Varghese and Another Vs Industrial Tribunal and Others

Court: High Court Of Kerala

Date of Decision: Nov. 11, 1960

Acts Referred: Industrial Disputes Act, 1947 â€" Section 33

Citation: (1961) 2 LLJ 479

Hon'ble Judges: M.A. Ansari, C.J; Anna Chandy, J

Bench: Division Bench

Judgement

M.A. Ansari, C.J.
These four writ petitions seek to vacate the award by the Industrial Tribunal, Ernakulam in dispute No. 4 of 1957. The

facts preceding the award are that the Alice Boat Service had three boats, "Alice", "Sofa" and "Crown", which were running the boat service on

the Ernakulam-Kottapuram line. Two of the aforesaid boats "Alice" and "Sofa" were owned by P.I. Varghese and the third "Crown" by K.K.

Ittyera. The service during the period, with which we are concerned, was being conducted by lessees, of whom P.T. Thomman was running the

"Alice" and T.T. Jacob the other two boats. Service employed 17 persons under the categories of masters, drivers, syrangs, and lasoars; and they

were represented by the Trichur District Motor Boat Workers" Union. At the meeting of the union held on 20 September 1956, it was decided to

launch a strike, should the demands by the employees of the aforesaid Alice Boat Service be not met, which demand was communicated by letter

of 8 October 1956. The employers refused the demands for payment of bonus on the ground that there was no profit for the year, and also the

claim for batta on toe ground that such payment was not obligatory. The refusal caused dispute, and the Assistant Labour Officer as well as the

District Labour Officer, attempted to settle it. The dispute led to stay-in-strike with the result that the service could not be run. The lessees had to

seek the help of the police; and four workers of the boat "Crown" were arrested. Suits were filed in the High Court to get possession of the two

boats "Alice" and Sofa", and the workers replied by picketing the residence of the proprietors. Finally, the Government referred the above dispute

for adjudication to the industrial tribunal. The reference contained the following four issues:

(1) To what bonus are the workmen entitled for the year 1955-56?

(2) Should the workers be paid batta; and if so, at what rate?

(3) Whether the employers of ''Crown'', ''Sofa'' and ''Alice'' boats are justified in suspending work from 13 November 1956, 23 November 1956

and 26 November 1956, respectively, and, if not, to what relief are the workmen entitled?

(4) Whether the suspension of the following workers from service is justifiable? If not, to what relief are they entitled?

* * * *

2. Before giving the tribunal''s conclusions on the aforesaid issues, it should be stated that the proprietors of the three boats thought it advantageous

to get rid of the boats. The writ petitioner in O.P. No. 805 of 1958 purchased the boat ''Alice'' from the former owner on 11 February 1957. The

petitioner in O.P. No. 827 of 1958 purchased the boat ''Sofa'' on 1 February 1957, and the petitioner in O.P. No. 828 of 1958 purchased the

boat ''Crown'' from the former owner on 17 February 1957. After the purchases these persons were impleaded as additional parties by the

tribunal''s order of 19 October 1957 and the award in the case was given on 25 September 1958. Thereby, the former owners of the three boats

have been held to be the employers of the workers, and consequently the purchasers from such owners to be successors-in-business and to be

bound by the award. Coming to the tribunal''s conclusions on the issues, on the first it has found not to be in a position to give the available surplus,

due to want of data in the case, but it has awarded/bonus to the workmen at the rate of 6 Ã¯Â¿Â½ per cent of the total earnings for the year 1955-56.

The workers have been further held entitled to batta at the rate of 9 nP per working hour without retrospective operation. On the third issue the

conclusion is that the lessees and the proprietors were justified in suspending the services on the dates specified in the issue, and finally, the tribunal

has held, on the fourth issue, that the suspension of the workers was justified till the date of the reference, which was 4 January 1957 and,

thereafter the workers were deemed to be In service. The next relevant part of the award reads thus:

The proprietors who are held to be employers should pay compensation to the employees at the rate of 25 per cent of wages from 4 January 1957

to the date of this award. No batta will be paid for the past. Even though the purchasers did so in February 1957, I do not order them liable for

payment of batta and other liabilities till they become answerable under the award. The bonus should be paid by the proprietor-employers for the

year in question within two weeks from the date of publication of this award. The workers will be reinstated within a month from the date of

publication of this award in the gazette. If they are not reinstated within the time the successors-in-business will be liable to pay wages till they are

reinstated. The wage means, the wage each worker was getting on the last day of his service in the boat.

