

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.31109 of 2003
and W.M.P.No.37873 of 2003

M/s.Berger Paints India Ltd.,
Rep. By its Senior Manager (Production),
53-56, Pandasozhanallur Village,
Nettapakkam Commune,
Pondicherry 605 106. .. Petitioner

Vs.

1.The President,
Berger Paints Thozhilalar Sangam,
No.42, Cuddalore Road,
Bharathi Mill Thittu,
Mudaliyarpet,
Pondicherry 605 004.

2.The Presiding Officer-cum-
II Additional District Judge,
Labour Court,
Pondicherry. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorari calling for the records relating to the award dated 07.01.2003 in I.D.No.19 of 2001 passed by the 2nd respondent published in Pondicherry Government Gazette No.38 Supplement - II dated 23.09.2003 and quash the same.

For Petitioner : Ms.Usha Ramman

For R1 : Mr.S.Ayyathurai

O R D E R

This Writ Petition is filed to issue a Writ of Certiorari calling for the records relating to the award dated 07.01.2003 in I.D.No.19 of 2001 passed by the 2nd respondent published in Pondicherry Government Gazette No.38 Supplement - II dated 23.09.2003 and quash the same.

2.The 1st respondent raised I.D.No.19 of 2001 alleging that its members were working continuously from 1998 for 3½ years, doing house keeping work for the petitioner, which is a continuous work, the work of its members were supervised by the petitioner's Supervisor and Disciplinary Proceedings are initiated by the petitioner. The petitioner filed counter statement and raised various grounds on merits and contended that the petitioner has engaged the workers for doing house keeping work through contractor. The Gramma Panchayatadars of Pandasozhanalur Village by their letter dated 24.07.1997, where the petitioner factory is constituted, applied for grant of Sanitary Assistant Contract and requested to execute the work of sweeping, washing and cleaning on contract basis by their letter dated 26.07.1997. The petitioner management accepted their request and awarded contract to them. The village panchatar authorized one M.Thiagarajan for collection of contract payments. The petitioner entered into an agreement with the said M.Thiagarajan on 01.11.2000. The said M.Thiagarajan only engaged workers and supervised their work. The said M.Thiagarajan, the contractor took appropriate Disciplinary Proceedings for the misbehaviour of their workmen. Subsequently, the contract employees under the said contract formed themselves as Union by the name and Style "Berger Paints Thozhilalargal Sangam". The contractor M.Thiagarajan became the Secretary of the said Union. They demanded various facilities on par with regular workers in the petitioner factory. They raised dispute with regard to bonus before the Conciliation Officer and sent notice to the petitioner on 28.10.1999. While so, after expiry of contract with the said M.Thiagarajan, the petitioner entered into a fresh contract with one N.Ambalavanan on 01.11.1999 for performing house keeping job. The workers engaged through contractor are not employees of the petitioner and prayed for dismissal of the Industrial Dispute.

3.Before the 2nd respondent, the parties did not let in any oral evidence. The petitioner marked 17 documents as Exs.B1 to B17 and 1st respondent marked 12 documents as Exs.A1 to A12. The 2nd respondent considering the pleadings and documentary evidence, held that in the absence of valid contract placed before the 2nd respondent, the workers doing house keeping work will be treated as workers of the petitioner. The 2nd respondent further held that the said workers are not regular workers of the petitioner, but directed the petitioner to continuously engage the said workers. The 2nd respondent further held that the issue relating to the bonus cannot be decided as there are no facts and figures available and both the petitioner and 1st respondent did not show any interest regarding bonus issue before the 2nd respondent-Labour Court.

4.The petitioner has come out with the present Writ Petition challenging the award passed by the 2nd respondent dated 07.01.2003 in I.D.No.19 of 2001 published in Pondicherry Government Gazette No.38 Supplement - II dated 23.09.2003.

