

Patwardhan Tailors, Poons Vs. their Workmen

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Court : Mumbai

Decided On : Aug-14-1959

Reported in : (1960)ILLJ722Bom

Judge : P.D. Sawarkar, J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 12(5)

Appeal No. : Reference (IT) No. 61 of 1959

Appellant : Patwardhan Tailors, Poons

Respondent : their Workmen

Judgement :

Acts/Rules/Orders:

[Industrial Disputes Act, 1947](#) - Section 12(5)

AWARD

1. This industrial dispute was referred to me under S. 12(5) of the [Industrial Disputes Act, 1947](#), by Labour and Social Welfare Department order, No. A.J.P. 71(1) 59, dated 11 March, 1959. The demands of the workmen pertain to stitching charges, holidays, sick leave, bonus, permanency and reinstatement of certain workers.

2. The company has taken a preliminary objection to the maintainability of the reference on the ground that the tailors who are involved in this reference are independent contractors and not the workmen of the company. The preliminary objection must therefore be first decided. Oral evidence has been led by both sides on this point and certain documents have been tendered in evidence.

3. This firm has three kinds of workers. There are a few who are the permanent employees of the company and who are monthly paid. There are some others who take cloth which is cut according the measurements by the cutter and go to a hall which is rented by the proprietor and stitch on the proprietor's machines. There are yet others who take cloth which is cut by the cutter and stitch it in their own homes. Sri R. S. Kulkarni who appeared for the workmen made it clear that the reference was confined to the second class of workers who stitched cloth on the proprietor's machines kept in a hall rented by him.

4. It is not necessary to narrate the history of this firm. Suffice it to say that the proprietor has a shop in a building known as Saraswati Vilas where he and his permanent employees including the cutter work. A furlong away from this shop stands a house bearing municipal No. 12 Budhwar. There is a big hall on the third storey of this house. It is rented by the proprietor. He has kept there his sewing machines, irons, coal, etc., and the second group of tailors stitch garments there. In March or April 1958 the proprietor shifted some of the machines to his shop keeping three machines at 12 Budhwar. The question that I am called upon to decide is whether this second group of tailors are independent contractors or workmen as defined in the Industrial Disputes Act.

5. Sri Kulkarni first examined one Rahane. He was until recently the proprietor's cutter. He left the job on 20 April, 1959. He says that all the workers came to work at 8-30 a.m.; that they had two hours' lunch recess between 1 and 3 p.m.; and that they worked till 8-30 p.m.; that the shop remained closed on every Monday; that he went to 12 Budhwar every day and inspected the work of the tailors; that if the tailors made any mistakes, they were warned by the proprietor. He admits that there was notice in the hall to indicate that the hall would remain closed on Mondays. To my questions he has admitted that the tabular statements produced

by the company at Exs. C-1, C-2 and C-3 are correct. The second witness on behalf of the workmen is one Paygude, a trade unionist. He has produced two warnings given by the proprietor to two tailors (Ex. U-W. 2).

6. Sri H. G. Abhyankar who appeared for the company first examined one Vidhwans, the owners of 12 Budhwar. He is a lecturer in chemistry in a college in Poona. He lives on the same floor on which the tailors work. He tells us that the key of the hall used to be kept with him; that every morning some tailor came, took the key, opened that hall and started his work. Then one by one the other tailors came. They used to come at any time after 6 a.m. and go home at any time upto 11 p.m. They came to work even on holidays. No one came there to inspect the work of the tailors. The proprietor went there only once in five or six months. The witness got some of his clothes stitched by the tailors directly without placing his order with the proprietor and paid the tailors direct.

7. The company's second witness Patankar has a tailoring shops in Poona. He says that Ramachandra Natu who used to work for Patwardhan Tailors also used to work for him in his spare time. He also tells us that the duties of a cutter are only to cut the cloth according to measurements. It is not part of his duty to supervise the work of tailors.

