

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

Writ Petition Nos.4168 and 4208 of 2002

Date: 23-07-2015

W.P.No.4168 of 2002

Between:

Nice Agro Oil Products Pvt. Ltd., represented by its
General Manager

.... Petitioner

AND

Madamanchi Sambaiah and another

.... Respondents

W.P.No.4208 of 2002

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Nice Agro Oil Products Pvt. Ltd., represented by its
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.... Petitioner

AND

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.... Respondents

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

Writ Petition Nos.4168 and 4208 of 2002

COMMON ORDER:

Since the parties in both the writ petitions are one and the same and the orders under challenge were passed on the same reasoning, both the writ petitions are being disposed of by this common order.

These two writ petitions are filed challenging the order dated

20-11-2001 passed by the Labour Court, Guntur in M.P.No.112 of 1996 and the order dated 20-11-2001 passed in M.P.No.16 of 1996 respectively allowing the claims of the petitioners therein/respondents herein by directing the respondents therein/petitioners herein to pay a sum of Rs.16,089-50 and Rs.9,000/- towards notice-pay and retrenchment compensation as well as bonus respectively.

For the sake of convenience, the parties will be referred to as they arrayed before the Labour Court.

The petitioner-workman filed two petitions in M.P.No.112 of 1996 and M.P.No.16 of 1996 under Section 33-C (2) of the Industrial Disputes Act 1947, claiming retrenchment compensation and notice-pay charges as well as bonus against the respondent-company stating that he worked as Mutta Coolie in the respondent-company from 1981 and worked up to 1996 and he was illegally retrenched in the year 1996 and he worked 12 hours during the entire service and worked as per the requirement of the respondent-company i.e. loading and unloading, packing and other works. As such, he is entitled for retrenchment compensation and notice-pay charges as well as bonus for the years 1994-95 and 1995-96. As the respondent-company has not paid the said amounts, the petitioner filed M.P.No.112 of 1996 and M.P.No.16 of 1996 before the Labour Court, Guntur. The respondent-company filed its counters denying the allegations of the petitioner-workman and contending that the petitioner-workman is not workman within the jurisdiction of the Industrial Tribunal and he is only an independent contractor, who used to get the work of loading and unloading on piece-rate basis done by the labour engaged by him

and there is no relationship of employer and employee between the company and the petitioner and that the status of the parties cannot be decided in the proceedings under Section 33-C (2) of the Act and the petitioner-workman used to make payment by calculating the work turned out by the persons engaged by him and the petitioner-workman is not entitled for any overtime wages and on account of fraud committed by the petitioner-workman, the workers engaged by him refused to work under him and chosen another contractor. The right of the petitioner-workman to claim the amounts is in dispute and cannot be entertained under Section 33-C (2) of the Act and the question of retrenchment does not arise in the case of the petitioner-workman as he is not an employee and there is no termination by the management. The Labour Court, considering the rival contentions of both the parties and on appreciation of both oral and documentary evidence produced by the parties, allowed the claims of the petitioner-workman directing the respondent-company to pay an amount of Rs.16,089-50 towards notice-pay and retrenchment compensation and also an amount of Rs.9,000/- towards bonus for the years 1994-95 and 1995-96. Aggrieved by the said orders, the respondent-company filed the present writ petitions.

Heard the learned counsel for the petitioners and the learned counsel for the 1st respondent.

Before adverting to rival claims of the parties, it would be relevant to refer to the agreement entered into by the petitioner-workman with respondent-company on 05-06-1995 and the relevant clauses-1, 3, 4 and 5 thereto read as follows:

“....the above contractor and his contract workmen undertake to work for M/s. NICO Agro Oil Products Pvt. Ltd., Perecherla, at their factory and its premises. On works allotted to them through the contractor by the Management or its representatives and the work so

executed which to the satisfaction of the management;

It is the responsibility of the above contractor to recruit whom he wants or dismiss whom he wants and he shall be responsible to maintain full discipline in the contract workmen and the management has no connection whatsoever in the contractor's responsibilities mentioned in this para.

The Contractor shall be responsible for proper maintenance of attendance of the workers, as required by law, and for necessary deductions like ESI, PF and EPF and also for remittance of the same, as per law, within time to the proper Government authorities, with prior intimation to the management.

