Hindustan Lever Limited Vs Hindustan Lever Employees Union and Another

Court: Bombay High Court

Date of Decision: Jan. 24, 2001

Acts Referred: Constitution of India, 1950 â€" Article 226
Maharashtra Contract Labours (Regulation and Abolition) Rules, 1971 â€" Rule 25(2)

Citation: (2001) 2 ALLMR 294 : (2001) 3 BomCR 363 : (2001) 3 BOMLR 450 : (2001) 88 FLR 943 : (2001) 1 LLJ 861 : (2001) 2 MhLj 837

Hon'ble Judges: R.J. Kochar, J

Bench: Single Bench

Advocate: Mr. P.K. Rele and Mr. V.H. Tayade, instructed by S.S. Pakale, for the Appellant; Mr. K.K. Singhavi, Mr. Sanjay Sanghavi and Tannu Mehta, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

R. J. Kochar, J.
The petitioners, a Multinational Company and enlightened management, are aggrieved by the order dated 20th February,

1997 passed by the Industrial Court, Maharashtra at Mumbai in Complaint (U.L.P.) No. 625 of 1987 filed by the union mainly for getting the

services of about 22 watchmen regularised in employment. The union filed the said complaint under Items 5. 6 and 9 of Schedule IV of the

M.R.T.U. & P.U.L.P. Act on the ground that the aforesaid 22 watchmen were in employment of the petitioner Company at its various places from

1982 onwards continuously. In fact, one of these watchmen had joined as back as on 12th November, 1962. There is no dispute about the dates

of joining which are given by the union in the Annexures A, B and C in the complaint filed by it. One watchman had joined on 16th March, 1982

while the others had joined in the year 1983, 84. 86 and 87. In view of the aforesaid facts that some of them had joined had put in at least more

than 240 days continuous service as on the date of the complaint filed on 2nd July, 1987, the union prayed for a declaration that the petitioner had

engaged in unfair labour practices and for a direction to the petitioner to cease and desist from engaging in such a unfair labour practice and for

direction to regularise the said watchmen as permanent watchmen employed in the petitioner Company.

2. The petitioner Company filed its written statement and opposed the complaint denying that any unfair labour practice, as complained of, by the

union was practised by the Company. The main defence of the petitioner Company was that the watchmen/security guards were engaged through

the two contractors named in the complaint. According to the Company, therefore, they were the contract labour engaged through the aforesaid

contractors and the Company had no employer employee relationship of whatsoever nature and that they had no control and supervision over

them. It was further pointed out by the Company that pursuant to the judgment of the Supreme Court in the matter of Security Guards Board for

Bombay & Thane v. S. C. P. Services Pvt. Ltd., all the aforesaid watchmen had registered themselves as the Security Guards in the month of July,

1987 and therefore, they cannot seek any appointment much less permanency or regularisation with the Company. The Company further pleaded

that the aforesaid watchmen/security guards were fully controlled by the Security Guards Board and they were paid their wages by the board and

therefore, they had ceased to be even the employees of the contractor and as such there is no question of any unfair labour practice being adopted

by the petitioner Company. In short, the petitioner Company disowned any liabilities to regularise them in their employment.

3. Both the parties adduced oral and documentary evidence before the Industrial Court. After hearing the parties, the learned Member of the

Industrial Court by the impugned order directed the petitioner to classify the watchmen mentioned in the Annexures A, B and C with the complaint,

as permanent workmen of the Company and to grant them wages, privileges and benefits applicable to other watchmen from the date of filing of

the complaint i.e. 2nd July, 1987.