5.The learned counsel appearing for the petitioner contended that the 2nd respondent failed to see that there was no employer-employee relationship between the petitioner and members of the 1st respondent Sangam. The petitioner has given contract of house keeping work to contractors. Originally, the contract was given to one M.Thiagarajan and on 01.11.1999, the work was given to N.Ambalavanan and subsequently, the contract was entered into on 01.11.2000 with one M.Thiagarajan, as per Ex.B8, the said contract. The petitioner agreed to pay consolidated sum of Rs.17,500/- to the said contractor and contract was for one year from 01.11.2000. Previously, the said M.Thiagarajan was contractor during the period from 1998-1999. Earlier, the petitioner had entered into contract with one N.Ambalavanan and D.Tamilmani. The relationship of members of 1st respondent is only with contractors who were their principal employers. The petitioner has registered themselves as per the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 [hereinafter referred to as 'the Act'] and marked the document as Ex.B14. The 2nd respondent having held that workers are not regular employees, erred in directing the petitioner to provide continuous work to the members of the 1st respondent on the ground that the petitioner failed to produce agreement before the 2nd respondent. At the time of arguments, the learned counsel appearing for the petitioner submitted that members of the 1st respondent having left the service on various dates from 2000 onwards, the 2nd respondent erred in directing the petitioner to provide continuous work to the members of the 1st respondent when there is no provision for contravention of provisions of the Act to that effect. In addition to that, the learned counsel appearing for the petitioner submitted that the Secretary of the 1st respondent Association raised issue with regard to payment of bonus before the Conciliation Officer. The Conciliation Officer sent the failure report. When it went to reference, it was expanded beyond conciliation proceedings for the relief more than the subject matter of conciliation proceedings and the dispute raised by the 1st respondent is not maintainable and prayed for allowing the Writ Petition.

6.The 1st respondent filed counter affidavit. The learned counsel appearing for the 1st respondent contended that members of the 1st respondent are the workers of the petitioner and they were continuously working under the supervision of the petitioner. The petitioner having failed to follow the provisions of the Act, cannot take shelter under the Act. The 2nd respondent have taken note of all the provisions under the Act

and correctly held that the members of the 1st respondent are workers of the petitioner and if at all the 2nd respondent has committed an error, it is in respect of not ordering regularization and not directing the petitioner to pay 20% bonus and revise the bonus of the workmen concerned and prayed for dismissal of the Writ Petition.

7. Heard the learned counsel appearing for the petitioner as well as the 1st respondent and perused the materials available on record.

8. From the materials on record, it is seen that it is the contention of the petitioner that he has awarded contract to the contractors for house keeping work. The petitioner has registered under Section 7 of the Act for engaging contractors. The said registration certificate was marked as Ex.B14 before the 2nd respondent. The petitioner has stated as per the request of the Pandasozhanalur village, they gave contract of house keeping to the said village panchayatdars who authorized one M.Thiagarajan to collect contract payments. The petitioner entered into an agreement with M.Thiagarajan and the same is marked as Ex.B8. Subsequently, the petitioner entered into contract with N.Ambalavanan and D.Tamilmani also. The 1st respondent has admitted that the said M.Thiagarajan, contractor, originally was the Secretary of the 1st respondent and subsequently, he was removed from the said post as he was brought over by the petitioner. The learned counsel appearing for the petitioner contended that the agreement was entered into with M.Thiagarajan, the contractor for house keeping work. The said M.Thiagarajan has not obtained any license as per Section 12 of the Act. When the contractor has not obtained license under the Act, he cannot undertake or execute any work through contract by engaging workers. The 2nd respondent concluded that members of the 1st respondent are workers of the petitioner on the ground that the petitioner failed to produce any valid contract. If the management or the contractor has violated provisions of the Act, the Court has no power to direct the petitioner to give continuous work. As per Section 23 of the Act, for violation of provision of the Act, the person who violates can be prosecuted. The 2nd respondent has taken adverse inference against the petitioner with regard to workers who are doing house keeping work for the petitioner. Having held that members of the 1st respondent Sangam are not regular employees of the petitioner, the 2nd respondent erred in directing the petitioner to give continuous work to the said workers. The 1st respondent has not produced any material to show that contract given to M.Thiagarajan, its erst-while Secretary is only sham and nominal and the petitioner is the real employer.

