

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 25th May, 2011

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WP(C) No.3655/2011

SHYAM SUNDER UPADHYAY & ANR.

..... Petitioners

Through: Mr. R.N. Dubey, Advocate

Versus

SHRI RAM SAJIVAN & ANR.

..... Respondents

Through: Mr. Sanjeev Sabharwal with Mr. Hem
Kumar, Advocates for GNCTD.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. The two petitioners impugn the order dated 7th November, 2008 of the Authority under the Delhi Shops & Establishments Act, 1954 (Shops Act) directing them to within 30 days of issuance of the order pay a sum of Rs.42,600/- to the respondent no.1 workman.

2. The writ petition has been preferred after 2 ½ years of the issuance of the order impugned therein. The petitioners have stated that they came to know of the order when they received the notice from the Court of the Metropolitan Magistrate of the proceedings instituted by the respondent workman for implementation of the order. However the petitioners have nowhere stated that the order was not issued/sent by the Authority as it purports to be. The petitioners have also not stated that they have examined the records of the office of the Authority and that there is no record therein of the issuance/sending of the said order to the petitioners. In the ordinary course of events, the order would have been issued/sent by the Authority and the petitioners would have known of the same. The petitioners were very much contesting the proceedings before the Authority and participating in the same and even otherwise it is inexplicable as to why the petitioners for a period of over two years did not make any enquiries from the office of the Authority, even if had not received the order. The writ petition is thus liable to be dismissed on the grounds of laches, acquiescence and waiver alone.

3. There is yet another aspect of the matter. The petitioners themselves state that after the notice from the Court of Metropolitan Magistrate had

been received by them, one Mr. Tapan Rajora, Advocate had appeared before the Court of the Metropolitan Magistrate on their behalf and had undertaken on their behalf to pay the claimed amount by the next date of hearing. The petitioners claim that they had not signed any Vakalatnama in favour of the said Mr. Tapan Rajora, Advocate. Mere non-signing of the Vakalatnama would not relieve the petitioners from the undertaking given by the said Advocate on behalf of the petitioners. The chronology of events set out by the petitioners in the writ petition leads to only one conclusion that it was the petitioners who had instructed Mr. Tapan Rajora, Advocate. Even otherwise, the petitioners do not claim to have taken any action whatsoever against Mr. Tapan Rajora, Advocate for having appeared on their behalf and/or for having given undertaking on their behalf without any instructions from them. The petitioners are thus bound by the undertaking given by Mr. Tapan Rajora, Advocate on their behalf and this writ petition is not maintainable on this ground also.

4. I have even otherwise examined the order impugned in the writ petition and do not find any error therein capable of interference in exercise of powers of judicial review under Article 226 of the Constitution of India.

5. The respondent workman had on 6th December, 2004 filed an application under Section 21(2) of the Act before the Authority claiming that he was employed by the petitioners herein in their Kiryana shop since 26th May, 2003 on monthly wages of Rs.3,000/-; that he was not issued any appointment letter and not paid any overtime and not given any cash against casual or annual leave and from June, 2003 to October, 2004 was paid Rs.500/- per month only with a promise to pay the balance later; that on 30th October, 2004 when the respondent workman asked the petitioners to pay the balance full wages earned by him, he was asked to visit the residence of the petitioners and where he was coerced to write that he owed Rs.30,000/- to the petitioners and of which incident he filed a complaint with the Police.

6. The petitioners contested the aforesaid claim of the respondent workman; they denied relationship of employer and employee and the claim of the respondent workman.

7. The Authority vide impugned order has found that the respondent workman was kept as an employee by the petitioners and the petitioners

owed arrears of wages @ Rs.2,500/- per month to the respondent workman from June, 2003 to October, 2004. Accordingly, the petitioners have been directed to pay Rs.42,500/- besides compensation of Rs.100/- under Section 21(3) of the Act.

8. The star argument of the counsel for the petitioners is that the respondent workman concealed from the Authority that he had also approached the Labour Court and which had returned a “No Dispute Award”. It is contended that owing to the said “No Dispute Award” having been returned by the Labour Court, the Authority could not have passed the order for payment of Rs.42,600/-.