4. Shri Rele, the learned Counsel for the petitioner Company has submitted that it was an admitted position that prior to April. 1987, the petitioner

Company had contracted with one Expert Services Bureau Pvt. Ltd. and Mr. Anthony Andrade, to provide security services on contract basis

pursuant to which the security guards were deployed by the said contractor at various locations of the petitioner. The learned Counsel, therefore,

raised the basic question of employer employee relationship between the security guards and the petitioner Company. He has also submitted that

after 28th April, 1987, the date on which the Supreme Court of India passed the judgment in the matter of Security Guards (supra) the security

guards in question registered themselves with the Board and the Board allotted them to the petitioner Company and since then they were working

for the petitioner Company. Shri Rele has also pointed out that even the petitioner Company got itself registered in June. 1987 with the Security

Guards Board as required under the Security Guards Board Act, 1981. Shri Rele, has stressed the point that after the watchmen in question got

themselves registered with the Board, they cannot seek regular employment with the petitioner Company and they cannot become regular

employees of the petitioner Company. Shri Rele, has therefore, criticised the judgment of the Industrial Court as not tenable in law. According to

him, the Industrial Court held against the Company merely because the contractors did not appear before the Industrial Court to support the case

of the petitioner that the concerned watchmen were employed through them.

5. Shri Singhavi, the learned Counsel for the respondent union, has submitted that the Industrial Court has found, as a matter of fact, that there was

no real and genuine contract between the petitioner Company and the alleged contractors. Shri Singhavi pointed out that the alleged contractors

were merely name-lenders and were not the contractors through whom the concerned watchmen were employed by the Company. He further

submitted that whatever alleged contract existed between the petitioner Company and the alleged contractors, was only a paper arrangement and if

there was any written contract, it was a sham and bogus one having no legal basis and effect. According to him, all these workmen were

performing the duties of watchmen for a long period and one of them was, in fact, working from 1962 onwards while the others were from 1982

onwards. It was further pointed out that they were continuously in employment and were posted at various places to perform the duties of

watchmen/security guards. It was further pointed out that the alleged contractors had never appeared before the Industrial Court and even the

concerned watchmen had never seen them at any time. They were impleaded as it was alleged by the Company that the concerned watchmen

were employed by the contractors. Shri Singhavi further pointed out that by way of abundant precaution and to save their bread and butter, they

got themselves registered with the security guards board without prejudice to their rights and contentions, soon after the judgment of the Supreme

Court (supra). Shri Singhavi has pointed out that as on the date of the complaint they continued to be in employment as watchmen and they were

performing the duties of perennial nature as watchmen to look after the property of the petitioner. Shri Singhavi has pointed out that since they

were doing the work of perennial nature of years together, they were entitled to be regularised in the employment of the petitioner and they were

entitled to get the same benefits including emoluments and are governed by other service conditions of the petitioner. According to him, by denying

the aforesaid benefits, the petitioner Company had engaged in unfair labour practice as contemplated under Items 5, 6 and 9 of the Schedule IV of

the Act. It was the contention of the learned Counsel that the act of the petitioner Company to employ them for years together as watchmen

without making them permanent and with an object to deprive them the benefits of permanency, was unfair labour practice as contemplated under

Item 6 of the Schedule IV of the Act. He also submitted that having completed more than 240 days continuous employment, these watchmen

became entitled to be regularised in employment as permanent watchmen of the petitioner Company. The so-called contract between the

Company and the alleged contractors has to be completely ignored as the petitioner Company had not even produced before the Industrial Court

a copy of the so called contract with the alleged contractors. In the aforesaid circumstances, according to the learned counsel, no fault can be

found with the well reasoned order of the Industrial Court. According to him, there is no miscarriage of justice to warrant any interference under

Article 226 of the Constitution of India.

6. It appears that someone in the management of the petitioner Company has made it a prestige issue to carry on the fight against the union and/or

the workers to an extreme bitter end. Otherwise, the enlightened management of a Multinational Company would not have perhaps contested such

a petty matter to such an extent. The facts are very simple. The concerned employees are working as watchmen/security guards to protect the

property of the petitioner Company. The property is always followed by watchmen. The requirement of watchmen is of perennial nature wherever

the property is to be safeguarded and protected. It is, therefore, not possible for me to accept that the nature of work of watchmen is not of a

permanent or perennial. According to me, the work of a watchmen is necessary for the industry. The every fact that one of the concerned

employees has been continuously working from 1962 onwards as a watchmen and other from 1982 onwards, definitely proves the permanent

requirement and necessity of watchmen for the petitioner. It, therefore, cannot be accepted that the work done by these watchmen necessitated