For the completed works a bill shall be prepared by the Labour Contractor, which on verification by the management the labour contractor shall receive the correct amount on behalf of his contract workmen, once every week on Monday and at that time ESI, PF and EPF deductions as per law shall be effected by the management on behalf of labour contractor, to be remitted to the concerned Government authorities. The net wages shall be distributed by the contractor to his contract workmen without any reference to the management.....”

Though the said agreement is marked as Ex.R.1, the Labour Court stated that the said agreement was signed only by the petitioner and 25 workers as attesting witnesses. But the perusal of Ex.R.1-agreement goes to show that the same was also signed by the General Manager, which was shown at Page-19 of the material papers. As such, the finding given by the Labour Court that Ex.R.1 cannot be termed as an agreement between the petitioner and the respondent company is against the record. If Ex.R.1-agreement itself were to be taken into account, the petitioner becomes an independent contractor and he has to execute the works as allotted to him by engaging his own men. When the petitioner was held to be an independent contractor, neither the master and servant relationship nor the employer and

employee relationship would arise between the petitioner and the respondent-company and on that sole ground, the orders of the Labour Court are liable to be set aside.

Mere deduction of contribution under ESI scheme does not mean that there is employer and employee relationship and when Ex.R.1-agreement entered into between the petitioner and the respondent-company clearly shows that the petitioner is only an independent contractor, the relationship of employer and employee does not arise between the petitioner and the respondent company. Insofar as the status of the petitioner-workman being an employee of the respondent is concerned, the learned counsel for the petitioner herein contended that the Labour Court erroneously held that the mutta workers/labour became the employees of the respondent-company in the absence of any registration of the establishment of the respondent company and also the licence to the petitioner for supplying labour as contemplated under the provisions of Contract Labour (Regulation and Abolition) Act. A thorough reading of the orders under challenge revealed that the Labour Court, placing a reliance on **Food Corporation of India v. Presiding Officer, Central Government Industrial Tribunal, Chandigarh and another** (1988 LIC 730), held that since the respondent company is not registered as establishment and also the petitioner-contractor is not having licence to supply contract labour as provided under the provisions of Contract Labour (Regulation and Abolition) Act in which case the said Act is applicable, the mutta workers/labour will be the employees of respondent-management. Per contra, the learned counsel for the petitioner herein placed a reliance on **Steel Authority of India Limited and others v. National Union Waterfront workers and others** ^[1], wherein it is held as follows:

“.....In Dena Nath's case (supra), a two-Judge Bench of this Court considered the question, whether as a consequence of non-compliance of Sections 7 and 12 of the CLRA Act by the principal employer and the licensee respectively, the contract labour employed by the principal employer would become the employees of the principal employer. Having noticed the observation of the three-Judge Bench of this Court in The Standard-Vacuums case (supra) and having pointed out that the guidelines enumerated in sub-section (2) of [Section 10](#) of the Act are practically based on the guidelines given by the Tribunal in the said case, it was held that the only consequence was the penal provisions under [Sections 23](#) and [25](#) as envisaged under the CLRA Act and that merely because the contractor or the employer had violated any provision of the Act or the Rules, the High Court in proceedings under [Article 226](#) of the Constitution could not issue any mandamus for deeming the contract labour as having become the employees of the principal employer. This Court thus resolved the conflict of opinions on the said question among various High Courts. It was further held that neither the Act nor the Rules framed by the Central Government or by any appropriate Government provided that upon abolition of the contract labour, the labourers would be directly absorbed by the principal employer.....

For reasons we have given above, with due respect to the learned Judges, we are unable to agree with their reasoning or conclusions.

The principle that a beneficial legislation needs to be construed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. We have already noticed above the intendment of the CLRA Act that it regulates the conditions of service of the contract labour and authorizes in [Section 10\(1\)](#) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of [Section 10](#) of the Act among other relevant factors. But, the presence of some or all those factors, in our view, provide no ground for absorption of contract labour on issuing notification under sub-section (1) of [Section 10](#).

