

Divisional Electrical Engineer, Operation, A.P.S.E.B. Vs Siripurapu Vijaya and Another

Court: Andhra Pradesh High Court

Date of Decision: Nov. 10, 2003

Acts Referred: Workmens Compensation Act, 1923 " Section 2

Citation: (2004) 1 ACC 685 : (2004) 1 ALD 372 : (2004) 1 ALT 476 : (2004) 101 FLR 77 : (2004) 1 LLJ 973

Hon'ble Judges: S.R.K. Prasad, J; B. Prakash Rao, J

Bench: Division Bench

Advocate: S. Ravindranath, SC, for the Appellant; Ashok Anand Kumar, for Respondent in CMA No. 1565 of 1993 and P. Padma, for the Respondent in CMA No. 736 of 2001, for the Respondent

Judgement

B. Prakash Rao, J.

These appeals, at the instance of A.P. Electricity Board (now bifurcated into A.P. Genco and A.P. Transco) are

coming up for consideration on a reference by learned Single Judge of this Court as per the orders dated 13.7.2001 on the following question:

whether the deceased/injured, who were working as the Village Electricity Workers are "workmen" within the meaning of the Workmen's

Compensation Act, 1923 (for short "the Act") and whether there is any relationship of "employer" and "employee" between the A.P. Electricity

Board/appellant and the deceased/injured in the absence of administrative/Supervisory control of the A.P. Electricity Board over the said

workmen" or in short as to "whether the deceased and injured are the employees of the A.P. Electricity Board or not?

2. Briefly, in CMA No. 1565 of 1993 and CMA No. 67 of 1996 the claim is at the instance of the legal representatives of the deceased. They

were working as Electrical Helper and Electrical Worker, who died as a result of the accident, occurred while discharging the duties. In the first

case the deceased Siripurapu Ramesh, the Electrical Helper while working on the electrical poll on 12.4.1992 suffered electric shock, fell down

from the poll and died in the Government Hospital. Hence the claim for compensation under the Workmen's Compensation Act by the wife Smt.

Siripurapu Vijaya.

3. In the second case i.e., CMA No. 67 of 1996 the deceased Madhava Rao, the Electrical Worker while attending to duties on the electric poll

on 3.6.1990 received electric shock as a result of which, he fell down and died. Hence the compensation is claimed by the wife Smt. Behara

Krishna Veni. Both the claims were contested, inter alia, by the appellant mainly on the ground that neither of the deceased were their employees

since they were appointed as Village Level Electricity Workers by the local Gram Panchayats, who were also made parties as respondents in the

claim petitions and these appeals, to maintain the street lights. Therefore, they are in the employment of the respective Gram Panchayats. Thus the

appellant cannot be made liable for any compensation, apart from the plea that both the deceased fell down from the poll due to their own

negligence. In the first case, the concerned Gram Panchayat remained exparte, whereas in the second case, the concerned Gram Panchayat

contested the claim denying their liability to pay the compensation on the counter plea that the salary was being paid by the appellant and as such,

the deceased were the employees of the appellant.

4. After a regular trial, during which, both sides let in their evidence, the Tribunal on a consideration of the material available on record, has

allowed the claim and awarded compensation of Rs. 84,716/- with costs in CMA No. 1565 of 1993, and Rs. 12,478/- in the other CMA No. 67

of 1996 and further holding that the appellant is liable for the compensation.

5. In CMA No. 736 of 2001, the claimant is the injured, who was working as a Village Electrical Worker. While discharging his duties on

5.3.1995 at about 2.30 p.m., in an accident he sustained injuries as a result of which, his right hand was amputated and thereby he incurred the

disability to the extent of 80%. Hence the claim. The concerned Gram Panchayat denied its liability on the same lines stating that the salary is being

paid by the appellant under a scheme and thus he is the employee of the appellant. Whereas the appellant contesting the claim has sought to deny

their liability on the ground that the claimant is the employee of the Gram Panchayat, having been appointed by the said authority, hence no liability

can be fastened on it. In this case also after a regular trial, wherein both sides produced the evidence on their behalf, the Tribunal below on a

consideration thereof awarded the compensation of Rs. 47,294/- and further holding that the appellant is liable.