contract labour. Such a long duration over which the concerned watchmen have been working unequivocally establishes that they were in fact

employed by the petitioner Company to do its regular work of guarding the property of the petitioner. The case of the petitioner Company that

they had engaged the respondent Nos. 2 and 3 as contractors does not inspire even the slightest confidence. Assuming that the alleged contractors

did not attend the Industrial Court, as they might have lost interest after the aforesaid Supreme Court judgment, since the security agencies were

abolished and no exemption was granted. If the petitioner Company and the said alleged contractors had entered into a contract to employ the

concerned watchmen through them, the petitioner Company at least could have produced a copy of the said agreement or contract before the

Industrial Court to prove the fact of the contract and the status of the concerned watchmen as contract labour. Nothing prevented the petitioner

from producing such a copy of the contract before the Industrial Court. We cannot lose sight of the fact that the petitioner is a Multinational

Company and a corporate body and, therefore, it will always act through proper resolutions and decisions and written contracts. In the case of

engaging a contractor it could never be believed that the petitioner Company had entered into an oral agreement, as whispered by Shri Rele, to

engage the watchmen as contract labour through the alleged contractors. The petitioners have not proved even a paper arrangement of contract

with them. According to me, there was no such contract in existence between the petitioner Company and the alleged contractors and the

concerned watchmen were in fact and in reality employed by the petitioner Company. It is possible that the alleged contractors might have lent

their names as so-called contractors to oblige some officers in the management for the reasons best known to them and even assuming that there

was some paper arrangement in existence at any subsequent point of time, according to me, it has got to be condemned as a bogus and sham one

and as a device used by some of the concerned officers to deprive the poor and needy watchmen who were employed. In the oppressive

condition of income, the watchmen as beggars had no choice but to accept the dictates of the concerned officers to get employment under the

petitioner Company. Furthermore, the petitioner Company has not even whispered that before engaging the contract labour, it had got itself duly

registered under the provisions of Contract Labour (Regulation and Abolition) Act, 1970. Such registration is essential and mandatory. The law

requires registration of both the principal employer as well as the contractor. In the present case, it is not the case of the principal employer that it

had registered itself under the provisions of the aforesaid Act. In the aforesaid circumstances, it is not possible to conclude " that the concerned

watchmen were employed through the alleged contractors as contract labour. I, therefore, hold that the concerned watchmen were the direct

employees of the petitioner Company and they were not the contract labour engaged through the so-called contractors. I may clarify here that the

registration of the petitioner Company under the Maharashtra Security Guards Act is different from the registration as the Principal Employer under

the provisions of the Contract Labour (Regulation and Abolition) Act, 1970. The petitioner Company might have got itself registered under the

former Act but it has certainly not registered under the latter one.

7. Having come to a definite conclusion that the concerned watchmen were the direct employees of the petitioner Company and they were not the

contract labour engaged through the alleged contractors, the subsequent registration of the watchmen with the security guards board is not material.

It was done by them with a view to save their bread and butter. If they were not to do so, they would have perhaps been removed from work. If

basically they were the direct employees of the petitioner Company, there was no question of losing that status or character merely because they

got themselves registered with the security guards board. Such a registration will have to be treated and regarded as without prejudice to their

rights and contentions. I, therefore, do not agree with Shri Rele, the learned Counsel for the petitioner, that the watchmen having been registered

with the security guards board, they were allotted to the petitioner Company and, therefore, there was no question of their being regularised and

made permanent in employment of the petitioner Company.

8. I, repeat and reiterate that they were employees employed by the petitioner Company as watchmen as per their perennial requirements to

protect the property of the petitioner Company.

9. The next question which arises is whether the petitioner Company has engaged in any unfair labour practice as contemplated under Items 5, 6

and 9 of the M.R.T.U. and P.U.L.P. Act.

10. The union filed the complaint of unfair labour practice before the Industrial Court invoking the following three items of Schedule IV of the

M.R.T.U. & P.U.L.P. Act, which are reproduced below :-

5. To show favoritism or partiality to one set of workers, regardless of merits.

6. To employee employees as ""badlis"", casuals or temporaries and to continue them as such for years, with the object of depriving them of the

status and privileges of permanent employees.

