



W.P.No.34808 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON
07.11.2023

PRONOUNCED ON
22.12. 2023

CORAM:

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P.No.34808 of 2007
and M.P.No.1 of 20107

The State Bank of Travancore,
Punch Operators' Association,
Represented by its President K.Chandrasekaran Nair,
Maharani Buildings,
Canchiyoor, Trivandrum. ... Petitioner

Vs

- 1.The Presiding Officer,
The Industrial Tribunal,
City Civil Court Building II Floor,
Chennai – 600 104.
- 2.The Managing Director,
State Bank of Travancore,
Head Office,
Poojappura, Trivandrum.
- 3.Data Software Research Company Limited,
(A.V.T. Software Research Company Limited)
Represented by its Managing Director,
22, Marshall Road,
Egmore, Madras – 18. ... Respondents



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PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the Award dated 29.03.2007 passed in I.D.No.86 of 1985 by the 1st respondent Tribunal and quash the same on issues 2, 3 and 4 and direct the 2nd respondent and 3rd respondent to provide work to the petitioners directly by the 2nd respondent Bank or through so called 3rd respondent contractor and pass such further orders.

For Petitioner : Mr.V.Stalin
for M/s.Row & Reddy

For R1 : Labour Court
For R2 : Mr.G.Ananda Krishnan
For R3 : Mr.S.Srinath Sridevan
Senior Counsel
for Mr.Bhagavath Krishnan

ORDER

This Writ Petition has been filed challenging the Award of the Labour Court dated 29.03.2007, made in I.D No.86 of 1985.

2. Heard, Mr.V.Stalin, learned counsel for M/s Row and Reddy, for the petitioner, Mr.G.Ananda Krishnan, learned counsel for 2nd respondent and Mr.S.Srinath Sridevan, learned Senior Counsel for Mr.Bhagavath



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Krishnan, learned counsel appearing for 3rd respondent.

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3. The learned counsel for the petitioner would submit that, during the year 1977, the 2nd respondent Bank started Data Processing work, hereinafter referred to as (DTP work) at their Head Office, Poojapura, Trivandrum. Initially from 1977 to 1979 the work was entrusted with Tata Consultancy, under a contract with the second respondent Bank, for which 47 employees were employed. All the necessary electronic equipments, premises and electricity were provided by the Bank. From 1979 the 3rd respondent Data Software formerly named as AVT Software was given with the contract, and they in turn had entrusted the same to Data Serve which was taken over by Gemini Chrome Chemicals Private Limited.

4. He would submit that during 1983-84 the 2nd respondent Bank assigning no reasons had closed the DTP work in the bank premises and shifted the office premises to Vellampalayam, and the employees were not given any employment. The petitioners have raised an Industrial Dispute, and the employees were called for a discussion by the Assistant Labour Commissioner, by letter dated 18.06.1984. The parties had arrived at an



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settlement on 28.07.1984, in which the Gemini Chrome had agreed to provide work for those 47 employees with effect from 30.07.1984, to carry out DTP work.

5. He would further submit that on 19.08.1984, the petitioners Association made a request to Gemini Chrome, to pay 25% of bonus with an additional advance of Rs.500/- as bonus for Onam festival. Subsequent to which on 27.09.1984, the said Gemini Chrome had locked out the premises, and had sent a notice of closure on 19.10.1984, under Section 25 FFF of the Industrial Dispute Act. Aggrieved by the illegal closure of the establishment the petitioners had raised an Industrial Dispute on 15.11.1984, and a failure report was given by the Conciliation Officer on 12.02.1985, the dispute was referred to the 1st respondent/Tribunal. The 1st respondent had passed an award on 11.09.1989, holding that the 1st respondent has no jurisdiction to deal with the dispute relating to the Contract Labour (Regulation and Abolition) Act, 1970.

