Supreme Court of India
Hussainbhai, Calicut vs Alath Factory Thozhilali ... on 28 July, 1978
Equivalent citations: 1978 AIR 1410, 1978 SCR (3)1073
Author: V Krishnaiyer
Bench: Krishnaiyer, V.R.

PETITIONER:
HUSSAINBHAI, CALICUT

Vs.

RESPONDENT:
ALATH FACTORY THOZHILALI UNION,KOZHIKODE AND ORS.

DATE OF JUDGMENT28/07/1978

BENCH:
KRISHNAIYER, V.R.
BENCH:
KRISHNAIYER, V.R.
DESAI, D.A.
REDDY, O. CHINNAPPA (J)

CITATION:
1978 AIR 1410 1978 SCR (3)1073
1978 SCC (4) 257

ACT:
Employee in labour law, concept of-Whether includes a person hired by an independent labour contractor for creating vinculum juris.

HEADNOTE:
The petitioner a factory owner, manufacturing ropes had entered into agreements with intermediate contractors who had hired the respondent union's workmen. In an industrial dispute raised by the respondent union the petitioner contended that no direct employer-employee vinculum juris existed between him and the workmen. However, the Tribunal gave an award in favour of the workmen which was affirmed by both the single Judge as well as a Division Bench of the Kerala High Court.
Dismissing the special leave the Court,
HELD : 1. Where a worker or a group of workers labour to produce goods or services and these goods or services are for the business of another, that other is in fact the employer. He has economic control over the workers' sub-sistence, skill, and continued employment. If he, for any reason, chokes off the worker is, virtually, laid off. The presence of intermediate contractors with whom alone the

workers have immediate or direct relationship ex-contractu is of no consequence when, on lifting the veil or looking ;it the conspectus of factors governing employment, Courts discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the management, not the immediate contractor. [1075 C-D]

If the livelihood of the workmen substantialy depends on labour rendered to produce goods and services for the benefit and satisfaction of an enterprise, the absence of direct relationship or the presence of dubious intermediaries or the make-believe trappings of detachment from the Management cannot snap the real-life bond. The story may vary but the inference defies ingenuity. The liability cannot be shaken off. Of course, if there is total dissociation in fact between the disowning management and the aggrieved workmen, the employment is, in substance and in real-life terms, by another. The Management's adventitious connections cannot ripen into real employment. [1075 E-F-G]

2.The source and strength of the industrial branch of Third World Jurisprudence is social justice proclaimed in the Preamble to the Constitution. The Court must be astute to avoid the mischief and achieve the purpose of the law and not be misled by the maya of legal appearance when myriad devices are resorted to when labour legislation casts'welfare obligations on the real employer based on Articles 38, 39, 42, 43 and 43A of the Constitution. The contention of the_ petitioner as to the non-existence of the vinculum juris between the respondent and himself is if at all impeccable only in laissez faire economics red in tooth and claw' and under the Contract Act rooted in English common law as the human gap of a century yawns between this strict doctrine and the industrial Jurisprudence of today. [1074. G-H, 1075 -D-E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION :Special Leave petition (Civil) No. 1853 of 1978.

From the Judgment and Order dated 30-6-1977 of the Kerala High Court in Writ Appeal No. 142/77.

N. Sudhakaran for the Petitioner.

The Order of the Court was delivered by KRISHNA IYER, J.-The petitioner before us in this special leave petition is a factory owner manufacturing ropes. A number of workmen were engaged to make ropes from within the factory, but those workmen, according to the petitioner, were hired by contractors who had executed agreements with the petitioner to get such,, work done. Therefore, the petitioner contended that the workmen were not his workmen but the contractors' workmen. The industrial award, made on a reference by the State Government, was attacked on this round. The l

earned single Judge of the High Court, in 'an elaborate judgment, rightly held that the petitioner was the employer and the members of the respondent-Union were employees under the, petitioner. A division Bench upheld this stand and the petitioner has sought special leave from this Court.

It is not in dispute that 29 workmen were denied employment which led to the reference. It is not in dispute that the work done by these workmen was an integral part of the industry concerned; that the raw material was supplied by the Management; that the factory premises belonged to the Management; that the equipment used also belonged to the Management and that the finished product was taken by the Management for its own trade. The workmen were broadly under the control of the Management and defective articles were directed to be rectified by the Management. This con- catenation of circumstances is conclusive of the question. Nevertheless, this issue is being raised time and again and so we proceed to pass a speaking order. We should have thought that even cases where this impressive array of factors were not present, would have persuaded an industrial court to the conclusion that the economic reality was employer-employee relationship and, therefore, the in- dustrial law was compulsively applicable. Even so, let us look at the issue afresh.

Who is an employee, in Labour Law? That is the short, die- hard question raised here but covered by this Court's earlier decisions. Like the High Court, we give short shift to the contention that the petitioner had entered into agreements with intermediate contractors who bad hired the respondent-Union's workmen and so no direct employer- employee vinculum juris existed between the petitioner and the workmen.

This argument is impeccable in laissez faire economics 'red in tooth and claw' and under the Contract Act rooted in English Common Law. But the human gap of a century yawns between this strict doctrine and industrial jurisprudence. The source and strength of the industrial branch of Third World Jurisprudence is social justice proclaimed in the Preamble to the Constitution. This Court in Ganesh Beedi's case 1974 (1)LLJ 367 has raised on British and American rulings to hold that mere contracts are not decisive and the complex of considerations relevant to the relationship is different. Indian Justice, beyond Atlantic liberalism, has a rule of law which runs to the aid of the rule of life. And life, in conditions of poverty aplenty, is livelihood and livelihood is work with wages. Raw societal realities, not fine-spun legal niceties, not competitive market economics but complex protective principles, shape the law when the weaker, working class sector needs succour for livelihood through labour. The conceptual confusion between the classical law of contracts and the special branch of law sensitive to exploitative situations accounts for the submission that the High Court is in error in its holding against the petitioner.

The true test may, with brevity, be indicated once again. Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship ex contractu is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the Management, not the immediate contractor.

Myriad devices, half-hidden in fold after fold of legal form depending on the degree of concealment needed, the type of industry, the local conditions and the like, may be resorted to when labour legislation casts welfare obligations on the real employer, based on Articles 38, 39, 42, 43 and 43-A of the Constitution. The court must be astute to avoid mischief and achieve the purpose of the law and not be misled by the maya of legal appearances.

If the livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefits and satisfaction of an enterprise, the absence of direct relationship or the presence of dubious intermediaries or the make-believe trappings of detachment from the Management cannot snap the real-life bond. The story may vary but the inference defies ingenuity. The lia- bility cannot be shaken off.

Of course, if there is total dissociation in fact between the disowning management and the aggrieved workmen, the employment is, in substance and in real-life terms, by another. The Management's adventitious connections cannot ripen into real employment.

Here, on the facts, the conclusion is correct and leave must be refused.

S.R.

Petition dismissed.

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