9. Failure to implement award, settlement or agreement.

According to the union though the concerned watchmen were employed as watchmen and they were performing the same duties required of

permanent and regular watchmen of the petitioner Company, the concerned watchmen were not given the same emoluments which the permanent

watchmen of the Company were getting. According to the union, this was an unfair labour practice of showing favoritism or partiality to one set of

workers regardless of merits. I agree with the contention of the union that the concerned watchmen were also entitled to get the same emoluments

as were paid to the permanent watchmen of the Company. The duties or the work of watchmen are the same though places of duties naturally

would be different in accordance with their posting. The petitioner Company was liable to pay to the concerned watchmen the said emoluments

which it was paying to its permanent regular watchmen. Strictly construing the word ""favoritism"" has a different colour and meaning but there has

been a partial attitude adopted by the petitioner Company between the concerned watchmen and the permanent, regular watchmen. The partiality

of treatment can be said to have been meted out on the basis of an illegal or wrongful assumption by the petitioner Company that the watchmen

were not its permanent or regular watchmen or employees and that they were employed through the alleged contractors, and therefore, the

petitioner Company was not liable to pay any wages to them directly and that their wages were liable to be paid by the alleged contractors. If the

petitioner Company had acted illegally and wrongfully from the beginning of their employment the concerned watchmen cannot be blamed and

cannot be made to suffer for no fault of theirs. According to me this discrimination amounts to partiality towards one set of workers regardless of

merits, and therefore, it squarely falls under Item 5 of the Schedule IV of the Act as an unfair labour practice,

11. This discrimination in payment of emoluments to the concerned watchmen also attracts Item No. 9 of the Schedule IV of the Act. Under Rule

25(2)(iv)(a) and (b) of the Maharashtra Contract Labour (Regulation and Abolition) Rules, 1971 framed under the Contract Labour (Regulation

and Abolition) Act, 1970, even the workmen employed as contract labour are entitled to get the equal rates of wages payable to the direct

workmen of the principal employer. The said rule is reproduced below :-

25(2)(iv)

(a) : ""The rate of wages payable to the workmen by a contractor shall not be less than the minimum rates of wages fixed under the Minimum

Wages Act, where that Act applies, where the rates have been fixed by agreement, settlement or award shall not be less than the rates so fixed,

and where rates have been fixed under the Minimum Wages Act and also under any agreement, settlement or award, the rates, shall not be less

than the higher of the two rates.

(b) : where, the workmen employed by the contractor perform the same kind of work as the workmen or a class of workmen directly employed

by the principal employer, the rates of wages payable to the workmen by the contractor shall be the rates payable to the workmen directly

employed by the principal employer doing the same kind of work.

12. Furthermore, it is the mandatory duty of the principal employer to see that even the workmen employed as contract labour get the wages in

accordance with the said rules. In the present case, there has been a clear violation of the Contract Labour (Regulation and Abolition) Act and

Rules made thereunder. As laid down by the Supreme Court in the case of S. G. Chemicals Employees Union v. S. G. Chemicals and Dyes

Trading Ltd., and followed by our High Court in a number of judgments, the law that violation of any provision of law would attract Item 9 of

Schedule IV of the M.R.T.U, & P.U.L.P. Act. In the present case also, the said judgment squarely applies. I, therefore, hold that the petitioner

Company has engaged in unfair labour practice under Items 5 and 9 of the Schedule IV of the Act.

13. There is no dispute that one of the concerned watchmen was employed in the year 1962 and the others from 1982 onwards and they have not

been made regular or permanent in the employment of the petitioner Company. I am in fact shocked to notice that the watchman who was

employed from 1962 was continued by the petitioner Company without making him regular or permanent. It appears that thereafter a label of

contract labour was put on him and he was continued as a contract labour in violation of the provisions of the law and in utter disregard for the

principles of fairplay and justice. The other watchmen who were employed from the year 1982 onwards were also stamped as contract labour and

were continued without any break in service till the year 1987 when they were advised to enroll themselves with the security board. It is alleged by