6. Challenging the same the petitioner has filed a Writ Petition before this Court in *W.P No.3684 of 1990*, which was allowed by this Court and had remanded the matter back to the Tribunal to decide the



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dispute on merits. On 12.05.2004, the Division Bench of this Court in *W.A.No.132 of 1999* had also confirmed the order of the learned Single Judge, based on which the 1st respondent has framed issues and conducted the case. The Tribunal has held that the petitioner's Association had sufficient interest in raising the dispute and that the supplementary contract entered by the second and third respondent is genuine, and the closure of the DTP work with effect from 27.09.1984 was justified, and the Tribunal had asked the petitioner's Association to approach the Authority under the Contract Labour (Regulation and Abolition) Act, to decide on the matter whether they can get their continued employment either under the 2nd or 3rd respondent.

7. He would submit that, the contractors were changing from the initial period of engagement from 1977, but all the 47 employees remained the same, and they had continued to work on the DTP machine despite the change of contractor, as the Punch Operators have been suffering since 27.09.1984. Therefore the petitioner would pray to set aside the order of the Labour Court, and to consider the fact that the



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members of the petitioner's Association worked continuously as Punch Operators, and to extend the benefits to the employees as they were employed by the 2nd and 3rd respondents.

8. Countering his arguments, Mr.G.Ananda Krishnan, learned counsel for the 2nd respondent would contend that the bank is not carrying on any DTP work, as the bank has no equipment or facilities to carry out those activities. It is the 3rd respondent who had entered into an agreement with the 2nd respondent for rendering computer services, and it was the 3rd respondent who had selected the employees and they were supervised, controlled and paid wages by the third respondent directly or through their agent or officers. The work of the punch operators was only a part of preliminary work in the data processing, whereas major part of the electronic data processing where done on the computer machines by other employees of the 3rd respondent.

9. He would further submit that the punch cards on which the punching is done by the punch operators and other stationery items required for the work of punch operators are all provided by the third



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respondent. The Bank of Travancore has not employed any punch operators, there exist no employer- employee relationship and they are unauthorisedly styled themselves as the 'State Bank of Travancore Punch Operators Association'. The industrial dispute which is raised by the petitioners is on behalf of the workmen employed with Gemini Chrome and not with this respondent bank. He would further contend the petitioner's Association and the third respondent had arrived at an settlement on 28.07.1984, such a settlement establishes the actual employer employee relationship between the Punch Operators and their employer/3rd respondent.

10. He would further submit that the bank had initially entrusted the Tata Consultancy with the computer services for a specific period, and such works were given on a contract basis after inviting tenders. The 2nd respondent can appoint any employee only through the Statutory Board constituted under the Banking Service Recruitment Board by the Government of India, all the claims made by the petitioner's Association is false and the bank has not employed any workmen for carrying out DTP



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work, so in any way this respondent bank cannot be made liable for the employees of the 3rd respondent.

11. The learned counsel for the 3rd respondent would submit that the 3rd respondent company was formerly known as M/s.A.V.Thomas Software Co. Ltd., and now known as Data Software Research Co. Ltd. He would contend that the workers of the petitioner's Association were the employees of Gemini Chrome Chemicals (P) Ltd., and it is the Gemini Chrome who is a necessary party to the proceedings. It is only an alleged claim made by the petitioners that they are the employees of the third respondent, and that no cause of action has been disclosed against the 3rd respondent. The respondent has not engaged any members of the petitioners Union for any nature of works, so that the 3rd respondent cannot become liable for those employees who are employed under Gemini Chrome.

12. I have heard the submissions on the behalf of the respective parties and have perused the materials available on record before this Court.



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13. The petitioner's Association consisted of members of Punch Operators who were engaged through contractors by the 2nd respondent. The 2nd respondent had originally out sourced the work of Punch operation to TCS Company Limited with whom the members of the petitioner's Association were employed. Thereafter, the 2nd respondent/Bank had entered into a new contract with the 3rd respondent which had sub-contracted the work to a Company named Data Serve. The members of the Association who were employed by TCS were all absorbed by the said Date Serve. Thereafter, the sub-contract with Data Serve came to be terminated and one Gemini Chrome had been appointed as a sub-contractor by the 3rd respondent. At that point of time, the petitioner/Union had raised an Industrial Dispute claiming that they were illegally removed from services. A 12 (3) Settlement had been arrived at between the petitioner/Association, the State Bank of Travancore Employees Union and the authorised representative of Gemini Chrome Private Limited, wherein, under the said terms of settlement, 43 members of the petitioner/Union mentioned in the annexure to the settlement were



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agreed to be provided with work by Gemini Chrome Private Limited.

