The Paper Products Ltd. Vs K.R. Powar

Court: Bombay High Court

Date of Decision: Sept. 21, 1970

Acts Referred: Industrial Disputes Act, 1947 â€" Section 10, 10(2), 33A, 39

Citation: (1971) 73 BOMLR 434 : (1971) 1 LLJ 35 : (1971) MhLj 908

Hon'ble Judges: N.A. Mody, J; G.N. Vaidya, J

Bench: Division Bench

Judgement

Vaidya, J.
Petitioner No. 1 in the above petition is the Paper Products Ltd., a company incorporated under the Indian Companies Act

having its registered office at Delhi, a branch office at Bombay and a factory at Roha in Kolaba District. Petitioner No. 2, Expert Services Bureau

Private Ltd., is a private limited company incorporated under the Indian Companies Act (hereinafter referred to as ""Bureau"") engaged in providing

amongst other things a security personnel to industrial units in India and particularly in the State of Maharashtra. The Bureau was established in

1961 and is a member of the World Secret Service Association and of the Association of British Detectives, London, and claims to be

represented in all parts of the world. The Bureau undertakes contracts of watch and ward and security work in industrial undertakings. In the

course of its business the Bureau has undertaken contract of watch and ward and of security in respect of petitioner No. 1''s factory at Roha. The

Bureau claims to have similar contracts for various other units numbering about 42 all over the State of Maharashtra.

2. On November 23, 1965, the Deputy Commissioner of Labour (Administration), Bombay, in exercise of his powers conferred by sub-s.(2) of

S. 10 as delegated under S. 39 of the Industrial Disputes Act, 1947, referred a dispute between petitioner No. 1 and its workmen to the Industrial

Tribunal, Maharashtra at Bombay. The dispute arose out of two demands of the workers, viz., (1) a demand for leave provision and paid holidays,

the details of which are not relevant for this petition, and (2) a demand for abolishing the existing contract system regarding watchmen and to make

all watchmen working at the Roha factory and its premises direct employees of petitioner No. 1 company from the dates on which the said

watchmen were respectively appointed. It is undisputed that the watchmen engaged by petitioner No. 2 Bureau neither appeared in the

proceedings before the Tribunal, nor did they support the demand made on behalf of the workmen of petitioner No. 1 company for the abolition of

the said contract system. The Tribunal passed an award on June 16, 1966 granting reliefs in respect of the two demands of the workers. Regarding

the second demand, the Tribunal directed the abolition of the contract system and absorption of all the workmen serving as watchmen as direct

employees of petitioner No. 1 company. Feeling aggrieved by the reliefs granted in respect of the demands of the workers, the petitioners have

moved this Court under Arts. 226 and 227 of the Constitution of India challenging the legality and correctness of the award in respect of the two

reliefs. But at the hearing of the petition Mr. Singhavi, the learned counsel for the petitioners, stated that the petitioners were not challenging the

reliefs granted by the Tribunal in respect of demand No. 1 in view of a settlement arrived at between petitioner No. 1 and the workmen on

September 24, 1969. The relief granted by the Tribunal in respect of demand No. 2 is challenged by the petitioners on the ground that the Tribunal

acted without jurisdiction and unjustly in directing the abolition of the contract system notwithstanding its finding that the contract system prevailing

in the factory of petitioner No. 1 did not result in exploitation of labour.

3. The only question which, therefore, arises in this petition is as to whether the Tribunal which relied on the decision of the Supreme Court in

Standard Vacuum Refg. Co. v. Their Workmen 1960 II L.L.J. 233, in directing the abolition of the contract system, correctly applied the

principles laid down in the said decision and otherwise acted legally and justly in abolishing the said system. Petitioner No. 2 although not a party to

the original dispute, has joined in the petition submitting that it is vitally concerned in the dispute between petitioner No. 1 and its workmen

inasmuch as its entire business is likely to be affected by the impugned award.

4. In coming to the conclusion that the contract system should be abolished in view of the principles laid down by the Supreme Court in the

aforesaid case, the Tribunal relied on certain assumptions and inferences based on the materials before it and also on certain general

considerations. These assumptions and considerations may be summed up as follows :-

(1) The Tribunal held that the work of the watchmen, viz., of maintaining watch, was incidental to the running of the factory and this work was

necessarily not of a temporary nature, nor intermittent, but a work that had to be maintained for all the 24 hours of the day and night and all round

the year even when the factory was not working and hence the work was permanent and perennial.