the petitioner Company that these watchmen have been allotted by the security guards board to the petitioner Company and they are still

continuing with the petitioner Company. Under the model standing orders, a workman who completes 240 days continuous service has to be made

permanent and regularised in employment. The petitioner Company has blatantly violated this rule. The petitioner Company having continued the

concerned watchmen without making them regular or permanent, has definitely attracted Item No. 6 of Schedule IV of the Act. All these

watchmen are employed and continued as temporaries or Badlis for years together (1962 onwards and from 1982 onwards) with the object of

depriving them of status and privileges of the permanent employees. All of them were employed and were continued without giving them benefits of

permanency. They were cleverly and conveniently branded as contract labour, unlawfully, on the basis of sham and bogus contracts, if at all such

contracts ever existed on record. I say so as the petitioner Company has not filed a copy of such alleged contract and has also not obtained

required registration and licence under the Contract Labour (Regulation and Abolition) Act, 1970. The relationship in these circumstances has got

to be presumed as employer and employees. It is, therefore, clear to me that the petitioner Company has engaged in unfair labour practice under

Item 6 of Schedule IV of the Act.

14. All these concerned watchmen have been deprived of not only the benefits of permanency under the standing orders and equal wages as

provided under the Contract Labour (Regulation and Abolition) Act and Rules, but they have also been deprived of all the benefits of various

settlements/awards applicable to other regular employees of the petitioner Company. According to me, the petitioner Company, has therefore,

engaged in unfair labour practice under Item No, 9 of Schedule IV of the Act. The petitioner Company has thus violated the provisions of Contract

Labour Act and Rules, model standing orders and various settlements between the Company and the union also.

15. I, therefore, hold that the petitioner Company has engaged in and is engaging in unfair labour practice within the meaning of Items 5, 6 and 9 of

the Schedule IV of the Act. I do not find any reason to interfere with the impugned order of the Industrial Court directing the petitioner Company

to classify the concerned watchmen mentioned in Annexures A, B and C with the complaint as permanent workmen of the petitioner Company and

to grant them wages, privileges and benefits as are applicable to other watchmen from the date of filing of the complaint dated 2nd July 1987. I

may clarify here that this order would apply to all such watchmen who are presently working with the Company as far as the relief of permanency

is concerned and those who have ceased to be working with the Company, if alive, or their legal heirs would be entitled to get the benefits

computed on the basis of this order.

16. In the peculiar facts and circumstances of this case I did not need any case law or judgments. I have followed the well settled principles of law

and I have decided this matter in accordance with my conscience to do ultimate justice to the concerned watchmen who have been denied justice

for a long period. Shri Singhavi, the learned Counsel for the union has handed over to me a compilation of 23 judgments plus two other judgments

while Shri Rele the learned Counsel for the petitioner Company has cited six. I do not think it necessary to burden the record by discussing the 31

judgments in the facts of the present writ petition. According to me, I have not departed from the well known principles laid down in the decisions

referred to by both the learned Counsel. The great leap and sweep of the Article 226 is to over-reach injustice and to abort miscarriage of justice.

I have been faithful to the spirit of the Article. I have truly followed the decision of the Supreme Court in the case of K. C. P. Employees''

Association, Madras v. The Management of K. C. P. Ltd., Madras & Ors., of the above judgment is relevant and reproduced below :-

In Industrial Law, interpreted and applied in the perspective of Part IV of the Constitution, the benefit of reasonable doubt on law and facts, if

there be such doubt, must go to the weaker section, labour. The Tribunal will dispose of the case making this compassionate approach but without

overstepping the proved facts, correct the balance sheets and profit and loss accounts of the Central Workshop to the extent justified by the Act

and the evidence and finish the ifs within three months of receipt of this order. The appeals are dismissed. No costs.

I am sure I have not overstepped the facts.

17. The writ petition, therefore, stands dismissed. Rule is discharged. The petitioner Company shall pay costs to the respondent union, quantified at

Rs. 25,000/-. Issuance of certified copy of the judgment is expedited. The effect and operation of this order is stayed by four weeks at the request

of Shri Rele for the Petitioner Company.