3. The aforesaid award has been challenged by four writ petitions, P.I. Varghese, who owned the boats ''Alice'' and ''Sofa'' has filed O.P. No. 743

of 1958; and the other three writ petitioners are the subsequent purchasers of the three boats. The former owner challenges the conclusion of being

held to be employer, notwithstanding the fact of having leased the boats during the period of the trade dispute. His case is that the lessees had

employed the workmen and they were then running the boats. This writ petitioner''s learned Counsel has also urged before us that the tribunal''s

conclusion on the fourth issue was incorrect and It has erred in rejecting the petition u/s 33 of the Industrial Disputes Act on insufficient grounds.

The main ground, on which the purchasers seek to vacate the award is that, being piecemeal purchasers of boats, and even assuming the vendors

to be the employers, there would be no contractual relation between them and the employees, nor succession in business, so as to justify their

being held liable for the past demands and for reemployment of persons dismissed. We felt any amicable settlement of the dispute, to be in the

interests of all parties concerned and accordingly we gave the workers'' advocate sufficient time to reach a fair adjustment. He has,. however,

informed us that such adjustment would be possible only after the case is sent back to the tribunal, and that it should be so sent back, is clear; for,

the tribunal has not fully appreciated the principle on which a person can be held to be the employer of those who are engaged in an industry.

4. It is not disputed that the owners of the three boats had executed two lease deeds, one of which is Ex. III, and is dated 1 May 1951. Thereby

Varghese had authorized P.J. Thomman to run the boat ''Alice"'' on a rent of Rs. 370 per mensem, out of which Rs. 270 is to be given to the lessor

in bi-monthly instalments, and Rs. 100 to be reserved for meeting the expenses in connexion with inspection fee, licence fee, repair charges, etc.

The lease was not only of the boat, but of the right to run the line with the goodwill of the business and with option to the proprietor to terminate

the period of the lease. It is conceded that the aforesaid document, contained a condition about the appointment, payment and disciplinary action

of the workers, being with the lessee. That condition of the lease was renewed by Ex. XLIII, but the monthly rent was enhanced to Rs. 440. The

same owner on 1 April 1954, executed Ex. XXXVII, in favour of one Jacob whereby the boat ''Sofa'' was leased at the rent of Rs. 300 per

mensem on similar conditions. The owner of the boat ''Crown,'' also leased by Ex. XXXVI, the boat to it year on the monthly rent of Rs. 300 with

similar conditions. The conclusion of the tribunal, after referring Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra, is in these words:

Hence on the facts and circumstances of this case, I have no other conclusion or inference than to conclude that the employees attached to the

boats engaged in the industry, are the workmen of the proprietors and the so called lessees are only intermediaries to supervise the work of these

workmen.

5. With respect, the conclusion pays little attention to the principle on which a person can be held to be employer for purposes of labour disputes.

In this connexion it would be of advantage to remember what was held in Shivnandan Sharma Vs. The Punjab National Bank Ltd., considering the

relation of master and servant, where Sinha, J. (as he then was), holding the nominees of the treasurers to be the servants of the bank observes as

follows at pp. 695-696:

If a master employs a servant and authorizes him Co employ a number at persons to do a particular job and to guarantee their fidelity and

efficiency for a cash consideration, the employees, thus appointed by the servant would be, equally with the employer, servants of the master. It is

not always correct to say that persons appointed and liable to be dismissed by an independent contractor can in no circumstances be the

employees of the third party.... As indicated above, In the present case the direction and control of the appellant and of the ministerial staff in

charge of the cash department at the bank was entirely vested in the bank through its manager or other superior officer. We have, .therefore, no

hesitation in differing from the conclusion arrived at by the Appellate Tribunal and in holding that the appellant was an employee of the bank. That

being so, the tribunal had the jurisdiction to make the directions it did in respect of the appellant.

