. That would assist this Court better in appreciating if the conditions pre-requisite are satisfied. In the application for certificate in the present case a number of grounds were stated for securing it. We are unable to find from the certificate as to which ground was considered by the High Court to be important enough to justify the certificate.

10. Now, in this case the respondents in fact questioned before us the competence of the High Court to grant the certificate of fitness but the objection raised by Shri Shukla was based only on the submission that Article 133 is inapplicable because the impugned order is not a final order. We may first deal with this preliminary objection.

11. Article 227 of the Constitution no doubt does not confer on the High Court power similar to that of an ordinary court of appeal. The material part of this article substantially reproduces the provisions of Section 107 of the Government of India Act, 1915 except that the power of superintendence has been extended by this article to Tribunals as well. Section 107 according to preponderance of judicial opinion clothed the High Courts with a power of judicial superintendence apart from and independently of the provisions of the other laws conferring on them revisional jurisdiction. The power under Article 227 of the Constitution is intended to be used sparingly and only in appropriate cases, for the purpose of keeping the subordinate courts and tribunals within the

bounds of their authority and, not for correcting mere errors : see Waryam Singh v. Amar Nath. [1954 SCR 565]. At this stage we consider it proper to refer to some of the judicial pronouncements by this Court with regard to the right of appeal under Article 133 from interlocutory orders. In Tarapur and Co. v. M/s. V/G Tractors Export, [(1969) 2 SCR 699 : (1969) 1 SCC 233] it was observed that an order of the High Court in appeal which does dispose of the suit but merely refuses to grant an interim injunction is not a final order within the meaning of Article 133 even though as a result thereof the pending suit as framed may become infructuous requiring amendment of the plaint. On the other hand, an order dismissing a writ petition challenging industrial award which disposes of only one of the items of a charter of demands by the workmen, leaving the rest of the items to be adjudicated by a subsequent award was held in Asbestos Cement Ltd. v. Savarkar, [AIR 1971 SC 100 : (1970) 1 SCC 475] to be a final order in a civil proceeding and, therefore, appealable under Article 133. Under Article 226 of the Constitution it may in this connection be pointed out the High Court does not hear an appeal or a revision : that court is moved to interfere after bringing before itself the record of a case decided by or pending before a court, a tribunal or an authority, within its jurisdiction. A decision in the exercise of this extraordinary jurisdiction which finally disposes of the proceedings is a final order, in an original proceeding. An appeal or a revision on the other hand is generally considered to be a continuation of the original suit or proceeding and in a case, where the High Court deals with an appeal or a revision, finality for the purpose of Article 133 must attach to the whole of the matter so that after the decision of the High Court the matter is not a live one. (see Ramesh v. Ganda Lal [AIR 1966 SC 1445 at 1449]).

12. The impugned order before us made by the Gujarat High Court on an application under Article 227 of the Constitution, the prayer in that application being, to remove the record of the case of the High Court "and after examining the same : (a) to quash the order and judgment of respondent No. 2 at Annexure 'B' and (b) to direct respondent No. 2 to dispose of the appeal of the petitioner according to law". Now, in some High Courts Article 227 is utilized for the purpose of securing relief by way of writs or directions in the nature of writs more accurately contemplated by Article 226 of the Constitution : Ramesh v. Ganda Lal (supra) and in some this article is invoked for getting orders of tribunals revised just as Section 115, C.P.C., is utilized for revision of orders of subordinate courts : (Surinder Nath v. Stiphen (P) Ltd. [(1966) 3 SCR 458]. As such power under Article 227 may also be exercised suo motu. In the present case Article 227 appears to us to have been used in effect as a substitute for Article 226 for seeking a direction in nature of a writ for quashing the orders of the subordinate tribunals. At least it appears that the proceeding before the High Court was so treated by all concerned. We should, however, not be understood to express our approval of the use of Article 227 for seeking relief by way of writs or directions in the nature of writs for which purpose Article 226 is expressly and in precise language designed. From that point of view if otherwise the High Court, while disposing of a petition under Article 227, finally settles some points affecting the rights of the parties then to that extent the impugned order may be considered to operate as a final order just as an order made under Article 226 would. As to whether the High Court has jurisdiction to make the impugned order while exercising its power under Article 227 will depend on our conclusion when considering the merits of the case.

