Karnataka High Court
Karnataka High Court
Bharat Earth Movers Limited Rep. ... vs Gangaramaiah By Sri Mahmood Mirza ... on 20 February, 2007
Equivalent citations: 2007 (3) KarLJ 225, (2007) IIILLJ 112 Kant
Author: S B Adi
Bench: S B Adi
ORDER

Subhash B. Adi, J.

Page 0858

1. This Writ Petition is directed against the order passed by the Labour Court, Mysore in Application No. 31/1994 dated 23rd December 2005.

2. Respondent Nos. 1 to 121 filed an application before the Labour Court, interalia claiming the difference of minimum wages from the petitioner. The Labour Court by order dated 20th November 1996 had rejected the contention of the petitioner that the proceedings before the Labour Court Page 0859 against the petitioner is not maintainable, as the respondent No. 122. the Contractor was not made party. The said order was called in question by the petitioner in W.P. Nos. 7338/1997 and 9341 to 9459/1997. This Court by order dated 3.12.1997 held that the Contractor is a necessary party and directed to implead the Contractor in the proceeding. In view of the order passed by this Court, respondents-1 to 121, who were the claimants before the Labour Court, impleaded respondent No. 122 also as second party. The Labour Court by order dated 12.5.2000 had allowed the application of the claimants-respondents-1 to 121. Petitioner had called in question the said order in W.P. No. 2882 to 3002/2001 and this Court by order dated 28th February 2005 allowed the writ petition and directed the parties to appear before the Labour Court on 4.4.2005 by reserving liberty to file additional statement and evidence, if any and further directed the Labour Court to accept the same in accordance with law and consider both the issues namely, issue as regards to the maintainability of the application, as well as the claim of the workman. After the order of this Court, the Labour Court heard the matter and by its order dated 23rd December 2005, allowed the application by directing the petitioner-Management to pay the arrears of minimum wages and D.A. within six months from the date of the order and also ordered for payment of interest @ 6%. It is this award, which is called in question in this writ petition by the petitioner.

3. Sri. Kasturi, learned Senior Counsel for the petitioner submitted, that the application for claim of difference of minimum wages is not maintainable as against the petitioner, as there is no relationship of employer and workman between the petitioner and the respondent Nos. 1 to 121 and they are all contract labours working under the respondent No. 122. He further submitted that respondent No. 122 is an employer and the liability is only on respondent No. 122 and not on the petitioner and no claim petition under Section 33-C Sub-section (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') is maintainable for recovery of difference of minimum wages from the petitioner. He further submitted that definition of workman as defined under Section 2(s) of the Act does not include the contract labour as a workman and he also referred to Section 33-C Sub-section (2) of the Act and submitted that it is only the workman, who is entitled to maintain an application for claim of difference of minimum wages and not the contract labour. He further submitted that workman as defined under Section 2(s) is only a person, who would be entitled to maintain a claim petition. Since in this case, the respondents-1 to 121 admittedly being the contract labours working under the contract, there is no relationship of master and servant or employer and workman between the petitioner and these respondents. In the absence of any relationship, a claim petition against the petitioner is not maintainable and the Labour Court without considering this aspect of the matter, had passed an order interalia directing the petitioner to pay the difference of minimum wages along with interest.

Page 0860

4. He submitted, that this Court in WP. Nos. 2882 to 3002/2001 had specifically directed to try both the issues namely, as regards to the maintainability and also on merit. He further submitted, that despite the direction by this Court, the Labour Court has not dealt with the issue relating to the maintainability. In support of his contention, he relied on a decision reported in 1985(2) LLJ page 4 in the matter of The Workmen of The Food Corporation of India v. Food Corporation of India and submitted that there is no privity of contract of employer and workman between the petitioner and the respondent Nos. 1 to 121. The expression 'employed' in the definition of workman has two known connotations and as used in the context, would indicate, that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the employer agrees to pay him in cash and kind as agreed between them or statutorily prescribed.

