

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

WRIT PETITION NO. 1640 OF 2022

Shreyas Ramniklal Jhaveri

.. Petitioner

Vs.

Assistant Commissioner of Labour, Mumbai
Suburban & Ors.

.. Respondents

Mr. Anand Pai a/w Adv. Diksha Shetty i/b AAK Legal for Petitioner.

CORAM : NITIN W. SAMBRE, J.

ORDER RESERVED ON : 14TH JULY, 2022

ORDER PRONOUNCED ON : 11TH AUGUST, 2022

P.C.:

1. This Petition is by the employer questioning the order dated 06/03/2010 whereby a reference under sub section 5 of section 12 of the Industrial Dispute Act (for short “the said Act”). A reference was made by the Additional Commissioner of Labour to the Industrial Court pursuant to industrial dispute under section 2(k) of the said Act. Award dated 23/10/2019 published on 16/01/2020 delivered by the Industrial Court, whereby Industrial Court issued directions to the petitioner-employer to pay closure compensation to the workmen of respondent-union as prescribed under section 25(o) of the said Act and consequential notice under section 33C(1) of the said Act, which is annexed at Exhibit-V to the

Petition.

2. Facts necessary for deciding the petition are as under:

a. The petitioner, claims to be an erstwhile partner and lawful attorney of M/s. Evergreen Gems. Partnership was dissolved under the Partnership Act. The business of firm was, manufacturing of rough diamonds i.e. assorting, cutting, and polishing of rough diamonds. The said company was in the business of importing rough diamonds, process the same by assorting, cleaving, sawing, laser sawing, bruited, cutting and polishing. It is claimed that such process of manufacturing was carried out at Goregaon (E), Mumbai.

b. The workmen of the respondent-union came to have been appointed by the said firm M/s. Evergreen Gems and the P.F. contribution, wages were paid and deducted and also deposited with the P.F. authority. It is claimed that machines on which the workmen of the respondent-union were working were owned by the said firm and were operated in the premises of the firm under the supervision, control, management, directions and finance. The said firm was provided PF number MH-92369. It is the claim of the

workmen of the respondent-union that they were orally appointed with the said firm. To come out of clutches of various labour and other allied laws, employment of the workmen of the respondent-union claim to have been shifted to another firm i.e. M/s. Virti Enterprises and M/s. Prasam Diamonds.

c. Alleging illegal and unjustifiable termination by the petitioner in 2008 under the pretext of closure, the workmen/members of the respondent-union alleged to have send demand letters seeking reinstatement on 06/09/2008. Accordingly, a communication was addressed to the Labour Commissioner for taking up conciliation proceedings and the report from the I.O. of the Industrial Court was invited.

d. The said claim was registered by the firm alleging that the firm's business was permanently closed with effect from 28-04-2008/30-04-2008 and the firm was dissolved on 31/12/2002..

e. As the conciliation proceedings failed, the Labour Commissioner having noticed existence of industrial dispute under section 2(k) of the said Act made a reference.

f. The said reference was of 06/03/2010, which was

decided by the Industrial Court vide award impugned dated 23/10/2019 referred above, as such this Petition.

3. Mr. Pai, counsel appearing for the petitioner while questioning the order impugned would urge that the workmen of the respondent-union were never in the employment of the petitioner and as such there does not exist employer-employee relationship. According to him, the workmen of the respondent-union were employees of the contractor and as the contractor was not impleaded in the proceedings, which led to the passing of impugned award, hence same cannot be justified in law, having passed in the absence of necessary party. He would claim that the award impugned is delivered behind the back of the contractor. In addition, his contentions are, there does not exist industrial dispute under section 2 sub-section (k) of the said Act and as such the reference dated 06/03/2010 is illegal. In this background, Mr. Pai would urge that the orders impugned including that of order of reference, the award delivered by the Industrial Court, so also the proceedings initiated under sub section 2 of section 33 of the said Act are liable to be quashed and set aside.

4. So as to substantiate his contentions, he has invited my attention to the fact as regards the nature of business of the firm

M/s. Evergreen Gems, the placement of the workmen with other firms namely M/s. Virti Enterprises and M/s. Prasam Diamonds. He would then claim that as the workmen of the respondent-union were never in the employment of M/s. Evergreen Gem, the liability cannot be fastened on the petitioner particularly when the business of the firm was permanently closed on 28-04-2008/30-04-2008. The counsel for the petitioner would also rely on the dissolution of the firm and has urge that the consequences there are not considered. It is also claimed that in view of the fact that the members of the respondent-union were the employees of the contractor, the employer-employee relationship or the status of the respondent-union as that of workmen under the provisions of section 2 sub section (s) said Act cannot be inferred. Drawing support from the provisions of section 59 of MRTU & PULP Act he would urge that the very dispute is not maintainable and as such sought the quashing of the order impugned.

