

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION***

WRIT PETITION NO. 3003 OF 2006

Prabhat Udyog Ltd .. Petitioner
vs
Sarva Shramik Sanghatana (K.V.)
Mumbai .. Respondent

Mr.Ashok Shetty with Mr.Aditya Bhat I.b

M/s Sanjay Udeshi & Co for Petitioner
None for Respondent

Coram : S.C.GUPTE, J
Date : 15th JUNE, 2018

ORAL JUDGMENT

Heard learned counsel for the petitioner. The respondent is absent. Since this is an old petition, I am not inclined to grant any time and proceed to decide the matter on the basis of the submissions of the petitioner's counsel and record and proceedings.

2. The petitioner, who was a manufacturer of kerosene pressure stoves and other accessories, is said to be the employer of the workmen, whose cause is espoused by the respondent union and for whom a reference was made before the Labour Court, at Mumbai. With effect from 1.11.2004, the petitioner claims to have closed its manufacturing activities, since there was no demand for kerosene

stoves after the advent of new cooking gadgets and developments. All the workmen employed by the petitioner left the company's services. The dispute pertains to about 21 female workers who were working with another company by the name of Swastik Manufacturing company. It is submitted that Swastik Manufacturing company was manufacturing allied products. It is the case of the complainant-union that its own activities were conducted by the petitioner company under the pseudo-name of Swastik Manufacturing company and that the workmen in fact were employees of the petitioner. It is the grievance of the union that with effect from 19.11.1988, Swastik Manufacturing company closed its activities and terminated the services of the workmen. An industrial dispute in respect of this termination was carried in a reference before the Labour Court at Mumbai. Evidence was led by the parties before the Labour Court. By its award of 5.5.2006, the Labour Court answered the reference in the affirmative granting an ex-gratia amount of Rs.50,000/- to each of the workmen and Rs.50,000/- towards compensation in lieu of reinstatement.

3. The petitioner challenges the award by way of the present petition. It is essentially the case of the petitioner that no employer-employee relationship between the petitioner and the concerned workmen was proved through any documentary or oral evidence. Considering the pleadings before the Court in reference,

the Court framed various issues. The relevant issue was whether it was proved that there was a relationship of employer and employee between the first party and the second party. The first party, i.e. the petitioner, produced voluminous record such as muster rolls for the year 1998-99, declaration forms in respect of ESI claims, wage registers for the relevant period, i.e. from January, 1996 to May 1998, in respect of both the petitioner and Swastik Manufacturing company as also letters addressed by Swastik Manufacturing company to the workmen. The workmen, for their part, led oral evidence of one witness, Smt.Rajiyabanu M.U.Khan. The witness admitted in her cross-examination that Insurance cards given to the workmen contained the name and insurance code number of Swastik Manufacturing company and even the benefits of ESI were availed from Swastik Manufacturing company. She admitted that the workmen used to sign the registers of Swastik Manufacturing company whenever they were paid salary and that payments towards closure were made after the closure of Swastik Manufacturing company. There is no documentary evidence produced by the workmen. In the impugned order, the Labour Court appears to have considered, carefully, as it puts it, the documentary evidence produced by the petitioner. The Court observed that it was apparent that the names of the employees were shown on the roll of Swastik Manufacturing company; and the muster roll was signed by workmen including the witness. The Court held that mere signatures

of the workmen on the wage register or on ESI forms of Swastik Manufacturing company were not sufficient to establish that the workmen were the employees of Swastik Manufacturing company. The whole emphasis of the Court's analysis appears to be to show want of employer-employee relationship between the employees and Swastik Manufacturing company. This Court fails to see how such statement can be made in the first place. Be that as it may, the question before the Court was not whether there was any employer-employee relationship between Swastik Manufacturing company and the workmen but whether there was such relationship between the petitioner and the workmen and the onus to establish such relationship was, even according to the Court, on the concerned workmen. The Court held that from the very correspondence with the Labour Commissioner on record, it was apparent that these workmen were paid salaries and dues by one B.G.Deshmukh, who was an exemployee of the petitioner. (B.G.Deshmukh has signed as a proprietor of Swastik Manufacturing company) On the basis of this fact, as also the circumstance that the record relating to muster roll, wage register of Swastik Manufacturing company was produced by the petitioner, the Court held that these facts showed that the petitioner "*might have got prepared*" the record of its female workmen showing the name of the employer as Swastik Manufacturing company and its own employee, B.G.Deshmukh, as a proprietor. The letter of 19.12.1998 issued by Swastik Manufacturing

company to its female workmen on account of closure is on record and is noticed by the Court. The Court held that if at the time of termination of employment, the employees, being in need of money, accepted legal dues and closure compensation, they cannot be estopped from making their claim against their real employer, which, in this case, according to the Court, was the petitioner. Accordingly, on this basis, the issue of existence of relationship of employer and employee was answered in favour of the respondent-union. The entire approach and analysis of the Labour Court is such as no reasonable person duly instructed in law could have indulged in. The award is opposed to the evidence on record. In the premises, the impugned award is unsustainable.

4. Accordingly Rule is made absolute by quashing and setting aside the impugned award and rejecting the reference.

(S.C.GUPTE, J)