5. He also submitted that the essential condition of a person being workman within the terms of definition is that, he should be employed to do the work in that industry and that there should be an employment by the employer and, that there should be a relationship between the employer and the workman i.e., the relationship of master and servant. Unless such person is employed, there cannot be any question of being workman. He also relied on a decision of the Apex Court reported in 2001(2) LLJ page 1087 in the matter of Steel Authority of India Limited and Ors. v. National Union Water Front Workers and Ors. and referred to paragraphs-55, 101 and 114 and submitted, that only in case where contract is found to be sham and nominal rather a camouflage in which case the contract labour working in the establishment of the principal employer was held in fact, and in reality, the employees of the principal employer himself. Indeed, such cases do not relate to abolition of contract labour and workman under such sham and nominal contract, would be impliedly a workman under the principal employer. He also submitted that there should be a direct relationship of master and servant between the principal employer and the contract labour. He pointed out that in this case, admittedly, all the respondents-1 to 121 are engaged by respondent No. 122. There is no direct or implied relationship of master and servant between the petitioner and respondent Nos. 1 to 121. Relying on these two decisions, learned Senior Counsel submitted, that the issue as regards to the relationship of master and servant or the employer and the workman and the maintainability of the claim petition filed by the respondents-1 to 121 was required to be adjudicated only by the Labour court in an appropriate dispute and not by the Labour Court in exercise of power under Section 33-C(2) and further submitted that the Labour Court has not decided the issue as regards to the maintainability and has proceeded to treat the respondents-1 to 121 as workmen and has allowed their claim treating, that they can claim the difference of wages under Section 33-C(2) of the Act.

6. Sri. V.S. Naik, learned Counsel appearing for respondents-1 to 121, submitted, that there is no dispute that these respondents are the contract Page 0861 labours, engaged by respondent No. 122. He also submitted that in the event the contractor fails to discharge, his obligation or payment of statutory minimum wages, in terms of the contract, the principal employer is liable to pay said amount and in this regard, he referred to Section 21 of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as 'CLRA Act') and pointed out, that under Section 21, primarily the Contractor is responsible for payment of wages to each of the worker employed by him, and the principal employer is required to engage his representative in terms of Section 21 (2) of CLRA Act to be present at the time of disbursement of wages by the Contractor and it is the duty of the representative to certify the amount paid as wages in the manner as prescribed. A duty is also cast on the contractor to ensure the disbursement of wages in the presence of authorised representative of the principal employer. Further, he emphasized on Sub-section (4) to Section 21 of CLRA Act, and submitted, that in case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor. Relying on the said provision, learned Counsel for respondents-1 to 121 submitted that Section 21 creates a liability on the principal employer to ensure the proper payment of wages to the contract labourer. It also creates liability on the principal employer to make the payment of wages in terms of the contract, in the event if the contractor fails to make payment. Relying on these provisions, learned Counsel for the respondents submitted that the contract labour for the purpose of recovery of the minimum

wages in terms of Sub-section (4) of Section 21 of the CLRA Act has to be treated as workmen and in this regard, he relied on a decision of the Apex Court reported in 1985(1) LLJ 428 in the matter of BHEL Workers' Association, Hardwar and Ors. v. Union of India and Ors. He relied on para-6 of the said judgment and submitted, that no distinction can be made against contract labour. Contract labour is entitled to the wages, holidays, hours of work and conditions of service as are applicable to workmen directly employed by the principal employer of the establishment on the said or similar kind of work. They are entitled for recovery of their wages and their conditions of service in the same manner as workers employed by the principal employer under the appropriate Industrial and Labour Laws. Relying on para-6 of the said judgment, learned Counsel for respondents-workmen submitted that Section 21(4) of CLRA Act statutorily creates liability on the principal employer to ensure the payment of wages to the contract labour and no distinction can be made between the contract labour or the workmen directly employed by the principal employer in the matter of recovery of wages, which is a statutory liability created on the principal employer. In this regard, he further referred to another decision of the Delhi High Court reported in 1987(2) LLJ 512 in the matter of Indian Airlines v. Central Government Labour Court, New Delhi and Ors. and referred Page 0862 to para-2, and submitted that the Delhi High Court following the decision of the BHEL Workers' Association case, has held that the workmen employed by the contractor are entitled to recover their wages and their conditions or service in the same manner as the workers employed by the principal employer under the appropriate Industrial and Labour Laws. He also submitted that if the workers directly employed by the petitioner can claim the wages due to them by moving an application under Section 33-C(2) of the Act, the workers employed by the contractors are also entitled to claim wages due to them by moving an application under said provision.