13. Coming to the merits of the case we should like first to reproduce the notification, dated May 30, 1939 and the definitions of the words "employee" and "employer" so far as relevant for our purpose as contained in the Act. The notification reads :

> # "BOMBAY CASTLE, 30th May, 1939 BOMBAY INDUSTRIAL DISPUTES ACT, 1938##

No. 2847/34-A. - In exercise of the powers conferred by sub-section (3) of Section 2 of the Bombay Industrial Disputes Act, 1938 (Bombay XXV of 1938), and in suppression of Government Notification in the Political and Service Department No. 2847/34-2, dated March 14, 1939, the Government of Bombay is pleased to direct that the provisions of the Act which have been extended to the Province of Bombay under Government Notification in the Political and Services Department No. 2847/34-I, dated March 14, 1939, shall apply to the Cotton Textile Industry as specified below -

> (a) All concerns using power and employing twenty or more workers which are engaged in cotton shining;
>
> (b) All concerns using power and employing twenty or more workers which are engaged in cotton weaving with or without an admixture of silk, rayon, artificial silk or one or more of these;
>
> (c) All mechanics shop attached to and (all dyeing, bleaching and printing departments, whether situated within or outside the precincts of and forming integral part of) the concerns falling under clause (a) or (b);
>
> (d) All the offices, whether situated within or outside the precincts of the concerns falling under clause (a) or (b)."
>
> "Employee" and "employer" so far as relevant for our purpose are defined as :
>
> "3. In this Act unless there is anything repugnant in the subject or context :
>
> (13) 'employee' means any person employed to do any skilled or unskilled work for hire or reward in any industry, and includes :
>
> (a) 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-clause (e) of clause (14);
>
> # X X X X X##
>
> (14) 'employer' includes :
>
> # X X X X X##
>
> (e) where the owner of any undertaking in the course of or for the purpose 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."

Shri Desai on behalf of the appellant submitted that the respondents in this Court who were gardeners employed by a contractor cannot fall within definition of the word "employee" as contained in Section 14(e) of the Act. He further contended that the notification issued under the Act extending its applicability to the textile undertaking does not take within its fold the respondents who are not directly connected with any part of the activity with which the appellant's textile industry is directly concerned. In support of his contention he relied on some decided cases. The first decision to which our attention was drawn is reported as Kesar Lal Narsing Bhai v. M/s. Calico Printing Ltd. [1955 ICR 1105]. This is a decision by the Labour Appellate Tribunal of India,

Bombay and the present appellant was a respondent in that case. There, the gardeners who used to work outside the gate of the factory and had been employed through a contractor had applied under Section 78(1)(A)(c) of the Act for a declaration from the first Labour Court that the mill's failure to pay wages and Dearness Allowance in accordance with the Standardisation Award amounted to an illegal change. The Labour Court had granted their application but the Industrial Court on appeal had reversed that decision. The employees took the matter on further appeal to the Appellate Tribunal but without success. In that case the employees had wrongly asserted in their application that they were direct employees of the mills in question and the relief claimed was based on this erroneous assertion. The Standardisation Award by which the company was bound, it is pertinent to point out, was given only in respect of those persons who had been employed directly for the purpose of looking after the garden of the factory proper. It would thus be obvious that the employees' claim there was liable to fail on the short ground that they were not direct employees as wrongly claimed by them and that the relief under the award was confined to direct employees only. But this apart, it is further clear from the decision of the Appellate Tribunal that under the agreement with the contractor there the latter had been employed for the purpose of looking after the garden not within the factory compound proper but beyond it. Indeed, the contractor's obligation to look after the garden extended further beyond even that area. It is in this context and background that the Appellate Tribunal observed in the concluding part of its order that "statutory definition of an employee in our opinion cannot be invoked by a gardener who has been employed through a contractor for the work as undertaken here". This decision, therefore, does not assist us on the precise question raised. The next decision relied upon by Mr. Desai is reported as Hakim Singh v. J. C. Mills Ltd. [1963 MPLJ 714]. In that case the mills had employed a contractor to supply packing material. The contractor because of the nature of his work was given a room in the mills premises for preparing a particular packing material. An employee of the contractor applied to the Industrial Court for relief under the provisions of the Act. It was held that he could not be deemed to be an employee of the mills because the work which was carried on by the employer of the petitioner was not a part of the industrial undertaking. While commenting on the scope of Section 3(13)(a) and Section 14(e) of the Act which define the words "employee", and "employer", it was said that for the purpose of these provisions, there must be an industrial undertaking owned by somebody : some work, which is ordinary part of the undertaking must have been entrusted by the owner to the contractor : that contractor must be employing an employee : that employee can then by the combined operation of these provisions insist upon being treated as employee of the owner himself, the obvious idea behind this scheme being that the owner of an industrial undertaking should not be allowed to evade responsibilities towards his employees which are imposed by the labour laws, by entrusting a part or whole of the undertaking to a contractor. The actual decision of this case is on different facts and is clearly not of much help through the observations regarding the purpose of the provisions of the definitions admit of no controversy. Reliance was further placed by Shri Desai on the decision of this Court in Messrs. Godavari Sugar Mills Ltd. v. D. K. Worlikar, [(1960) 3 SCR 350] where a notification applicable to the manufacture of sugar and its by-products was held not to cover the head-office of the sugar mills at Bombay and the employees engaged there, when the head-office was separated from the factories by hundreds of miles. The notification was held not to cover sugar industry as such. Shri Desai also sought support from Begibhai M. Chokshi v. Ahmedabad Manufacturing and Calico Printing Co. Ltd. [1958-II LLJ 126] (a decision of the Industrial Court, Bombay) which dealt with running of retail shop; New India Tannis v. Aurora Singh Mojhi, [AIR 1947 Cal 613] a case of doing repairs to the machinery of the factory and from S. M. Ghose v. National Sheet and Metal Works Ltd., [AIR 1950 Cal 548] a case of an employee of a contractor engaged to paint the premises. Both the Calcutta decisions are under the Workmen's Compensation Act.