6. It follows that direction and control of those employed is the decisive test for holding the person having such direction to be the employer.

Bhagwati, J., in Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra, reaffirms the test; for he holds that prima facie the test for the

determination of relationship between master and servant is the existence of the right in the master to supervise and control the work done by the

servant not only in the matter of directing what the servant is to do, but also the manner in which he shall do his work. The learned Judge has

further held that the nature or extent of control which is requisite to establish the relationship of employer and employee, must necessarily vary from

business to business and is by its very nature Incapable of precise definition, and the correct method of approach would be to consider whether,

having regard to the nature of the work, there was due control and supervision by the employer. Not only supervision and control been treated as

the decisive test under the Industrial Disputes Act, but it has been further applied to ascertain who is the "" employer "" under the Factories Act.

Thus Subba Rao, J., in Chintaman Rao and Another Vs. The State of Madhya Pradesh, adopts the test and after stating the concept of

employment to involve the three ingredients of employer, employee and the contract of employment has held the employer to be one who employs,

i.e., one who engages the services of other persons. He also defines the workman as one who does the work by submitting to the control of the

employer in respect of the details of the work. In State of Kerala v. V.M. Patel 1961 I L.L.J. 549 Hidayatullah, J., has followed the test laid in

Chintaman Rao and Another Vs. The State of Madhya Pradesh, and states the distinction between an independent contractor and servant in these

words:

The distinction between an independent contractor and a servant was adverted to. .That distinction is well-known. An Independent contractor is

charged with a work, and has to produce a particular result; but the manner in which the result is to be achieved is left to him. A servant, on the

other hand, may also be charged with the work and asked to produce a particular result, but is subject to the directions of the master as to the

manner in which the result is to be achieved. This distinction was utilized to determine whether the Sattedar and his coolies were workers of the

main factory or not, and it being found that the occupier and manager of the main factory had no control over them, it was held that they were not

the workers of the main factory.

Though the earlier case of this Court is somewhat different on facts. the principle of it is equally applicable here. The ""Moopan"" or the works

supervisor was like an independent contractor, because he was the sole judge of the number of the persons required to be employed, their hours

of work, their remuneration, and the manner in which they were to execute the work. The High Court of Kerala has adverted to this fact, though it

had not the advantage of seeing the decision of this Court, and, in our opinion, the conclusion reached by it cannot now be challenged because it

has considerable support from the decision of this Court referred to above.

7. Therefore, the tribunal before holding the owners to be the employers ought to have determined whether they were the sole judges of the

number of workers required to be employed, the hours of their works, their remunerations and the manner in which they were to execute the

works. Should he not be found to have such a control and direction, the writ petitioner In O.P. No. 743 of 1958 would not be the employer. The

tribunal has not done so and therefore the error goes to the very root; for, should the employer in the case be not owners, the purchasers from

such owners would not be successors-in-business that had employed the workers and could not be made liable, they not being purchasers from

the lessees.

8. In these circumstances, we would vacate the entire award, and remand the case to the tribunal to make a fresh award after determining whether

the relation between the workmen and the writ petitioner in O.P. No. 743 be of such control and direction over the work of the labourers, as to

constitute him the employer for the purposes of the Industrial Disputes Act. While deciding the fourth issue, the tribunal may well consider other

pronouncements of the Supreme Court as to the points on which the decision must be given when a petition u/s 33 of the Industrial Disputes Act is

made. As regards the complaint of the purchasers not being purchasers of the business, we leave that also to the tribunal, as we think the

authorities on the point are now fairly clear to guide the tribunal. In these circumstances, the award Is vacated, the tribunal is directed to adjudicate

afresh and these four writ petitions are allowed. Costs will depend on the final result of the case.