Saraspur Mills Co. Ltd vs Ramanlal Chimanlal & Ors on 12 April, 1973

Equivalent citations: 1973 AIR 2297, 1973 SCR (3) 967, AIR 1973 SUPREME COURT 2297, 1974 3 SCC 66, 1973 LAB. I. C. 1040, 43 FJR 420, 14 GUJLR 948, 1973 2 LABLJ 130, 1973 3 SCR 967, (1973) 1 LAB L N 423, 1973 (1) SCWR 638, 26 FACLR 294

Author: A.N. Grover

Bench: A.N. Grover

PETITIONER:
SARASPUR MILLS CO. LTD.

Vs.

RESPONDENT:
RAMANLAL CHIMANLAL & ORS.

DATE OF JUDGMENT12/04/1973

BENCH:
GROVER, A.N.
BENCH:
GROVER, A.N.
VAIDYIALINGAM, C.A.

CITATION:
1973 AIR 2297 1973 SCR (3) 967
1974 SCC (3) 66

ACT:
Bombay Industrial Disputes Act, Gujarat Amendment 1962--Clauses 13 and 14 of section3--Entrustment of work which in ordinarily a part of the undertaking--Legal obligation of a factory to run a canteen under Section 46 of Factories Act--Entrustment of running the canteen to a Cooperative Society--Factories Act 1948, Section 2(1) work incidental to the manufacturing process--Running of a canteen by a textile mill.

HEADNOTE:
The appellant Textile Mill had a statutory obligation, as a factory, under the provisions of Section 46 of Factories Act and the Rules made thereunder for maintaining a canteen for

its workers. The appellant entrusted the management of the canteen to a cooperative society. The workers of the canteen demanded additional wages and dearness allowance in terms of certain awards claiming that they were the employee of the appellant within the meaning of Clauses (13) and (14) of Sec. 3 of the Bombay Industrial Disputes Act, 1938 as amended by Gujarat Legislature in 1962. The workers contended that the running of the canteen was an ordinary part of the undertaking of appellants, since it was a statutory obligation for the appellant to do so. The appellant on the other hand contended that the cooperative society was neither the agent nor the contractor of appellant.

Rejecting the appeal,

HELD : Under the Factories Act , it was the duty of the appellant to run and maintain canteen for the use of its employees. Under clauses (13) and (14) of Section 3 as amended in 1962, the definition of an employee is extended by a fiction of law and certain employees are recognised as statutory employees. The workers in question fall under the said definition. [972B]

Ahmedabad Mfg. & Calico Printing Co. Ltd. and Ors. v. Their Workmen. [1964] 2 S.C.R. 838, relied upon.

Basti Sugar Mills Ltd. v. Ram Ujagar add Ors. [1953] 11 L.L.J. 647, followed.

JUDGMENT:

CIVIL APPELLATE JURISDICTION Civil Appeal No. 1957 of 1968. Appeal by special leave from the Award dated March. 26, 1968 of the Industrial Court Gujarat Ahmedabad in Appeal (IC) No. 58 of 1966.

S.V. Gupte, P. C. Bhartari, and J. B, Dadachanji & Co., for the appellant.

V. M. Tarkunde, and S. S. Shukla, for respondents 1 (a) to 1(h).

The Judgment of the Court was delivered by GROVER, J : This is an Appeal by special leave from an Order of the industrial Court,, Gujarat which reversed an order made by the 2nd Labour Court, Ahmedabad.

Ramanlal Chimanlal and others are the workers of a canteen which is run by the Saraspur Mills Canteen Co-operative Society Limited, Ahmedabad (hereinafter called the co- operative society). The appellant company is responsible for maintaining the canteen under the provisions of S. 46 of the Factories Act and the rules made thereunder. The appellant handed over to the co-operative society the task of running the canteen. The workers mentioned above filed an application before the 2nd Labour Court at Ahmedabad under S. 79 of the Bombay Industrial Relations Act, 1946 (hereinafter called the Act), complaining that the appellant was not paying them the wages and