9. According to the learned counsel appearing for the petitioner, except one person, all the other employees have left the service of the contractors and one A.Murugan is working with different contractor under the petitioner management. The learned counsel for the petitioner furnished the list of employees and dates on which they have left the service of contractors which are as follows:

SL.No.	Name	under Contractor	Left service/contract closed
1.	S.Kalian	Palani	12.06.2019
2.	P.Kalian	Palani	31.05.2013
3.	M.Gothandabani	M.Gothandabani	26.11.2008
4.	K.Jayamurthy	Palani	31.05.2017
5.	A.Thachanamurthy	Palani	30.06.2017
6.	A.Sankar (s) Ananthan	Ambalavan	2000
7.	K.Ramakrishnan	Ambalavan	2000
8.	M.S.Munuswamy	Ambalavan	2000
9.	Dharmakodi	Ambalavan	2000
10.	A.Murugan	Palani	2010
11.	S.Ravi	Ambalavan	2000

Considering all the materials on record in its entirety and the contention of the learned counsel appearing for the petitioner, the impugned award of the 2nd respondent dated 07.01.2003 made in I.D.No.19 of 2001 is liable to be set aside and is hereby set aside.

10. In the result, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

gsa

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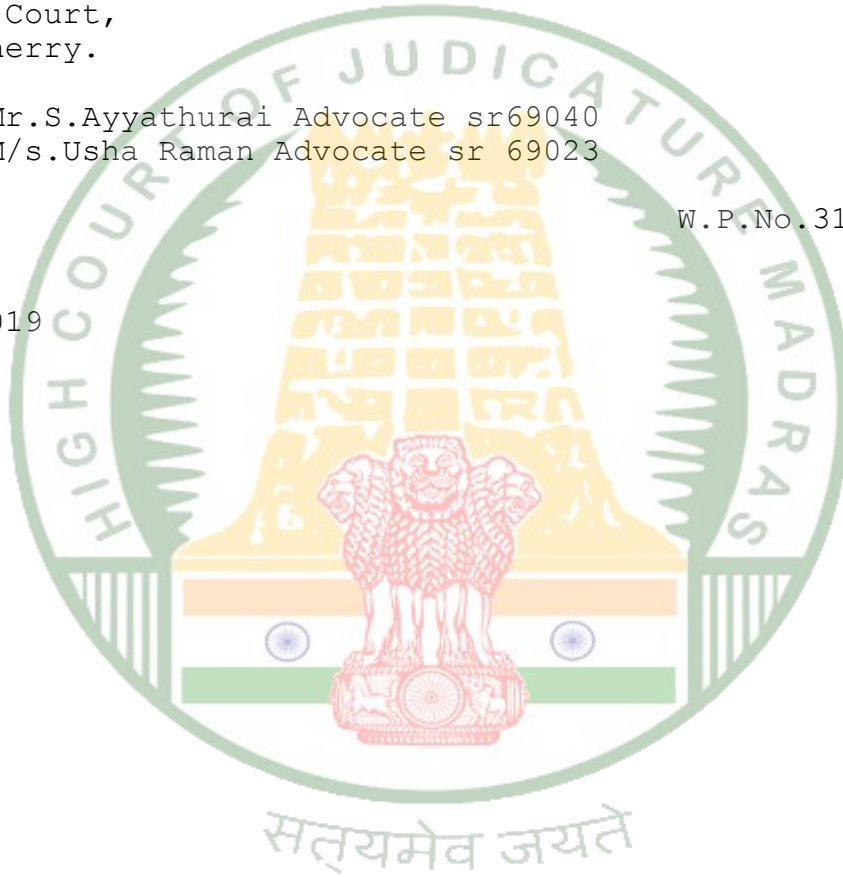
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+1 cc to Mr.S.Ayyathurai Advocate sr69040
+1 cc to M/s.Usha Raman Advocate sr 69023

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