7. He also relies on a decision reported in 1985 LAB. I.C. 1185 in the matter of Prabhat Enlarging Works, Nagpur v. Prabhakar Antaramji Bagmare and Ors. and submitted, that the difference of minimum wages or the minimum wages can be recovered by invoking the provision under Section 33C(2) of the Act.

8. The learned Senior Counsel Sri. Kasturi in reply, pointed out from the judgment reported in 1996(5) SLR 650 in the matter of Hindustan Steelworks Construction Ltd., v. The Commissioner of Labour and Ors. and submitted, that the principal employer Under Section 21(4) of the CLRA Act is liable only to the agreed wages and not any other wages.

9. The principal contention of the learned Senior Counsel for the petitioner is that the Labour Court in exercise of power Under Section 33-C(2) has no power to allow the claim of the workmen when there is a serious dispute as to the relationship of master and servant and maintainability of the application. The said contention of the learned Senior Counsel for the petitioner is that since the respondents 1 to 121 not being workmen under the petitioner, they cannot maintain a claim application for the difference of minimum wages before the Labour Court under Section 33-C(2) of the Act. In the light of these submissions, the question that arises for consideration in this writ petition are:

1) Whether the contract labourer whose difference of minimum wages has not been paid by the contractor are entitled to maintain the claim petition under Section 33-C(2) against the principal employer as well as the contractor?

2) Whether on failure of the contractor to pay the difference of minimum wages as agreed under the contract, the principal employer is liable or not?

10. The facts which are not in dispute are that the respondent No. 122 in this writ petition is a contractor engaged by the petitioner. It is also not in dispute that respondents No. 1 to 121 are all contract labourer engaged by respondent No. 122. It is also not in dispute that the respondents No. 1 to 121 have filed a claim petition Under Section 33(C)(2) of the Act. Interalia, claiming the difference of minimum wages due to them from the contractor i.e., respondent No. 122. It is also not in dispute that the claim petition initially directed against the petitioner and later on in view of the impleading of respondent No. 122 claim petition is directed

against both the petitioner as well as the respondent No. 122.

Page 0863

11. The licence granted under the provisions of CLRA Act before the Labour Court is produced as W-3 and Clause 4 of the said license reads as under:

4. The rates of Wages payable to the workmen by the contractor shall not be less than the rates prescribed for the Schedule of employment under the Minimum Wages Act, 1948, where applicable and where the rates have been fixed by agreement, settlement or award, not less than the rates fixed.

12. By reading of this clause and also Clause 4 of the contract, makes it clear, that there is a contract between the petitioner and the respondent No. 122 for payment of minimum wages to the contract labourer. The contractor under Section 21 of the CLRA Act, is required to make the payment of wages to all the contract labourer and such payment has to be ensured by the petitioner - Management by appointing/engaging a nominee or representatives in terms of Section 21(2) of the CLRA Act. The obligation of the contractor is to see, that the wages has agreed are paid to the contract labourer. What is important to note here is, that, if the contractor fails to make such payment within the prescribed time or make short payment, the liability is fixed on the principal employer to make the payment of wages in full or unpaid balance due. By reading of these provisions, makes it clear that there is a dual obligation of the principal employer. One is that, the principal employer to ensure that proper wages are paid to the contract labourer and second in case, if there is a failure to make the payment of the wages in terms of the contract to the contract labourer, the principal employer is liable to make the payment, and recover the same from the contractor.