dearness allowances as per the directions contained in the Award of the Bombay Industrial Court made in Reference No. 18 of 1947 and supplementary Award given in certain miscellaneous applications. of 1956 and 1962 respectively relating to additional wages sanctioned by the said Award. It was alleged by the applicants in support of their claim that by virtue of certain amendments made in the Act in the definition of the word "employer" they became workers of the appellant, which was bound to pay wages and dearness allowances settled by the aforesaid Award and the supplementary Awards referred to. The case of the workmen was that the appellant was running the canteen only because it was under an obligation to do so under the Factories Act and the rules made thereunder. Thus the running of the canteen was an ordinary part of the undertaking of the appellant. It was admitted that the appellant did not run the canteen itself but handed over the premises to the co- operative society to run the canteen for the use and welfare of the mill's employees and discharge its legal obligations. The appellant denied the allegations of the workmen that they were its employees. It was claimed that the aforesaid workers had never been employed either by the appellant or by its agent or contractor. The workers in fact were stated to have beep employed by the licences of the appellant and, therefore, there was no question of the wage settlements or Awards being binding on, the appellant. The 2nd Labour Court by its Order dated 14th April, 1966 dismissed the claim of the workmen, who filed an appeal before the Industrial Court, which was allowed by its order dated 26th March, 1968. The Industrial Court held that the employees of the co-operative society, who were working in the canteen were employees of the appellant and, their wages and dearness allowance etc. were payable in accordance with the Awards mentioned before. The direction was made that the appellant should pay the difference in wages and dearness allowance in accordance with those Awards. The only question which requires determination is whether the canteen workers employed by the cooperative society could be treated as employees of the appellant within the meaning of the relevant provisions of the Act for the purpose of payment of their wages in spite of the fact that they are employees of the cooperative society and were wing paid wages by that society. Prior to the Act, Bombay Industrial Disputes Act 1938 was in force in the erstwhile province of Bombay. Under that Act no statutory employees were created but only those person-, who were directly employed by the employer were treated as employees. The Act repealed the 1938 Act. Section 3(13) of the Act contained the definition of the term "employee". Before its amendment this provision was as follows "(13) and includes

(a) a person employed by a contractor to do any work for him in the execution of a contract with an employer within the meaning of sub-clause (e) of clause 14.

Sub-clause(e) of clause 14 is as follows (14) " employer" includes (e) where the owner of any undertaking in the course of or for the purpose of conducting the undertaking contracts with any person for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the undertaking, 'the owner of the undertaking".

The Factories Act, 1948 came into force on April 1, 1949. Section 2(1) of that Act is as follows:

> "(1) 'worker' means a person employed directly or through any agency, whether for wages or not, in any manufacturing process. or in cleaning any part of the machinery or premises used for manufacturing process, or in any other kind of work incidental

to, or connected with, the manufacturing process, or the sub-

ject of manufacturing process"

The expression 'occupier' was also defined by section 2(n) to mean the person who has ultimate control over the affairs of the factory, and where the said affairs were entrusted to a managing agent such agent shall be deemed to be the occupier of the factory. The Bombay High Court had held in certain matters which were brought before it that in spite of the fact that the L797Sup Cl/73 co-operative society was mentioned in the Bombay Factories Rules, 1950, the employee employed by the co-operative society could not be treated as employees under the Act. The Gujarat Legislature passed an Act in 1962 amending clause,' (13) and (14) of Section 3 of the Act. After the amendment these clauses run as follows:

"(13) 'employee' means any person (including an apprentice) employed in any industry to any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied and includes (a) a person employed in the execution of any work in respect of which the owner of an undertaking is an employer within the meaning of sub-clause (e) of clause (14).

(14) 'employer' includes-

(e)Where the owner of any undertaking in the course of or for the purpose of conducting the undertaking entrusts the execution of the whole or any part of any work which is ordinarily a part of the undertaking to any person otherwise than as the servant or agent of the owner, the owner of the undertaking.....