Admittedly when the concept of automatic absorption of contract labour as a consequence of issuing notification under [Section 10\(1\)](#) by the appropriate Government, is not alluded to either in [Section 10](#) or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or this Court to read in some unspecified remedy in [Section 10](#) or substitute for penal consequences specified in [Sections 23](#) and [25](#) a different sequel, be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible. We have already held above, on consideration of various aspects, that it is difficult to accept that the Parliament intended absorption of contract labour on issue of abolition notification under Section 10(1) of CLRA Act.....”

Therefore, in view of the law laid down by the Full Bench of the Supreme Court in the decision cited above, the view taken by the High Court of Punjab and Haryana in **Food Corporation of India v. Presiding Officer, Central Government Industrial Tribunal, Chandigarh and another** (1988 LIC 730), on which the Labour Court placed reliance, is not justified and against the law and consequently, the findings given by the Labour Court basing on the decision of Punjab and Haryana High Court are factually erroneous and not sustainable in law, and accordingly, on that sole ground, the orders of the Labour Court under challenge are liable to be set aside.

Insofar as the issue of employer and employee relationship between the petitioner and the respondent-company is concerned, the respondent-company in the counter affidavit disputed the relationship stating that there was no relationship of employer and employee between the respondent-company and the

petitioner-workman in view of the fact that the petitioner became an independent contractor and when there was no such relationship, the petitions under Section 33-C (2) of the Act are not maintainable. In support of his contentions, the learned counsel for the petitioners herein relied on a decision in **Desai Brothers,**

Hyderabad v. Laxnii Bai Peddamalla ^[2], wherein it is held:

“.....The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and him as between employer and employee or master and servant. Unless a person is thus employed there can be no question of his being a ‘workman’ within the definition of the terms as contained in the Act.

We therefore, having given earnest consideration to the principles laid down by the Supreme Court and also the provisions of the Act and the definition of “workman”, think that the Labour Court ought to have examined the other evidence also and then given a finding whether there was such relationship as pointed out by the Supreme Court. Hence, we set aside the order of the learned Single Judge and the common order passed by the Labour Court, and remand the matter to the Labour Court to consider all the evidence adduced and decide the issues involved. If, prima facie, the Labour Court is satisfied that the petitioners are workmen, it can proceed with the enquiry. But, if on the other hand, it finds that some genuine doubt arises about the relationship, then the only course left for the Labour Court is to direct the Union or the workmen to raise a dispute under Section 10 of the Industrial Disputes Act, 1947....”

and in **Municipal Corporation of Delhi v. Ganesh Razak and**

another ^[3], wherein it is held:

“.....The High Court has referred to some of these decisions but missed the true import thereof. The ratio of these decisions clearly indicates that where the very basis of the claim or the entitlement of the workmen to a certain benefit is disputed, there being, no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding under Section 33- C(2) of the Act. The Labour Court has no

jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under [Section 33-C\(2\)](#) of the Act. It is only when the entitlement has been earlier adjudicated or recognized by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power under Section 33- C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution.....”

Therefore, in view of the principle of the law laid down in the above decisions, in the instant case, when once the petitioner-workman was held to be an independent contractor and not the employee of the respondent-company in the light of Ex.R.1-agreement, he cannot be entitled to the benefits as provided under Section 33-C (2) of the Act and the observations given by the Labour Court in respect of entitlement of the petitioner-workman to the benefits under Section 33-C (2) of the Act is against the law and not sustainable and hence, the orders under challenge are liable to be set aside.

In view of above facts and circumstances and the law laid down by the Apex Court as well as this Court, the order dated 20-11-2001 in M.P.No.112 of 1996 and the order dated 20-11-2001 in M.P.No.16 of 1996 passed by the Labour Court, Guntur are set aside and the writ petitions are allowed accordingly. However, it is made clear that since the writ petitions are allowed, the petitioner in the writ petitions, who is respondent-company before the Labour Court is entitled for refund of the amounts deposited by it in pursuance of the interim order dated 06-03-2002 passed by this court and consequently, the Labour Court is directed to refund whatever amounts the petitioner-company deposited in pursuance of interim orders of this court to it. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any,

pending in the writ petitions shall stand closed.

A. RAJASHEKER REDDY, J

Date: 23-07-2015

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- [\[1\]](#) (2001) 7 Supreme Court Cases 1
 - [\[2\]](#) 1988 Law Suit (AP) 138
 - [\[3\]](#) (1995) 1 Supreme Court Cases 235