(2) The work had to be done in and near the premises of the factory under the vigilant supervisor and managerial staff of the employer company.

(3) It was a matter of common knowledge that in most of the concerns in almost all the industries in the region, the watch is maintained by the

direct employees and not under the contract system.

(4) Although taking into consideration the salary paid to the watchmen under the contract system and the salary paid under settlement dated July

13, 1965 to a peon, who, according to the Tribunal, was treated on an equal footing with a watchman, it appeared that there was no exploitation

under the contract system, there was nothing to show that there was any special training given to these watchmen engaged by the Bureau which

justified the contract system.

(5) Having regard to the conditions of the Service imposed by the Bureau on its employees, and, in particular, that they shall not form or join any

trade union, and also the condition that they should not mix up with the factory workers, it was clear that deliberately there was imbibed in the

watchmen a sense of aloofness or separateness from the other workmen and this made the workmen think that the training imparted to the

watchmen was the training in spying and hence lead to a distrust between the workers of petitioner No. 1 company and the management which

was unhealthy and detrimental to the maintenance of industrial peace and harmony.

For these reasons, the Tribunal came to the conclusion, relying on the principles laid down by the Supreme Court in the aforesaid case, that the

contract system deserved to be abolished.

5. It must be noticed that after the petition filed by the petitioners was admitted, a civil application was filed, viz., Civil Application No. 2257 of

1966, by which the petitioners prayed that they may be allowed to proceed against respondents Nos. 2 and 3, who are workers employed in the

factory at Roha under O.I. r. 8 of the CPC as representing themselves and all other persons employed by petitioner No. 1 or deriving a benefit

under the impugned order. That prayer was granted and it was further directed that the Chemical Mazdoor Sabha, the trade union who appeared

before the Tribunal, should be given notice of the petition. The Chemical Mazdoor Sabha has appeared on behalf of the workers through their

counsel Mr. Sowani.

6. It is doubtful whether petitioner No. 2 can file this petition when the Bureau was not a party to the dispute before the Tribunal, but we do not

wish to discuss this point any further than to state that the petition will be considered as if it is a petition by petitioner No. 1 alone, without prejudice

to the rights, if any, of petitioner No. 2.

7. Mr. Singhavi, the learned counsel for the petitioners, submitted that the Tribunal did not correctly apply the principles laid down by the Supreme

Court in the Standard Vacuum Refg. Co."s case to the present case and the Tribunal wrongly assumed that the five factors mentioned by it were

sufficient to justify the abolition of the contract system in the instant case in view of the said principles.

8. Turning to the decision of the Supreme Court, we find that the tests which are indicated in the judgment of the Supreme Court for deciding

whether in a particular case the contract system should be abolished are stated in it on page 238 of the report as follows :

..... In dealing with this question it may be relevant to bear in mind that industrial adjudication generally does not encourage the employment of

contract labour in modern times. As has been observed by the Royal Commission on Labour :

''Whatever the merits of the system in primitive times, it is now desirable, if the management is to discharge completely the complex responsibility

laid upon it by law and by equity, that the manager should have full control over the selection, hours of work and payment of the workers.''

The same opinion has been expressed by several labour enquiry committees appointed in different States. We agree that whenever a dispute is

raised by workmen in regard to the employment of contract labour by any employer, it would be necessary for the Tribunal to examine the merits

of the dispute, apart from the general consideration that contract labour should not be encouraged, and that in a given case the decision should rest

not merely on theoretical or abstract objections to contract labour but also on the terms and conditions on which contract labour is employed and

the grievance made by the employees in respect thereof. As in other matters of industrial adjudication, so in the case of contract labour, theoretical

or academic considerations may be relevant, but their importance should not be over estimated.

In other words, the Supreme Court has not tried to lay down that in all cases contract labour system should be abolished. What it has indicated is

that the Tribunal should examine the merits of each dispute apart from the general considerations that contract labour should not be encouraged

and take into consideration the terms and conditions on which contract labour is employed and the grievance made by the employees in respect

thereof.