8. The third witness for the company was Bhambure. He was until three months ago working for Patwardhan Tailors but is now working for Manek Tailors. he say that he used to stitch garments for Patwardhan Tailors in 12 Budhwar; that other tailors working there used to come to work at any hour that suited them; that they went whenever they liked; that no one supervised their work; that on no occasion did all the 10 or 12 tailors go to work at 12 Budhwar at one and the same time or go stitched garments for his acquaintances while working in the hall and got separately paid for the work; that before engaging them the proprietor tested the ability of the tailors.

9. Patwardhan, the proprietor, has also given his evidence. He says that he had absolutely no control over the work of the tailors working in the hall; that he never punished them; that there was no question of granting them leave; that the tailors worked as and when they liked; that if there was some mistake he had to pay extra

amount to the concerned tailor to mend the garments; that he knew that the tailors were taking outside work but that he took no action against them; that he no doubt tested the ability of the tailors before engaging them; that on one occasion the factory inspector had asked him to give leave cards to these tailors and that he had bought some cards for doing so but that his legal adviser said that that was not necessary.

10. After the company led this evidence, Sri Kulkarni examined one more witness, namely, Sarawate. This witness had sat in the Court hall throughout when the company's witnesses were being examined. Ordinarily I would brush aside his evidence; but all that he says is that there were fixed hours of work for the tailors working in the hall and that along with the cut cloth they used to get slips of instructions being as to how the cloth was to be stitched. It is interesting to note that Rahane the cutter says nothing about such instructions being given to the tailors. Several slips are produced at Ex. C.W. 1 in cross-examination of Patwardhan. Patwardhan has explained them by saying that the names at the top of these chits are the names of the customers and the measurements and other instructions are for the cutter.

11. That, then, is the oral evidence led by the parties. The union has produced copies of three letters to the tailors at Ex. U-W. 2. The first letter says that the work done by the tailor is not liked by the customers and that he should pay more attention to the work. The second letter only mentions certain rate. The third letter says that the concerned tailor has not properly stitched the sleeves of a particular garment, that the customer has complained about it and that carelessness should be avoided. These letters cannot be called warnings. All that they do is to draw the attention of the tailor to the mistakes. They do however show that the proprietor did exercise some control over the tailors.

12. I was referred to the case of Dharangadhra Chemical Works, Ltd. . In that case the Supreme Court laid down the correct test to find out if a worker is an independent contractor or a workman. Their lordships observe :

Page 481 - 'The principle which emerges from these authorities is that the prima facie test for determination of the relationship between master and servant is the

existence of the right in the master to supervise and control the work done by the servant not only in the matter of directing what work the servant is to do, but also the manner in which he shall do his work ... The nature and extent of control which is requisite to establish the relationship of employer and employees must necessarily vary from business to business and is by its very nature incapable of precise definition. As has been noted above, recent pronouncements of the Court of Appeal in England have even expressed the view that it is not necessary for holding that a person is an employee that the employer should be proved to have exercised control over his work, that the test of control was not one of universal application and that there were many contracts in which the master could not control the manner in which the work was done ... the correct method of approach, therefore, would be to consider whether having regard to the nature of the work there was due control and supervision by the employer ...'

13. This case was applied by the Supreme Court to the case of Chintaman Rao and another . That was a case under the Factories Act. A bidi factory used to enter into contracts with independent contractors known as sattedars for the supply of bidis. The sattedars got tobacco and bidi leaves from the, factory, distributed them among their own coolies and got bidis rolled and supplied them to the factory. The question was whether the sattedars and their coolies were the factory employees. Their lordships observed :

Page 256. - 'There is, therefore a clear-cut distinction between a contractor and a workman. The identifying mark of the latter is that he should be under the control and supervision of the employer in respect of the details of the work.'

Then their lordships applied the test laid down in the case of Darangadhra Chemical Works, Ltd., and came to the conclusion :

Page 257. - 'It has been established in the present case that the sattedar is only an independent contractor and the agreement between the management and the sattedar is only that the sattedar should receive tobacco from the management and supply them rolled bidis for consideration. He is not under the control of the factory management and he can manufacture bidis wherever he pleases. It is immaterial to the factory whether or distributes tobacco to different individuals for

making bidis under a separate agreement entered into by him with them. The management cannot regulate the manner of discharge of his work. His liability is discharged by his supplying bidis and delivering by his supplying bidis and delivering them in the factory ... His only obligation is to deliver bidis at the factory.'