14. The respondents learned counsel, apart from urging that the High Court has sent the case back for deciding the nature of work done by the malis in this case and that, therefore, the appellant cannot appropriately ask this Court to determine these questions which are awaiting decision by Industrial Court, also relied on Basti Sugar Mills Ltd., v. Ramjagar, [(1964) 2 SCR 838] and on J.K. Cotton Spg. and Wvg. Mills (supra). In the former case the respondents there employed by a contractor to remove press mud from the sugar factory were held to be workmen employed by the factory because removing press mud was considered ordinarily to be a part of the sugar industry. The latter case is an authority for the proposition that an employee engaged in any work or operation which is incidentally connected with the main industry is as workman if other requirements of Section 2(s) of the Industrial Disputes Act 14 of 1947 are satisfied and that the malis in that case were workers within the meaning of Section 2 of U.P. Industrial Disputes Act 28 of 1947. The bungalows and gardens on which the malis in that case worked were a kind of amenity supplied by the mills to its officers and on this reasoning the malis were held to be engaged in operations incidentally connected with the main industry carried on by the employer. It was by relying on the ratio of this decision that the High Court in the present case came to the conclusion that the workers in order to come within the definition of "employee" need not necessarily be directly connected with the manufacture of textile fabrics. This decision is binding on us and indeed Shri Desai also fairly accepted its ratio. He only contended that the malis employed by a contractor unless directly connected with the textile operations cannot get the benefit of this decision.

15. In our view on the conclusions of the High Court which have not been shown to be erroneus justifying interference it is not possible to reverse its decision on the basis of the abstract submission advanced by Shri Desai. As observed in F.K. Cotton Spg. and Wvg. Mills case (supra) the problem has to be looked at from the considerations of social justice which has become an integral part of our industrial law. This concept of social justice has a comprehensive sweep and it is neither pedantic nor one-sided but is founded on socio-economic equality. It demands a realistic and pragmatic approach for resolving the controversy between capital and labour by weighing it on an even scale with the consciousness that industrial operations in modern times have became complex and complicated and for the efficient and successful functioning of an industry various amenities for those working in it are deemed as essential for a peaceful and healthy atmosphere. The High Court has left open for the decision by the Industrial Court the question as to the nature of the work done by the respondents for determining whether or not, in view of the fact that they are employed through a contractor and not directly, their case falls within Section 3(13). This is what the High Court has said :

> "It was urged by Mr. Patel that the garden in the which the petitioners were working as gardeners was not situated within the premises of the mill and that the garden area included a large area of offices of some other concerns, a Government Post Office and Museum which were open to public and some quarters for workers as well as assistants and officers of a hospital. It was also urged by Mr. Patel that the garden area comprised of the above buildings and the area round the caustic plant factory as well as the field at Dani Limda in respect of which an agreement was entered into with the contractor for keeping the trees and plants in proper trim. It appears that this contention made on behalf of the mills was not considered by the Industrial Court as it appears from Para 7 of the order of the Industrial Court because according to the Industrial Court, looking to the nature of the work done by the petitioners and to the fact that they were not directly employed by the employer but through contractor, they could not be covered within the scope of Section 3(13) of the Bombay Industrial Relations Act. Since this contention has not been considered by the Industrial Court,

> we do not wish to express any opinion as regards the merits of this contention and it would be open to Respondent No. 1 to raise the contention before the Industrial Court which will decide on the merits of the contention if raised.
>
> Subject to this, the order of the Second Labour Court, Ahmedabad, dated August 9, 1963, passed in Application No. 2005 of 1962 and the order of the Industrial Court, Ahmedabad, dated February 5, 1964, passed in Appeal (I.C.) No. 123 of 1963, must be quashed and set aside and we direct that the matter should now be decided by the Industrial Court in the light of the observations made above."

16. There is no cogent ground why this matter should be decided by this Court and not by the Industrial Court in the normal course as directed by the High Court. In our opinion the order of the High Court is legally correct and is also eminently just and fair. We are unable, therefore, to agree with Mr. Desai that this order requires any interference. The principle followed by the High Court is the one which was laid down by this Court in J.K. Cotton Spg. and Wvg. Mills case (supra). The decisions of the Labour Court and the Industrial Court were based on misconception of the legal position and the High Court was within its authority to interfere under Article 227 of the Constitution to quash them.

17. The appeal accordingly fails and is dismissed with costs.

</html