6. Challenging these decrees and awards, the appellant has filed these appeals and raised the principal contention that there is no Master and

Servant relationship in between the appellant and the deceased/injured, as the case may be, and therefore, the appellant is not answerable and thus

the decrees are liable to be set aside as against them. In support of its contention, reliance was placed by the appellant on the judgment of a

Division Bench of this Court passed In WA No. 697 of 1991 dated 14.6.1991 wherein it was held that as per the scheme appointing the Village

Electricity Workers the relationship of master and servant cannot be spelt out between the Board and such employee. Further reliance is placed on

a judgment of a Single Judge of this Court passed in WP No. 1350 of 1997, dated 4.8.1998 holding that such persons are not the employees of

the Board. In another case in WP No. 12732 of 1992, a learned Single Judge of this Court by an order dated 1.4.1993 disposed of the writ

petition with a direction to consider the case of the petitioners therein for recruitment on par with the similarly situated persons. The said judgment

was confirmed by a Division Bench of this Court in Writ Appeal No. 619 of 1993 dated 5.7.1993 and confirmed by the Apex Court in SLP No.

4335 of 1994 dated 11.7.1994. A similar request by the Junior Assistants/Typists/Revenue Cashiers was negatived by a Single Judge of this Court

in WP No. 23755 of 1999, dated 16.11.1999, which was confirmed by a Division Bench of this Court in Writ Appeal No. 117 of 2000, dated

9.6.2000. On similar circumstances, the Industrial Tribunal No. 1, Hyderabad as per the orders in I.D. No. 78 of 1992 dated 24.10.1996 has

taken the view that there exist absolutely no relationship of master and servant between the Electricity Board and the said workers. Considering the

similar objections, arising out of a claim for compensation, the learned Single Judge in CMA No. 1413 of 1991, dated 5.3.1997 and CMA No.

1048 of 1992, dated 19.11.1997 rejected the same and confirmed the award of compensation fixing the liability on the Board. Having regard to

such varied pronouncements in respect of similarly placed employees, especially confirming the liability on the Board and holding that there is no

such master and servant relationship, the reference arises.

7. Sri S. Ravindhnath, the learned Standing Counsel appearing for the appellant contends that having regard to the nature of the scheme and the

very appointment made by the local body, namely the Gram Panchayat, it cannot be said that such persons can be treated as employees of the

appellant. Therefore, in the absence of master and servant relationship, the question of fixing any liability for compensation does not arise.

Whereas, it is the contention on behalf of the respondents herein that even under the very scheme, there is a reimbursement towards the payment

of salary and, in fact, the very appointment is in pursuance of the scheme enunciated by the appellant and the employees do attend to the duties

and functions on its behalf. Therefore, the appellant cannot be exonerated from any such liability. Before considering the question, the provisions

which are relevant for the purpose are the definition clause contained in Sections 2(e) of the Workmen's Compensation Act, 1923, which defined

the "employer", which reads as follows:

employer"" includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of a

deceased employer, and, when the services of a workman are temporarily lent or let on hire to another person by the person with whom the

workman has entered into a contract of service or apprenticeship, means such other person while the workman is working for him;

The definition ""workman"" is defined u/s 2(n) of the Act, reads as follows:

Workman"" means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes

of the employer's trade or business) who is-

(i) a railway servant as defined in (clause (34) of Section 2 of the Railways Act, 1989 (24 of 1989)), not permanently employed in any

administrative, district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II, or

(1a) (a) a master, seaman or other member of the crew of a ship,

(b) a captain or other member of a crew of an aircraft,

(c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle,

(d) a person recruited for work abroad by a company, and who is employed outside India in any such capacity as is specified in Schedule II and

the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India, or) (ii) employed in any such capacity as is specified in

Schedule II,

Whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in

writing; but does not include any person working in the capacity of a member of (the Armed Forces of the Union) and any reference to a workman

who has been injured shall, where the workman is dead, include a reference to his dependants or any of them.