Therefore their lordships held that sattedars were not factory employees. They also held that the coolies employed by sattedars were not the employees of the factory.

14. Let us apply the principle enunciated in the case of Dharangadhra Chemical Works to the facts of the present case. From the oral and documentary evidence produced it may be taken as proved that the cutter cuts cloth according to the measurements taken from the customer. There are some tailors who stitch only particular types of garments. They take the cut cloth which they can stitch, go to the hall, stitch the garment and bring it back to the shop in Saraswati Vilas. The garment is then delivered to the customer. It may also be taken as established that no one goes to the hall to supervise the work of the tailors and that the tailors go to the hall whenever they want and leave the hall whenever they please. It may also be assumed that no tailor has been fined and that no tailor has had to apply for leave. It is also conceded that some of these tailors have taken outside work which they have finished on the proprietor's machines and have been separately paid by the outsiders.

15. The question is, has the proprietor the right to supervise and control the work of the tailors It is to be remembered that the tailors are not engaged to stitch garments for dealers is ready-made clothes. They stitch garments according to the taste and measurements of individual customers. Naturally, therefore, the proprietor gives to the customers the date of delivery of the garment. If it is an expensive garment, a shark skin or a woollen coat or a pant or a suit, more often than not there is a trial taken by the customer before the garment is finally stitched. At the trial the tailor has got to be present to mark places where a change is necessary. A little crease here or a little looseness there often mars the appearance not only of the garment but also of the wearer, as we so well know. Therefore the tailor has got to be extra careful with such expensive garments. The

reputation of the tailoring firm depends not only on the cutter but also on the tailor. The job of the tailor is not merely to stitch along the edge of the cut cloth. The cutter has to cut several pieces for a single garment - the sleeves, the shoulders, the pockets, etc. - and they are to be stitched only at a particular place. So when the tailor returns the garment, the proprietor has got to inspect it carefully to see that it is perfect. He has to keep the customers pleased. He has also got to be punctual. He cannot make the customer go to his shop again and again for his garment. So he has to be after the tailor to finish the job in time. I do not believe Patwardhan when he said that he did not mind if the tailors delayed finishing the job; that he does not take any action if a tailor commits mistakes, in stitching; that he pays an extra amount to the tailor to mend his mistakes. It does not stand to reason that a servant who is asked to do a particular job in a particular manner is paid extra if he commits a mistake and is asked to mend that mistake. In jobs where each individual garment is stitched according to measurements, there is bound to be a degree of control and supervision by the employer. And as the Supreme Court said, the degree of control and supervision would be different in different types of business.

16. It was argued that a worker cannot work for two masters at one and the same time and that it is in evidence that tailor Ramachandra Nath used to work both for Patwardhan and for Patankar. The definition of the word 'workmen' in the Industrial Disputes Act does not restrict an employee to work for one master only. A concern may have a part-time worker in its employ. Such a worker may work for another employer in his spare time. Sri Abhyankar argued that such a worker cannot claim bonus or gratuity or provident fund at both places. What the consequences of serving two masters will be is not material for the decision of the preliminary objection raised in this case. Even so, Sri Kulkarni gave a reply to Sri Abhyankar's argument by saying that bonus, gratuity, provident fund, are calculated on the wages of a workman; that if he is a part-time worker, his wages would necessarily be smaller than those of a full-time worker. But these considerations do not affect the question whether a part-time worker can or cannot be a workman. In my opinion he can still be called a workman.

17. Upon giving careful thought to the evidence on record and considering the degree of control and supervision that must necessarily be exercised by the proprietor, I hold that the tailors who stitch garments in the proprietor's hall are workmen and not independent contractors.

18. Since March or April 1958 some machines have been shifted from 12 Budhwar to Saraswati Vilas. Three machines are still kept at 12 Budhwar. The tailors who now work in Saraswati Vilas are naturally more easily open to the control of the proprietor who too works there. They too are therefore workmen.

19. I direct that this award be submitted to Government and that after it is published in the official gazette, the case be fixed for further hearing.

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