

**(2012) 01 DEL CK 0547**

**Delhi High Court**

**Case No:** LPA 1057 of 2011

Lumax Automotive Systems Ltd.

APPELLANT

Vs

Its Workmen and Others

RESPONDENT

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**Date of Decision:** Jan. 20, 2012

**Acts Referred:**

- Industrial Disputes Act, 1947 - Section 17B

**Citation:** (2012) 187 DLT 270

**Hon'ble Judges:** Pratibha Rani, J; Pradeep Nandrajog, J

**Bench:** Division Bench

**Advocate:** Rajinder Dhawan and Mr. B.S. Rana, for the Appellant; Atul Bandhu, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

Pradeep Nandrajog, J.

CM No. 22515/2011

42 days delay in filing the appeal is condoned.

CM No. 22517/2011

Since appeal is being heard and disposed of today itself, instant application which seeks stay of operation of the impugned order is dismissed, being infructuous.

LPA No. 1057/2011

1. Impugned order dated 19th September, 2011 requires the appellant i.e. the writ petitioner before the learned Single Judge to comply with Section 17-B of the ID Act, 1947. The grievance of the appellant is that the "CD" which was got prepared by the appellant through a private detective agency shows that the two workmen i.e. respondent No. 2 and respondent No. 3 are gainfully employed by way of self-employment, inasmuch as the two are running retail shops in their village.

2. We had summoned respondent Nos. 2 and 3 in Court, requiring their presence on 22nd December, 2011. The order passed on said date reads as under:

1. Respondent Ishwar Singh and Krishan Kumar are present in person. They are brothers and reside in village Paharawal, District Rohtak (Haryana). On being questioned, they inform that Village Paharawal is a small village having a population of about 1500 persons. They inform that total number of households in village Paharawal is 250. They inform that whereas the family of Krishan Kumar runs a family retail shop from within the precincts of their house and sell sweets and biscuits to the children of the village, the family of Ishwar Singh has taken a kiosk on rent just at the boundary of the village; wherefrom sweets, biscuits, etc. are sold to the children of the village. They inform that depending upon the availability, family members including they sit at the shop and that the monthly income from the shop does not exceed Rs. 1,000/-.

2. We have asked learned Counsel for the appellant whether the two brothers can be given employment either at the Manesar unit or Faridabad unit of the appellant. Learned Counsel for the appellant states that he would use his good offices with his client to try and find the possibility of employment for Ishwar Singh and Krishan Kumar.

3. Renotify on 20th January, 2012.

3. In view of the facts noted in the order dated December 22, 2011 it is apparent that small time petty business run by family members of the respondents No. 2 and 3, in which business the said respondents participate on account of being jobless, would not affect their right to the enforcement of Section 17-B of the ID Act, 1947.

4. Learned Counsel for the appellant relies upon the decision reported as [Niranjan Cinema Vs. Prakash Chandra Dubey and Another](#), to urge that gainful employment would include self-employment.

5. Having perused the said decision, all we have to say is, that self-employment would be gainful employment, if sufficient income is generated through self employment. The measure of sufficient income could be the minimum wages fixed under the Minimum Wages Act.

6. Applying as aforesaid and reflecting upon the order dated 22nd December, 2011, it cannot be said that respondent Nos. 2 and 3 are gainfully employed.

7. The appeal is. accordingly dismissed.

8. With consent of the learned Counsel for the litigating parties, we refer the main dispute to the Mediation and Conciliation Centre of the Delhi High Court. If a settlement is arrived at, the same should be placed before the learned Single Judge so that WP(C) No. 7106/2009 filed by the appellant challenging the award pronounced by Industrial Adjudicator can be disposed of.

9. No costs. Dasti