8. There is no dispute that in pursuance of the scheme enunciated by the appellant itself, the Government sanctioned in G.O. Ms. No. 221, Social

Welfare (S.E.S.) Department, dated 19.9.1978 for the purpose of employment of part-time basis under special employment scheme contemplating

a training, in regard to the candidates belonging to the Scheduled Castes and Scheduled Tribes, listed and Economically Backward Classes in the

Electricity Board as Village Helpers on part-time basis to attend to the consumer service such as, replacement of L.T. fuses of single-phase

Services, replacement of L.T. fuses of 3 phases services, replacement of street light bulbs, replacement of H.T. and L.T. fuses, distribution of bills

and such other works of routine maintenance as may be entrusted to them. Under the said scheme, the Government contemplates that the entire

expenditure has to be met fully by the appellant without any commitment to them. Under the scheme, the workers have to act as liaison between

the villagers and the nearest Officer of the appellant. Further during the training, they are provided with the stipend and honorarium. The recurring

expenditure has to be incurred by the appellant alone. Subsequent to the completion of training, there was further approval as per the G.O. Ms.

No. 305, Panchayati Raj (ESTT. VIII) Department, dated 22.3.1979 contemplating that such candidates were already trained and appointed by

the local bodies to act as liaison between the village panchayats and the local officers of the appellant. Further it specified that the amounts paid to

the employees will be sanctioned to each Gram Panchayat as Grant-in-aid by the appellant through the Panchayat Department in advance, A

facsimile proceedings of appointment of such Village Electricity Workers has also been produced which states that the appellant Board will

reimburse the amount paid per month towards Grant-in-aid to the panchayat and the bills rendered every month by the panchayats. Further, the

proceedings of the appellant vide Memo No. DP/DMI/A2/217/84-1, dated 1.3.1984, it contemplates that the panchayats only have to bear the

risk in case any accident occurs to the Village Electricity Workers while on duty, since they belong to the panchayat establishment.

9. Thus on a conspectus of the scheme and the objects as enunciated thereunder, basically such employees are attending the duties on behalf of the

Board alone but they are appointed by the local bodies namely, the Gram Panchayats and the entire expenditure incurred towards their salaries

etc., are being reimbursed by the appellant alone. Therefore, what emerges from the scheme is that such employees are the liaison employees

between the Gram Panchayats and the appellant. It follows, therefore that such employees have their employment traced to dual authorities i.e., the

concerned Gram Panchayat as well as the appellant themselves, one an appointing authority and another their pay master. And, the employees

discharging the duties attributable to the pay master. Though similar plea has been raised by the appellant disowning their liability in regard to claims

arising in respect of such workers, a learned Single Judge of this Court as per the judgment in C.M.A. No. 1413 of 1991 rejected the same mainly

placing the reliance on a Memo No. CE(O) SE. MRT/PO/D. No. 878/90, dated 4.12.1990 whereunder the appellant has been paying the

compensation to Village Electrical Workers in case of accidents, and holding that the appellant squarely falls within the definition of "employer" as

contemplated u/s 2(e) of the Act. No doubt, for the purpose of deciding as to the incidents of service, this Court has taken a view that there is no

master and servant relationship between such workers and the appellant Board.

10. Amongst the decisions relied upon by the appellant herein, in WA No. 697 of 1991, dated 14.6.1991 a Division Bench of this Court held as

follows:

We find no merits in this appeal against the speaking order of the learned Single Judge dismissing the appellant's writ petition. The scheme and its

terms are clear and categorical. Nowhere is the relationship of master and servant spelt out as between the Board and the appellant. On the

contrary, the terms clearly show that the appointing and controlling authority is the Gram Panchayat. The validity of the scheme is not questioned in

these proceedings. In all the circumstances, we see no reason to take of the matter a view different from the one taken by the learned Single Judge.