9. A perusal of the documents filed by the petitioners shows that a statement of claim dated 6th December, 2004 i.e. on the same day when the Authority under the Shops Act was approached, was filed by the respondent no.1 workman before the Settlement Officer; a reference dated 22nd August, 2005 was made to the Labour Court; however the summons sent by the Labour Court to the petitioners were received back with the report that “there exist no firm in the name of the management at the given address”;

that thereafter the respondent workman also stopped appearing – it was in these circumstances i.e. owing to the absence of the respondent workman as well as the management that a “No Dispute Award” dated 29th March, 2007 was returned. The proceedings before the Labour Court thus terminated without determination of the lis. The Supreme Court in *Tilokchand v. H.B. Munshi* (1969) 1 SCC 110 and *Arunima Baruah v. UOI* (2007) 6 SCC 120 held that in such circumstances the parallel remedy for the same relief can be pursued.

10. The respondent no.1 workman having approached the Authority under the Shops Act as well as the Settlement Officer on the same day and both remedies being available to the respondent workman, merely because the respondent workman chose not to pursue the remedy under the Industrial Disputes Act would not disentitle the respondent workman from pursuing his remedy under the Shops Act. Thus the order under the Shops Act cannot be found fault with for the said reason.

11. It is also the case of the petitioners that there was no relationship of employer-employee with the respondent workman. This Court does not, in

the guise of judicial review, exercise appellate powers. Ordinarily, findings of fact are non-interfereable, except when shown to be perverse or not borne out at all from the material/evidence on record; re-appreciation of evidence is not permissible. Merely because this Court may on appreciation of evidence reach a different conclusion is no ground to interfere with the order/action under judicial review. The judgments in this regard have been recently noticed in *MVL Industries Ltd. v. Harendra Singh* MANU/DE/1927/2011. Thus it only has to be seen whether the finding of the Authority of existence of employer-employee relationship is based on no evidence whatsoever.

12. The Authority has held –

“It is admitted by the respondent that the claimant was under their employment as it has been admitted by Sh. Shyam Sunder Upadhyay in his cross examination that Sh. Ram Sanjivan and Sh. Prayag were working at his shop and that no appointment letter was issued to them..... Although Sh. Shyam Sunder has stated that he was running the shop in agreement with Sh. Ram Sanjiwan but he was unable to show any written agreement. The management i.e. Sh. Shyam Sunder in his affidavit, had also stated that he had given Rs.50,000/- to Sh. Ram Sanjiwan for purchasing the Kiryana goods and further stated that he had also paid Rs.30,000/- in next three months for purchasing the Kiryana goods but he was unable to show any evidence to the effect.”

13. The petitioners have along with the writ petition filed copies of cross examination before the Authority. A perusal of the cross examination on 15th November, 2007 of the petitioner no.1 Sh. Shyam Sunder Upadhyay shows that he stated therein –

“At my shop, Ram Sajivan and Parag were working. I never issued any recruitment letter to both the employees and I have also not opened any organization, rather, Ram Sajivan has himself recruited Parag at the shop and Ram Sajivan used to pay the salary to him It is correct that in May, 2003, when I taken the shop on rent, there was an agreement with the owner of the shop with me.”

14. It would thus be seen that it cannot be said that the findings of the Authority are based on no evidence whatsoever. The question is of appreciation of the evidence before the Authority and the view taken by the Authority being a plausible view, cannot be interfered with. Significantly, it is the case of the petitioners that the respondent workman had lured them into financing a Kiryana business which the respondent workman was operating the said business on their behalf and they had nothing to do with the business and it was the respondent workman alone who had arranged the shop from where the business was being carried on. However as aforesaid in the cross examination the petitioner no.1 has admitted that the tenancy of the

shop where the business was being carried on was of the petitioner no.1. If the petitioners had nothing to do with the operation of the business, the tenancy of the shop from where the business was being carried on would not have been in the name of the petitioner no.1.

15. Even otherwise, I am of the opinion that the legislature having created authorities as under the Shops Act to adjudicate the petty disputes between the employees of the shops, and establishments and the management of the shops, this Court in exercise of powers of judicial review ought not to lightly interfere with the decisions of the said authorities which are supposed to have a flair over such disputes and expected to resolve the same expeditiously. This Court as far back as in *The Unique Motor and General Insurance Co. Ltd. v. Dr. Krishmira Singh Sidhu* 3(1967) DLT 500 held that the Shops Act has been enacted to provide *inter alia* security for payment of wages to the employees and demands liberal interpretation so as to accomplish the long-range social objectives.

16. There is thus no merit in the petition; the same is dismissed in *limine*.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

MAY 25, 2011

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(corrected and released on 17th June, 2011).