9. Now, it is true that the Tribunal in the present case has taken into consideration the terms and conditions of employment of workmen as

watchmen by the Bureau and the grievance of the other employees that the said watchmen are trained to spy on them and on their trade union

activities. It is also true that industrial adjudication is generally directed in such a manner as not to disturb the solidarity or workers; and it is pointed

out in the very case referred to above by the Supreme Court that the regular workers had a community of interest with the workmen of the

contractor who were in effect working for the same employer and they had also a substantial interest in the subject matter of the dispute in the

sense that the class to which they belonged, viz., workmen was substantially affected thereby. However we think that the Tribunal in the present

case erroneously relied on certain assumptions and ignored the facts and circumstances in the context of which the Supreme Court laid down the

above principles.

10. The factory of the Standard Vacuum Refining Company''s case are, in our opinion, easily distinguishable from the facts of the present case.

There a dispute was raised by the workmen of the company with respect to contract labour employed by the company for cleaning and

maintenance of the refinery (plant and premises) belonging to the company. It appears that the company was giving this work to contractors for a

period of one year from October 1 to September, 30. The contractors used to be changed from year to year sometimes, with the result that the

workmen employed by the previous contractors were thrown out of employment. The result of the system, therefore, was that that there was no

security of service to the workmen who were in effect doing the work of the Standard Vacuum Refining Co. of India Ltd. The workmen of the

contractors were not entitled to other benefits and amenities such as provident fund, gratuity, bonus, privilege leave, medial facilities, subsidised

food and housing to which the regular workmen of the company were entitled. Although the work was of a permanent nature, the contract system

was introduced to deny the workmen the rights and benefits which the company gave to its own workmen. It is in view of those facts that, in the

dispute referred to the Industrial Tribunal under S. 10 of the Industrial Disputes Act, the Tribunal directed the company to abolish the contract

system, holding that the work which was being done by the contractors was necessary for the company and had to be done daily, though it was

not a part of the manufacturing process; and that doing of the work through annual contracts resulted in the deprivation of security of service and

other benefits, privileges, leave, etc. for the workmen of the contractors. The Supreme Court held that the Tribunal''s decision was right

considering the nature of the work and the conditions of service in that case.

11. We find, however, that the facts and conditions of service in the present case are not similar to the facts in that case. In the first instance, as

stated above, the watchmen employed by the Bureau have no grievance against the Bureau; they have not appeared before the Tribunal : and they

have not opposed the petition although notice was served under O.I., r. 8 of the Civil Procedure Code.

12. The Assistant Manager of petitioner No. 2 Bureau, Victor Manuel Dantas, has filed an affidavit giving the relevant particulars of the business

carried on by the Bureau and of the conditions of the services of the watchmen employed by them. As stated above, the Bureau was established in

1961. It is a private limited company registered under the Indian Companies Act. It is a member of the World Secret Service Association and also

a member of the Association of British Detectives, London. Watch and ward and security affairs in industrial undertakings being closely connected

with the activities of the Bureau, the Bureau undertakes contracts of watch and ward and security work. It is further stated in the affidavit that the

security service provided by its watchmen is a specialised service because the safety and security of the machinery and material of an industrial unit

depend on the honesty and sincerity of its security personnel. Because of the special nature, the watchmen are required to be trained men of

courage and integrity. They have to be carefully selected and properly trained before they are fit to shoulder the responsibility of guarding the

property of the factory in which they are employed. The security personnel are selected keeping in view the physical and mental qualities required

from such watchmen. Their antecedents are also fully verified before they are employed. The Bureau has a training centre. In that training centre the

watchmen are given intensive training in their duties including that or parades, fire fighting, etc. It is only after they pass the test that they are posted

as watchmen at the factories. The Bureau takes the responsibility of selecting these men. The owners of the factories have not to take the trouble of

selecting the personnel and training them. The Bureau also takes care to see that their men do not get mixed up with the factory workers. For this

purpose the Bureau rotates its employees periodically by transferring them from one place to another. The Bureau specialises in knowing about the