The writ appeal thus fails and is dismissed.

Similarly, in WP No. 12732 of 1992, dated 1.4.1993 a learned Single Judge of this Court held as follows:

This writ petition has been filed seeking a declaration in not treating the petitioners as employees of A.P. State Electricity Board as illegal, and

arbitrary and consequently to direct the respondents to treat the petitioners as employees of the State Electricity Board and to regularize the

services of the petitioners in suitable posts by reckoning their service from the date of their initial appointment by giving time scales, arrears of

salary and all other attendant benefits. The Counsel for the A.P.S.E.B. contests this and submits that this kind of omnibus prayer cannot be

granted. On behalf of the respondents a judgment rendered by this Court in WP No. 6435 of 1991 is placed before me where the learned Judge

has directed the APSEB to consider the claims of the similarly situated persons as that of the petitioners sympathetically in the direct recruitment

quota in accordance with the rules and not as in-service candidates. Following the said judgment, I direct the respondents herein to consider the

case of the petitioners for recruitment in the posts sought for in accordance with the rules treating them as direct recruits, but before fresh

candidates are considered for recruitment.

In the other proceedings in WP No. 23755 of 1999, dated 16.11.1999 a learned Single Judge of this Court while rejecting the claim by Junior

Assistants/Typists/Revenue Cashiers for absorption into service of the appellant as per the scheme formulated in B.P. Ms. Nos.36 and 37, held

that they cannot be termed as employees of the appellant. Similarly, the Industrial Tribunal in the aforementioned decision in I.D. No. 78 of 1992,

dated 24.10.1996 considering the similar situation, held as follows:

So far as these Village Electrical Workers are concerned they have been appointed by the Gram Panchayats. They are attending to the work of

Gram Panchayats to the extent of replacement of fuses of street bulbs. It is a work to be attended once in a month or two. The remaining three

items of work referred in para 9(a) of this award, relates to the Electricity Board. The Electricity Board is paying for the work done on its behalf

by giving subsidy to the panchayat. The work of the Electricity Board that is attended to by the Village Electrical Workers is (i) replacement of

fuses in single and three phase services, (ii) replacement of H.T. and L.T. fuses of the distribution, transformers and (iii) distribution of bills and

other routine works. Items (i) and (ii) have to be attended to once in blue moon. The other work is distribution of bills and such routine

maintenance work entrusted to them. The distribution of bills is once in a month or two. The routine maintenance work is cutting of tree branches

etc., once in a way so that they may not touch the live wires. The workers who are said to be 4800 in number according to M.W.2 are paid Rs.

600.00 per month at present. They are doing only part time work. They have passed only 8th class. They can attend to their cultivation and if he

has no landed property either own or leasehold, he can attend daily to agricultural coolie work in the lands of others. He has to attend about 100

to 110 services in the village. Each householder having a connection, is already paying Rs. 6.00 to him as he is drawing Rs. 600.00 per month. For

the above meager service each householders cannot be made to pay Rs. 25.00 to this part time worker, as the salary of a helper is about Rs.

2500.00 per month which is being demanded by the workers. There is absolutely no relationship of master and servant between the Electricity

Board and these workers. It was so held by our High Court on 27.5.1991 (Ex.W.7) in Writ Petition No. 712 of 1991 etc., except few village

level workers appointed in the first instance, 90% of them were sponsored by Gram Panchayats. A Sarpanch sponsors his caste men or his section

men. No rule is followed in appointing these men.