The Industrial. Court was of the view that the term "employee" under the Act had been given an extended meaning. An employee Was not only a person who was employed by the employer or over whom the employer had control, but also certain types of persons had been constituted statutory employees under the Act. Before such a person could become the employee of the owner of the undertaking, the conditions that must be fulfilled were: (1) the owner of the undertaking must entrust to any person the execution of the whole or any part of any work; (2) such entrustment must be in the course of or for the purpose of conducting the under- taking; (3) such entrustment must be otherwise than as the servant or agent of the owner and (4) such work must be any work which is ordinarily a part of the undertaking. The Industrial Court referred to the earlier decisions including that of the Labour Appellate Tribunal and of the, Bombay High Court and examined the circumstances in which the relevant provisions of the Act came to be amended. It was pointed out that in the statement of objects and reasons appearing in the Bill to the Amending Act, it was stated that the definition of an employee was being amended so as to cover persons employed by a contractor or any other person to whom the owner of an undertaking had entrusted the execution of any work which was ordinarily part of the undertaking. The definition of 'employee was also amended correspondingly. According to the Industrial Court there was a statutory obligation on the part of the mills to provide a canteen and this obligation had been discharged by the mills by

entrusting that task to the co-operative society, even if there was no positive evidence of such entrustment of work. It was pointed out that the activities of running the canteen could hardly have been undertaken by the co-operative society unless it was entrusted to it by, the mills. It was finally held that although the co- operative society which wag the real employer and not the present appellant, but by virtue of the fiction created by the amendment introduce,-' in the Act, the employees of the Society became the employees of the appellant. They were, therefore, entitled to the benefits of the Awards. The sole point which has been strenuously urged on behalf of the appellant is that on a proper construction of the amended clauses (13)- and (14) of Section 3 of the Act, the workers, employed in the canteen which was being run by the co-operative society, could not have been held to be employees of the appellant. It is contended that the appellant was under a statutory obligation because of section 46 of the Factories Act and the relevant rules made thereunder to maintain the Canteen for the workers, but the canteen was being actually run by the cooperative society and the appellant had nothing to do with it nor did it pay any wages to the employees of the society who were working in the canteen.

The matter seems to be concluded by the judgment of this Court in Civil Appeal No. 1044 of 1968 decided on April 14, 1972, in which an identical argument had been addressed that certain gardeners who had been employed by a contractor for working in the gardens of the textile mills, could not be said to fall within the definition of the word "employed" as contained in Section 3 (13) of the Act. In that case reference was made to the decision in Basti Sugar Mills Ltd. v. Ram Ujagar and Ors. (1) It had been held that the workmen fell within the definition of that word as given by S. 2 (z) of the U.P. Industrial Disputes Act 1947 as they were persons employed in the industry to do manual work for reward. The workmen had been employed by a contractor with whom the mills had contracted in the course of conducting the industry for execution by the said contractor of the work of removal of press mud which is ordinarily a part of the industry.

The above case was treated as an authority for the proposition that an employee engaged in a work or operation which was incidentally connected with the main industry was a workman if other requirements of the statute were satisfied and that the Malis in that (1) [1964] (2) S. C. R. 838.

(2) [1953] 11. L. L. J. 647.

case were workers. It was pointed out that the bungalows and gardens on which the Malis in that case worked were a kind of amenity supplied by the mills to its officers and on this reasoning the Malis were held to be engaged in operation incidentally connected with the main industry carried out by the employer. The High Court in Ahmedabad Mfg. & Calico Printing Co. Ltd. & Ors v. Their Workmen (2) had relied on the above ratio and came to the conclusion that the workers in order to come within the definition of an "employee" need not necessarily be directly connected with the manufacture of textile fabrics. The decision in Basti Sugar Mills' case was treated as binding in the former case.

Since, under the Factories Act it was the duty of the appellant to run and maintain the canteen for the use of its employees, it appears to us that the ratio of the decision in Ahmedabad Manufacturing & Calico Printing Co. Ltd. v. Their Workmen would, be fully applicable in which the same provisions

of the Act were considered.

The appeal, therefore, must fail and it is dismissed with costs.

S.B.W. Appeal dismissed.