

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4718 OF 2014

Sarva Shramik Sangh, Thane Petitioner

Vs.

M/s Neosyn Industries Limited Respondent

Mr. Ravindra Nair alongwith Mr. Rahul Oak, Advocate for the Petitioner.

Mr. R.S. Pai, Senior Counsel alongwith Hemant Telkar i/by Nagesh Mehta & Co. for Respondent No.1.

Coram : Smt. R.P. SondurBaldota, J.

Date : 22nd April, 2015.

P.C.

1 The Petitioner-Union files this petition under Article 227 of the Constitution of India for quashing and setting aside the award dtd.22nd April, 2013 passed by the Industrial Court, Thane in Reference (IT) NO.18 of 2005. By the impugned order, it has rejected the demand made by the petitioner for reinstatement of 75 workmen with full back-wages and continuity of service. The defence of the respondent-employer was that these 75 workmen were not it's employees, but were the employees of contractor. The Industrial

Court, after considering the extensive evidence led by both the sides in the Reference, has held that the petitioner has failed to establish that the workmen mentioned at Annexure "A" to the statement-of-claim were employees of the respondent. It also held that the petitioner had failed to establish that the respondent had illegally terminated their services. The other contention taken by the respondent was that termination of service had already been challenged by the very petitioner by filing Complaint (ULP) No.793 of 1993. That complaint has been dismissed and in view of the dismissal of that complaint, the Reference made was not maintainable. The Industrial Court has rejected the contention and opined that the reference made was maintainable. Therefore, the only dispute that remains for consideration is the status of the concerned workmen, as employees of the respondent.

2 The Tribunal had noted that not a single document had been produced by the petitioner to show that the concerned workmen had worked with the respondent-Company as its employees. Also, there is nothing to show that the concerned persons were employed by the respondent. On the contrary, there was sufficient material on record to show that these persons were employees of the contractor engaged by the respondent-Company.

3 The complaint made by the petitioner proceeds on the basis that there were no contractors engaged by the respondent-Company

and that the workmen were the employees of the respondent. But according to Mr. Nair, there was an alternative plea taken up by the petitioner i.e. the contracts relied upon by the respondent are sham and bogus and therefore, the workmen must be treated to be the direct employees of the respondent.

4 The material before the Tribunal for deciding the question of the status of the workmen consisted of oral evidence led by the parties, report of the Investigation Officer appointed at the instance of the petitioner and the documents produced by the respondent. The report of the Investigation Officer clearly states that the workmen were not the direct employees of the respondent and they were the employees of the contractors. Similarly, the documents produced by the respondent-Company, the evidence led by the parties and the evidence in cross-examination of the workmen in particular clearly indicate that there was no relationship of employer and employee between them and the respondent.

5 Mr. Nair refers to the definition of the “Contractor” in the Contract Labour Act, 1970 to submit that unless a contractor is established to be, somebody who undertakes to produce a given result for the establishment, he cannot be said to be the contractor within the definition under the Contract Labour Act. The definition of Contractor at Section 2(c) reads as follows:

“2. Definitions.--- (c)”Contractor”, in relation to an establishment, means a person who undertakes to produce a given result for the establishment other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor.”

Perusal of the record shows that the contractors have been engaged for the specific activity of work as mentioned in the certificates of registration of the contractors with Contract Labour (Regulation and Abolition), Act, 1970. It also shows the nature of the work assigned to them and the number of workers engaged. The work included general cleaning, scrap sorting, bailing, weighing, stacking, clipping, grinding of castings and to bring fettled castings to dispatch bay etc. Therefore, there can be no substance in the submission advanced.

6 One of the defences taken by the respondent was that there was non-joinder of necessary parties i.e. the contractors. Mr. Nair submits that it was necessary for the Tribunal to decide whether the contract is sham and bogus irrespective of the impleadment of the contractors to the reference. According to him, the petitioner had filed an application for impleading the contractors as parties to the proceedings. That application was rejected on 15th December, 2011 on the ground of delay. The application had been made at the final stage of the trial i.e. the stage of final arguments. The application did not

offer satisfactory explanation for the delay. In the circumstances, no fault can be found with the order dismissing the application. Mr. Nair, then argues that since all the documents relating to the Contract Labour were in possession of the respondent-Company, the fact that the contractors were not impleaded to the Reference made no difference. Be that as it may, the Tribunal has extensively considered the entire material on record and found that the respondent had not engaged the concerned workmen and that they were employees of the contractors.

7 The other unexplained circumstance that went against the petitioner was the delay in the reference. The services of the concerned workmen were terminated on 23rd December, 1993 and the reference was made on 23rd February, 2005.

8 For the above reasons, there is no infirmity whatsoever in the impugned judgment and order. Hence, the petition is dismissed.

(Smt. R.P. SondurBaldota, J.)