11. However, there is a scuttled distinction in regard to fixing the liabilities, one for the purpose of service conditions and another for the purpose of

fixing the liability for compensation that has to be awarded as a result of an accident as a fatal or otherwise. The principles applicable in case of

deciding the service conditions cannot be made applicable for fixing the liability in respect of compensation. The claimants in such cases have no

concern nor any say in regard to service conditions as applicable between the employees or their appointing authorities. In regard to the fixation of

liability for the compensation, the question which has to be seen is as to the immediate liability for payment. At this juncture, it has to be taken note

of that where a vehicle is involved in such accident, the liability is being fixed not only on the owner but also on the insurance company with whom

such vehicles are insured. In such cases the joint and several liabilities are fixed leaving open for both of them to work out their remedies for any

such quasi liabilities. On the same lines, in regard to the payment of compensation, it follows that there cannot be any objection in fixing the joint

and several liability in between the appellant and the local bodies/Gram Panchayats, which a quasi relationship exists. Where both the authorities

are impleaded and proceeded against, it is not really necessary to go into question as to who is the employer. Both of them stand on the same

plane as co-obligants. The dispute inter se as to ultimate liability can be worked out between themselves. Even if one pays the amounts under the

decree, it is always open to recover the same from others. Accordingly, a decree can be passed fixing the joint and several liability between them

with a reservation that on making payment by either of them, it is open for the parties to work out. In these cases, it has been represented that the

appellant has already paid substantial amounts in terms of the decree passed by the Tribunal below. In such an event, the appellant can recover the

amounts paid by them from the local bodies on the basis of any arrangements made inter se in between themselves. That itself would not in any

way exonerate the appellant from disowning or exempting from their liabilities and fasten on the local body.

12. In this regard, it would be very apt to refer to other relevant provisions in Section 12 of the said Act, which reads as follows:

12. Contracting :--(1) where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or

business contracts with any other person (hereinafter in this Section referred to as the contractor) for the execution by or under the contractor of

the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any

workman employed in the execution of the work any compensation which he would have been liable to pay if that workman had been immediately

employed by him; and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for

references to the employer except that the amount of compensation shall be calculated with reference to the wages of the workman under the

employer by whom he is immediately employed.

(2) Where the principal is liable to pay compensation under this Section, he shall be entitled to be indemnified by the contractor, (or any other

person from whom the workman could have recovered compensation and where a contractor who is himself a principal is liable to pay

compensation or to indemnify a principal under this Section he shall be entitled to be indemnified by any person standing to him in the relation of a

contractor from whom the workman could have recovered compensation,) and all questions as to the right to and the amount of any such

indemnity shall, in default of agreement, be settled by the Commissioner.

(3) Nothing in this section shall be construed as preventing a workman from recovering compensation from the contractor instead of the principal.

(4) This Section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has

undertaken or usually undertakes, as the case may be, to execute the work or which are otherwise under his control or management.

From this, the Legislature has made a well thought provision to "enable the worker to receive the amounts, shown of the relationship with a

principal employer or the contractor. The employer is being indemnified from the contractors, which again spells out of quasi judicial relationship

between themselves and for working out their remedies. The object and principle as can be spelled out is to see that the worker is in a better

position to recover the amounts. The law thus safeguards the right of payer to get indemnified In such situation, it is not necessary to probe into the

identity of the employer, in stricter terms. In fact, an enquiry into such question widens the scope and powers of the authority beyond its statutory

limitations. The worker has no say on such inter relations. Extending the principles to this case, it is to be noted that at his own behest and to attend

to their own duties, the appellant came out with scheme and meeting the expenses therefor, though appointments are made by the local body. Thus

the appellant is the author behind and the employees are its own babies, under different guardianship. Therefore, it has to be held that the appellant

and the concerned Gram Panchayats are to be treated as employers with incidence of joint liability.

13. In the circumstances, it has to be held that there exist relationship of master and servant for the purpose of fixing the liability for a

compensation, and both such co-obligants fall within the expression of employer under the provisions of the Workmen's Compensation Act.

Accordingly, in the circumstances, a decree shall fix the joint and several liability in between the appellant and the local bodies with liberty and

option left to the appellant to recover the amounts paid by them from the local bodies.

14. The question is accordingly answered positively. The office is directed to post the matter before the Court hearing the matters.