modus operandi of unsocial elements in different localities. The Bureau is, therefore, in a position to provide right type of people in a particular unit

in a particular locality. In case of watchmen remaining absent, the Bureau is able to provide substitutes immediately from its reserve force, so that

the security staff in a factory is maintained at its full length at all times. If at any time the factory requires more men, the Bureau is in a position to

supply them from its reserve force. It is further claimed that the officers of the Bureau are highly qualified persons having expert knowledge about

the duties to be performed by watchmen to keep watch. They frequently visit the units under their control to make sure that discipline is maintained

at high level and the duties are performed by their men with complete vigilance. Furthermore, the Bureau indemnifies the factory for any loss

caused to the factory on account of the negligence or mischief of a watchman. Mr. Dantas has further averred in the affidavit that watchmen

employed by the Bureau including those posted at the Paper Products Ltd. at Roha are given a starting wage of Rs. 75 per month and that after a

period of six months, the wages are raised to Rs. 80 per month and then they are put in a grade of 80-3-110. Besides the above wages, the

watchmen are provided with 2 pairs of uniforms, one cap and one pair of shoes every year and they are also given a washing allowance of Rs.

2.50 per month. They are given all the benefits of leave as per the Factories Act and of bonus as per the provisions of the Payment of Bonus Act in

addition to the free accommodation in the factory premises.

13. The statements made by Mr. Dantas are not disputed by the workers in this case or by the union for whom Mr. Sowani appears. A perusal of

these conditions show that the Tribunal was quite right in holding that there was no exploitation of the workers employed as watchmen. Mr.

Sowani concedes this position in so far as monetary exploitation is concerned; but he contends that contract labour so employed, though it

participates in the production in the factory of petitioner No. 1, is denied its fair share in the profits of the company in which other workers through

their union are vitally interested. He, therefore, submits that the finding of the Tribunal that there is no exploitation of labour by the system of

contract labour in the present case is erroneous. This contention must be rejected having regard to the conditions of service mentioned in the

aforesaid affidavit and not disputed by respondents Nos. 2 or 3 or the union. In our judgment, the exploitation suggested by Mr. Sowani not only

does not exist but must be ignored as the watchmen themselves have not come forward to support the demand of the workers in the present case.

14. Now, it is true that exploitation of labour may not be the conclusive test for determining whether contract labour system in a particular factory

or unit should be permitted; but it is an important test. When the Tribunal finds that there is no exploitation of the workers working under the

contract system, we think it should be slow to prohibit it unless law or justice requires it to be stopped. At present there is no law which prohibits

the contract labour system such as exists in the present case. It is difficult to lay down any definite rule when it will be just to prohibit it even though

it does not result in exploitation of labour. We, however, think that the Tribunal in this case proceeded to prohibit it on insufficient grounds. Of the

five circumstances summarised above as having been found by the Tribunal, the Tribunal was clearly wrong in relying on what it described as

common knowledge that in most of the concerns in all the industries in the region, watch is maintained by the direct employees and not under the

contract system."" Mr. Sowani is unable to show how this was regarded as common knowledge. There is no material on the record to support this

assumption of the Tribunal. Another factor relied on by the Tribunal, that the watchmen are employed elsewhere without any special training is also

not supported by any evidence on record. The Tribunal further erred in proceeding on the footing that the special training given to the watchmen

employed by the Bureau did not justify the contract system. It is possible that the training given by a special agency like the Bureau made the

services of watchmen more economic and efficient and justified the contract system with regard to watchmen in the absence of anything else that

made it an evil in fact.

15. Mr. Sowani contended that in any event, the Tribunal was quite right in its conclusion that the system must be stuck down as it generates

distrust between employees and employers because the watchmen were trained as spies and a material part of their work was to spy over trade

union activities. This contention must be rejected because the Tribunal''s conclusion is not based on any evidence or material on the record. After

referring to the grievance of the workmen, the Tribunal merely relied on a theory of industrial peace and harmony. As pointed out by the Supreme

Court in the above case, theoretical grounds are relevant, but they must be considered along with the nature and conditions of the contract labour

in a particular case before deciding whether the contract labour should be prohibited.