Thereafter, the Gemini Chrome had also closed its business which had led to this Industrial Dispute.

14. The issue in the Industrial Dispute was that whether the closure of contractors establishment dealing with electronic data processing attached to the 2nd respondent was legal and justified and whether the petitioner's Association is justified in demanding continuing the employment either by the Contractor engaged by the 2nd respondent or direction under the 2nd respondent. Originally, an Award was passed by the Industrial Tribunal rejecting the claim of the petitioner's Union *inter-alia* holding the Industrial Tribunal had no jurisdiction to decide the issue challenging the same. The petitioner/Union filed a Writ Petition in W.P.No.3684 of 1990, wherein, the learned Single Judge of this Court had held that the Tribunal has jurisdiction to entertain the dispute and directed the Tribunal to decide the matter within a period of three (3) months. Against which the 2nd respondent had filed an intra court appeal



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in *W.A.No.132 of 1999*. The Division Bench of this Court dismissed the intra court appeal upholding the order of the learned Single Judge, however, with a direction to the Tribunal to examine whether the contract between the 2nd respondent and its contractor was a valid and legal one. Pursuant to the remand, the Industrial Tribunal had entered upon the dispute had rejected the claim of the petitioner/Union holding that the contract entered between between the 2nd respondent and its contractors as a valid and legal and not a sham and nominal contract and the same had been impugned in this Writ Petition.

15. At the outset, it is an admitted fact that the petitioners were appointed by TCS which had entered into a contract with the 2nd respondent. At the end of the contract, the 2nd respondent had appointed the 3rd respondent as its contractor, who has also admittedly sub-contracted the work to one Data Serve. Thereafter, the 3rd respondent had sub-contracted the work to one Gemini Chrome Chemicals Private Limited. The members of the petitioner/Union who were originally appointed by TCS had came to be absorbed by the Data Serve and then



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under a 12(3) settlement, they were absorbed by the Gemini Chrome Chemicals Private Limited. Therefore, the members of the petitioner/Union were all employed by Gemini Chrome Chemicals Private Limited. The said Gemini Chrome Chemicals Private Limited had not been made as a party to this Industrial Dispute. Therefore, at the outset, the Industrial Dispute raised by the petitioner/Association without impleading their employer namely the Gemini Chrome Chemicals Private Limited is not at all maintainable. The petitioner/Association ought to have impleaded their employer and challenged the contract between the employer and the 3rd respondent. As it has been admitted by the petitioner/Association that the 3rd respondent had sub-contracted the contractor to the 3rd party.

16. Be that as it may, the Industrial Tribunal has entered upon the dispute and had given a categorical finding that the contract between the 2nd respondent and its contractors are true and genuine ones and not sham. There was no documents produced assailing the said findings before this Court, except to contend that they have been continuously



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employed as Punch Operators, even though through different contractors.

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I am afraid that such a contention cannot be entertained for the simple reason that when their services were sought to be terminated by the then sub-contractor namely Data Serve. The petitioner/Association had raised an Industrial Dispute in which the subsequent sub-contractor namely the Gemini Chrome Chemicals Private Limited have agreed to take upon the services of the members of the petitioner/Association under them. This itself would mean that the petitioner/Association and its members have acknowledged the validity and the legality of the contract that has been entered by the 2nd respondent, 3rd respondent and also the sub-contracts i.e., contracts that the 3rd respondent had entered with Data Serve and Gemini Chrome Chemicals Private Limited.

17. In such view of the matter, the petitioner also estopped from now making a claim that the contract entered between the 2nd and 3rd respondents and the 3rd respondent with other contractors to be a sham and nominal. Therefore, I do not find any merits in this Writ Petition. Further, I also do not find any perversity or infirmity in the Award passed by the Tribunal.



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18. In fine, this Writ Petition is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Speaking order : Yes/No
Neutral Citations : Yes/No

K.KUMARESH BABU,J.

Gba

To

The Presiding Officer,
The Industrial Tribunal,
City Civil Court Building II Floor,
Chennai – 600 104.

A Pre-delivery order made in
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