13. If the principal employer is statutorily liable to make the payment to the contract labourer, then the amounts due to the contract labourer becomes the statutory liability, and it becomes legally recoverable due.

14. If the contract labourer is entitled to recover from the said amount from principal employer in terms of Section 21(4) of the CLRA Act, then the question that arises for consideration, is as to whether the contract labourer can make a claim petition under Section 33-C(2) of the Act. In the light of the decision of the Apex Court in the matter of B.H.E.L., Workers' Association, Hardwar (supra), there is no insidious distinction between the contract labourer and the workmen for the purpose claiming service benefits, which he is entitled, such as wages, holidays, hours of work and conditions of service. If the contract labourer is entitled to the similar terms of the conditions on par with the workmen, then they cannot be denied the benefit to which in law that they are entitle. Payment of wages is statutory liability. The Delhi High Court in a reported decision referred to above in the matter of Indian Airlines (supra) has reiterated the view taken by the Apex Court and has held, that the workmen employed by the contractor are entitled to recover the dues and the conditions of service in the same manner as the workers employed by the principal employer, which means the workers directly employed by the principal employer, who can claim the wages very due under Section 33-C(2) then the workers or the labourers Page 0864 employed by the contract are also entitled to recover the amount under Section 33-C(2) as they are also placed in the same possession as that of the workmen for the purpose of recovery of the wages, which has become statutory due and for which the principal labourer is also statutorily liable. To this extent in my view, the decision of the Delhi High Court relying on the decision of the Apex Court clearly establishes that even the contract labourers, who were in law entitle to recover the amount in due from the principal employer, can maintain the claim petition under Section 33-C(2).

15. In so far as the contention of the learned Senior Counsel that there is no relationship of master and servant or employer and workmen and claim petition under Section 33-C(2) of the Act is not maintainable. It is to be seen here, that as regards to the nature of the employment of the respondents 1 to 121 is concerned is that they are contract labourer under the respondent No. 122. What is claimed by these respondents is the difference of minimum wages from the contractor, who is primarily liable under Section 21(1) of the CLRA Act. By reading of Section 21 Sub-section (1) & (2) makes it abundantly clear that a contractor is liable to make the

payment to the contract labourer and that payment is required to be ensured by the principal employer. Reading of these two sub-sections clearly indicates, that the liability basically on the contractor and the said payment has to be ensured by the principal employer. It also makes it clear, that in the event the contractor fail to make the payment, than the liability is created on the principal employer. If the status creates liability on the principal employer, than it becomes legally unrecoverable due. Once the amount becomes legal due, the contract labourer for the purpose of recovery would be workmen for the purpose of Section 33-C(2) of the act. Hence, the application under Section 33-C(2) is maintainable for the recovery of the amount as agreed under the contract. There is no dispute that the minimum wages is required to paid to the contract labourer in terms of the contract and the claim made by the respondents 1 to 121 is not the claim, which is beyond the contract. In that view of the matter, the amount, which statutorily become due for which the respondents 1 to 121 are in entitle can be recovered under Section 33-C(2) of the Act. The question of relationship of master and servant does require for the purpose of deciding the recovery amount to which the principle employer is statutorily liable.

16. I find that the application for claim of the difference of minimum wages made by the respondents 1 to 121 is maintainable and also the amount for which they are entitled, can be recovered from the principal employer in view of Section 21(4) of the CLRA Act by invoking the provisions of Section 33-C(2) of the act. The Labour Act has considered all these aspects. Hence, I find no merit in this writ petition.

Accordingly, the writ petition fails and the same is dismissed.