16. There is no material in the present case to show that the watchmen employed by the Bureau spied on the trade union activities. The finding of

the Tribunal that ""evidently a distrust is created among the workers"" is also not based on any evidence or any other material. No such material are

referred to either in the affidavit in reply filed by the General Secretary of the Union in this Court or in the course of his arguments by Mr. Sowani.

The Tribunal had no jurisdiction to come to such a conclusion without any basis or material on the record. If there was any material to show that

the watchmen had acted as spies on the trade union activities, the further question as to whether such spying should be prohibited would have

arisen. In our judgment, however, it is not necessary for us to go into that question in the facts of the present case as there is nothing to show that

the watchmen employed by the Bureau in the factory did any spying on the trade union activities in the factory. The trade union and the workers

cannot possibly have any reason to distrust the watchmen merely because they act as spies to prevent thefts or pilfering or to maintain peace in the

factory premises. It is possible that it is in the interest of the workers themselves that such watchmen should belong to an independent agency like

the Bureau just as it would be in the interest of the employees doing accounts work that there should be an independent audit by auditors who are

also not employees.

17. The other circumstances mentioned by the Tribunal as circumstances justifying its conclusion to stop the contract labour of appointing

watchmen do not by themselves support the said conclusion. That the work done by the watchmen is permanent or perennial and is done on the

factory premises cannot by itself make the contract system an evil to be put an end to. We are, therefore, of the opinion that there is no legal or

factual basis for the conclusion of the Tribunal to grant demand No. 2 of the workers in the present case for abolition of the contract system under

which the watchmen are appointed. Applying the principles laid down by the Supreme Court in the above Standard Vacuum Refining Company''s

case and taking into consideration all that is urged by Mr. Sowani against the contract labour system and the nature and conditions of the work of

watchmen employed at the factory of petitioner No. 1, we must unhesitatingly hold that the Tribunal was not justified in directing the abolition of the

contract system.

18. It must be noticed that no case was cited at the Bar dealing with workmen employed as watchmen through a contractor like the Bureau in the

present case. Mr. Singhavi referred to a decision of the Industrial Tribunal dated October 31, 1969 in a dispute between Kirloskar Engines Ltd.,

Poona, and the workmen employed under them, which is published in the Maharashtra Government Gazette, Part I-L on December 4, 1969. In

that case, it appears that the police establishment in Poona, with the sanction of the Government of Bombay, had set up a scheme under which

certain number of Ramoshi or workmen, who were employed as policemen at some time or other, were made available to private parties such as

companies, concerns or even private individuals, as watchmen. But the police watchmen retained their status as police employees and were under

the control, Supervision and discipline of the police authorities. The Commissioner of Police, Poona, however, terminated their services with effect

from October 1, 1967 and thereafter the Kirloskar Oil Engines Ltd., Poona made an arrangement with the Expert Services Bureau Ltd., petitioner

No. 2 in this case. The nature of the police scheme was a subject matter of a dispute between the workers and the management and it was carried

to the Supreme Court in Kirloskar Oil Engines Vs. Hanmant Laxman Bibawe, and it was held by the Supreme Court :

Considering the scheme under which the services of the watchmen were made available to the appellant and the oral evidence on record, it

became clear that the watchman could not claim the status of industrial employee qua the company.

The Supreme Court, therefore, only decided the question as to whether the watchman, who had started the dispute by making an application under

S. 33A of the Industrial Disputes Act, 1947, was an employee; and they did not consider the general question as to whether the employment of

watchmen under contract labour required to be prohibited. After stating this result of the said decision, the Tribunal considered the scheme of

watchmen provided by Expert Services Bureau to Kirloskar Oil Engines Ltd. and came to the conclusion that the decision of the Supreme Court in

