IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.7992/2019

Dinanath Batau Ramteke and Ors. Vs. M/s. Bharat Intelligence Security Force and another

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. S. O. Ahmed, Advocate for petitioners.
Mr. P. D. Meghe and Ms Arti Singh, Advocates for respondent No.2.

CORAM : ANIL L. PANSARE, J.
DATE : OCTOBER 17, 2024

Heard Mr. S. O. Ahmed, learned counsel for the petitioners and Mr. P. D. Meghe, learned counsel for respondent No.2. None for respondent No.1, though served.

2. The petitioners are aggrieved by order dated 13.12.2018 passed by the Labour Court, Chandrapur in Reference I.D.A. No.2/2013. The Labour Court answered reference in negative.

3. Having heard both sides and having gone through the material placed before me, it transpires that the petitioners and 12 others came up with a case that they were in employment as Security Guards with respondents. They were orally terminated on 03.05.2009. The Labour Court observed that there is no dispute regarding the fact that the respondents have entered into an agreement of one year each for the years 2005 onwards with the Maharashtra State Electricity Distribution Company Ltd., Chandrapur (Hereinafter referred to as the, "MSEDCL") for providing labours. The Labour Court, however, held that the respondents cannot be said to be employer of the petitioners.

4. There is nothing to indicate on what basis this finding has been rendered inasmuch as the Labour Court proceeds to note that the respondents acted as contractor to provide security guards to the MSEDCL. The respondents paid monthly wages to the petitioners. Further, the provident fund was deducted from their salary. Accordingly, the Labour Court held that the petitioners and twelve others were contract labours engaged by respondent - contractor for carrying work assigned by MSEDCL, Chandrapur. It further appears that the muster register was admitted by the respondents. Thus, the finding recorded by the Labour Court that the respondents cannot be said to be employer of the petitioners is apparently incorrect.

5. The Labour Court then held that providing security guards is hit by the provisions of Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as the, "Act of 1970"). It appears that the Labour Court has committed a mistake in reading the contract (Page 53), which was for providing security guards and not for providing labours.

6. I have gone through Section 10 of the Act of 1970. It commences with non obstante clause and provides that appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit by notification in Official gazette, employment of contract labour in any process, operation or other work in any establishment. Thus, the provision stipulates that there has to be notification prohibiting employment of contract labour. The Labour Court has not referred to any notification in this regard. The counsel

appearing for the parties are also unaware whether any notification was placed on record. In absence of notification prohibiting employment of security guards on contract basis, the finding of the Labour Court that services provided by respondent to MSEDCL is hit by Section 10 of the Act of 1970, is erroneous.

7. Further, Section 2(b) of the Act of 1970 provides that a workman shall be deemed to be employed as contract labour in/under the work of an establishment when he is hired in or in connection with such work by or through a contractor. Thus, a workman will be treated to be employed as contract labour when he (workman) is hired through a contract for the work by an establishment. In other words, when a regular work of an establishment, which otherwise is to be carried out by a workman on the establishment is carried through a workman hired on a contract to avoid the benefits available to the regular workman, working on the establishment, can be said to be work done through contract labour, which may attract Section 10 of the Act of 1970.

8. Such is not the case here. In fact, it is nobody's case that the MSEDCL Chandrapur is an establishment which is engaged in a work which is required to be carried out by security guards. MSEDCL is involved in distribution of electricity. The security guards cannot be employed for such work. They are deployed for the purpose of protection/security of the premises which has no nexus with distribution of electricity. Thus, the finding of the Labour Court that the

services provided by the respondents to the MSEDCL will attract provisions of the Act of 1970, is erroneous.

9. The Labour Court has further held that the respondents are not an "Industry" in terms of Section 2(j) of the Industrial Disputes Act, 1947 (hereinafter referred to as the, "Act of 1947"). This finding is also incorrect. Section 2(j) of the Industrial Disputes Act reads thus:

> *"(j) "Industry" Means any business, trade, undertaking, manufature or calling of employers and includes any calling, service, employment, handicaraft or industrial occuaption or avocation of workmen."*

10. As could be seen, industry means any business amongst other businesses, undertakings, etc. and includes any services, etc. The respondents herein, by appointing petitioners on their establishment and further by entering into contract with MSEDCL can be said to have rendered services of providing security guards to MSEDCL and, therefore, will be covered under Section 2(j) of the Act of 1947.

11. On this point, Hon'ble Supreme Court in ***Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Ors. 1978 AIR (SC) 548,*** held that organized activity possessing the triple elements namely (i) systematic activity, (ii) organized by cooperation between employer and employee and (iii) for the production and/or distribution of goods and sevices calcualted to satisfy human wants and wishes, although not trade or business may still be an industry, provided the nature of activity, viz. The employer-employee basis, bears resemblances to what is found in trade or business. In other words, where an

establishment provides services for earning profit, it carries an element of the trade or business and thus could be said to be an industry. The respondents, who are involved in the activity of rendering services by providing security guards to various industries/ establishments are, in a way, carrying on business of supplying security guards and for that the respondents have employed persons like petitioners and, therefore, will perfectly fit in the definition of industry under Section 2(j) of the Act of 1947. The Labour Court has, without considering the nicieties of Section 2 (j), rendered erroneous finding that the repsondents are not an industry.

12. The Labour Court has committed yet another glaring mistake by holding that there is no relationship of employer employee between the petitioners and the respondents. As such, the Labour Court has found that the respondents have not only employed the petitioners but have paid them wages by deducting provident fund. Despite such admitted position, the relationship of employer and employee has been negatived on the ground that the petitioners were serving at and for the establishment of the MSEDCL. The Labour Court lost sight of the fact that the contract was entered into by the respondents with the MSEDCL. The Labour Court further failed to take note of the fact that the respondents had admitted the muster roll recording presence of the petitioners. Thus, there was ample evidence to show the relationship of employer and employee between the petitioners and the respondents.

13. The sum and substance of the above discussion is that the Labour Court has committed patent illegality in holding that

there was no employer – employee relationship between the parties and that the respondent is not an industry and that the issue involved is hit by Section 10 of the Act of 1970. The order is, thus, unsustainable for the reasons assigned hereinabove.

14. Resultantly, the writ petition is partly allowed. Order dated 13.12.2018, passed by Labour Court, Chandrapur in I.D.A. No.2/2013 is quashed and set aside. The matter is remanded back for decision afresh, in accordance with law and what has been stated in the body of order.

The Parties shall appear before the Labour Court on 13.11.2024.

The writ petition is disposed of. No order as to costs.

(Anil L. Pansare, J.)

Kahale