5. Upon appreciation of the aforesaid submissions based on the rival claims of the parties i.e. written statement at Exhibit C-2 placed by the petitioner on the record of the authority below, the issues were famed are as under:

SR NO.	ISSUES	FINDINGS
1	Whether the reference is maintainable though the first party has disputed employer-employee relationship between concerned workmen and first party?	In the affirmative
2	Does the second party prove that workmen named in the schedule of the order of reference are workmen employed by the first party?	In the affirmative
3	Does the second party succeed to specify that termination of concerned 17 workmen is without following due procedure of law and same is illegal and improper?	In the affirmative.
4	Whether the concerned workmen are entitled to the relief sought?	As per final order
5	What award and relief?	As per final order.

6. The issues are specifically in relation to maintainability of the reference as is sought to be canvassed by Mr. Pai so also the existence of employer-employee relationship and illegal termination. It appears that there was earlier round of litigation up to this Court wherein this Court in WP/12099/2016 remanded the matter back with certain directions.

7. The present petitioner was one of the witnesses examined at Exhibit C-299. The workmen of the respondent-union also laid oral

and documentary evidence in support of their claims.

8. The fact that dissolution of the firm was on 31.12.2002 and closure of the firm on 28-04-2008/30-04-2008 was duly taken into account by the Industrial Court.

9. If we appreciate the industrial dispute as provided under sub section (k) of section (2) of the said Act, the same means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

10. It appears that by the notice demand was submitted to the firm and in case if the conciliation fails, reference can be made under sub section 1(d) of section 10, as the demand made by the workmen of the respondent-union was not considered and existence of a industrial dispute was witnessed between the employer and employee. Rightly so the Court below formed an opinion about existence of dispute. As such the claim that there does not exist industrial dispute within the meaning of sub section (k) of section 2 cannot be said to be acceptable.

11. The aforesaid finding as regards the existence of industrial

dispute is based on the application before the labour commissioner, reference made by the appropriate government as the petitioner fails to concede to the demands.

12. The documentary evidence brought on record by the workmen of the respondent-union herein, the overall evidence given by the petitioner and other witnesses particularly the admissions therein, has prompted the Industrial Court to hold that the workmen were in the employment of the firm M/s. Evergreen Gems. In this background, findings were recorded that employees are entitled for the relief of reinstatement with the closure compensation.

13. A fact remains that even if there was closure, and other similarly placed employees were provided closure compensation, it is held that the workmen of the respondent-union were in the employment of the M/s. Evergreen Gems, it was liability of the said firm to pay closure compensation to the workmen of the respondent-union as their services were terminated without following due process of law. So as to substantiate the aforesaid findings, this court needs to be sensitive to the admissions given by the present petitioner in his evidence. The present petitioner has admitted that he has appointed Mr. Digambar K. Pisat as

power of attorney. It is claimed that the firms M/s. Virti Enterprises and M/s. Prasam Diamonds were appointed as a contractor in the year 2007 and the firms were functioning from at gala nos. 101 to 106 at Goregaon. He was unable to deny in categorical terms about the status of the members of the respondent-union to be the workmen. It was brought on record that Mr. Priyank R. Shah and Ms Bijal P. Shah were the proprietors of M/s. Virti Enterprises and M/s. Prasam Diamonds respectively who were husband and wife. The Petitioner was having authority to take decision so as to manage the affairs of the M/s. Evergreen Gems, he has admitted that the workmen of the respondent-union along with others were shifted from the pay role of M/s. Evergreen Gems to M/s. Virti Enterprises and M/s. Prasam Diamonds.

14. Having admitted that Mr. Priyank R. Shah and Ms Bijal P. Shah were the owners of the aforesaid firm, it was expected of the petitioner to examine the said persons as witnesses, which the petitioner has failed to. The Petitioner has not only failed to produce the documents which are referred to in his Affidavit but also was unable to specifically say anything about the status of the employment of 19 employees to whom the benefit is awarded under the impugned award.

15. As a sequel of above, the fact remains that the Industrial Tribunal was justified in recording findings that the 19 employees in relation to whom impugned award was delivered at the behest of the respondent no. 2 were the employees of M/s. Evergreen Gems of which the petitioner was managing partner.

16. The fact remains that the petitioner for the first time has impleaded M/s. Virti Enterprises and M/s. Prasam Diamonds to the present proceedings. Though the fact that the said firms and it's proprietors were within the knowledge of the petitioner, it was expected to the petitioner to establish or to prove the fact that the members of the respondent-union were not in the employment of M/s. Evergreen Gems.

17. In this background, the claim put forth by the petitioner that in absence of the proprietor of the two firms namely M/s. Virti Enterprises and M/s. Prasam Diamonds, the findings of the employer-employee relationship ought not to have been recorded does not appear to be sustainable. Rather the evidence of the petitioner in clear terms establishes that the employees to whom the compensation is directed to be paid at the behest of the respondent no. 2-union were in fact in the employment of the firm M/s. Evergreen Gems.

18. Apart from above, in view of the demand made, in regard to termination without following due process of law, existence of the industrial dispute is rightly recorded by the authority.

19. In that view of the matter, the award delivered against the petitioner is just and proper. Once this Court has reached to a conclusion that the impugned award is justified in the facts and circumstances of the case, the claim put forth that the proceedings under section 31C(1) are illegal, cannot be accepted, as the same is sequel of the award impugned.

20. That being so, no case is for interfere is made out.

21. The petition as such fails, stands dismissed.

(NITIN W. SAMBRE, J.)