Standard Vacuum Refg. Co. v. Their Workmen, could not be extended to the case of watchmen. The Tribunal, therefore, inter alia, rejected the

demand for abolition of contract system in that case. In the course of its reasoning the Tribunal appears to have assumed that the conditions of

service of the watchmen were irrelevant for deciding whether the system should be abolished. We do not think that the Tribunal was right in its

view. The contract labour system in India-well known and universally condemned-sprang up during the British rule. Indented or contract labour in

indigo farms was hardly better than pure slavery. Similar was the case of contract labour in tea gardens and Mahatma Gandhi"s agitation against

the same has now become a part of Indian history. A change for the better started before India achieved independence. The change continued at a

greater pace after independence. Even so, contract system prevailed in a modified form. The contractor, the jobber, the Muccadam - he

functioned under different names - provided teams of labour, dealt with them as herds of cattle, made them toil and slave, and pocketed a major

slice of their earnings, which were meagre for lack of organisation in labour. Over a large number of years ""contract system"" of labour has acquired

an evil reputation, and quite rightly. But times have changed greatly, though not completely. It has therefore become necessary to be very vigilant

and analytical when examining cases of individual industries to find out whether the evil of contract system exists in the employment of labour in that

industry. It becomes necessary to ascertain whether any such evils exist in any form even if it is not called a contract system. But it is equally

necessary to ascertain that a system of employment of labour which has no such evil, and may even be more beneficial, is not condemned by

merely dubbing it a ""contract system"". In short, the absence or presence of the label ""contract system"" should make no difference in examining the

system of labour in any particular industry and a system should not be condemned merely because it is given that label.

19. Mr. Sowani drew our attention to the Contract Labour (Regulation and Abolition) Bill, 1967 stating that it was passed by the Rajya Sabha and

is pending before the Lok Sabha. We cannot rely on the bill for any purpose as it has not yet become law. We have to decide the present case on

the basis of the law at present in force. As stated above, in our opinion, there is no principle of law which prohibits absolutely all contract systems

in all cases. The Industrial Tribunal has to consider each case on its merits and decide whether the contract system deserves to be contained or

prohibited. Even the statement of objects and reasons annexed to the bill referred to by Mr. Sowani does not show that the bill was intended to

prohibit absolutely the system of contract labour. It is well-known that contract labour is frowned upon by labour commissions and labour enquiry

committees whenever such contract labour results in exploitation of workers. But it is also well-known that it is more convenient and reasonable to

have sometimes certain services under contract labour rather than to have regular employees, as in the case of auditors referred to above. In the

statement of objects and reasons, it is therefore, stated :

The proposed Bill aims at the abolition of contract labour in respect of such categories as may be notified by the appropriate Government in the

light of certain criteria that have been laid down, and at regulating the service conditions of contract labour where abolition is not possible. The Bill

provides for the setting up of Advisory Boards of a tripartite character, representing various interests, to advise the Central and State Governments

in administering the legislation and registration of establishments and contractors.

Mr. Sowani, however, submitted that the criteria which are referred to in the statement of objects and reasons are the criteria mentioned in clause

10 of the bill, which are as follows :

(a) whether the process, operation or other work is incidental to, or necessary for, the industry, trade, business, manufacture or occupation that is

carried on in the establishment;

(b) whether it is of perennial nature, that is to say, it is of sufficient duration, having regard to the nature of industry, trade, business, manufacture for

occupation carried on in that establishment;

(c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;

(d) whether it is sufficient to employ considerable number of whole-time workmen.

Mr. Sowani, therefore, submitted that since these are the very criteria applied by the Tribunal in coming to the conclusion that the employment of

watchmen under the contract labour system in the present case should be abolished, this Court should not interfere with the decision of the Tribunal

under Arts. 226 and 227 of the Constitution of India. As stated above, the Tribunal has not applied all that is stated in the criteria on the basis of

the material on record. Moreover, even the bill does not say that the moment the criteria are satisfied the contract labour system should be

abolished. Even under the bill, an advisory board has to advise the State Government as to whether in the particular case, the contract labour

system should be prohibited. If and when the Act comes into force and the advisory board is of the view that such a contract system should be

abolished, the matter may be different. At the moment, however, we have no doubt that there was no material before the Tribunal to show that the

system of employing watchmen under the contract labour in the present case was an evil system which required to be stopped. In the absence of

any such material, the Tribunal was not justified in prohibiting it.

20. For these reasons, the direction of the Tribunal relating to the engagement of watchmen in sub-paragraph IV of paragraph 19 of its award must

be struck down and the petition allowed to that extent. Rule is, therefore, made absolute. In the circumstances of the case, there shall be no order

as to costs.