

Pratap Mardokar Vs. Goa Shipyard and Others

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Court : Mumbai

Decided On : Jul-05-1995

Reported in : (1997)IIILLJ561Bom

Judge : D.R. Dhanuka and;J.K. Chandrashekhara Das, JJ.

Acts : [Factories Act, 1948](#) - Sections 46

Appeal No. : W.P. No. 17/1994

Appellant : Pratap Mardokar

Respondent : Goa Shipyard and Others

Advocate for Def. : M.S. Usgaonkar, Adv.

Advocate for Pet/Ap. : S. Singhvi, Adv.

Judgement :

Dhanuka, J.

1. This is a petition under Article 226 of the Constitution of India whereby the petitioner has sought a declaration that all the workers employed in the Canteen on the premises of Goa Shipyard Ltd. are the direct employees of the Respondent No. 1, i.e. Goa Shipyard Ltd., and for issue of writ of mandamus and grant of consequential reliefs. The petitioner has invoked Section 46 of the [Factories Act,](#)

[1948](#) for the purposes of reliefs claimed in this petition. The petitioner seeks enforcement of statutory obligations of Respondent No.1 emanating from Section 46 of the [Factories Act, 1948](#) and the rules made thereunder. The subject matter of this petition is covered by direct decisions of the Supreme Court in favour of canteen employees of the factory.

2. We shall first set out the relevant facts having bearing on subject matter of this petition.

3. The Respondent No. 1 is a public sector undertaking working under the Ministry of Defence Production. It employs about 2,000 workmen at its factory premises at Vaddem in Vasco da Gama, Goa. The Respondent No. 1 is 'a factory' duly covered under the [Factories Act, 1948](#). The Respondent No. 1 is under a statutory obligation to provide and maintain a canteen or canteens for the use of the workers employed at the factory. Section 46(1) of the said Act imposes statutory obligation on the occupier of the factory to provide and maintain statutory canteen or canteens for the use of the workers. By the judicial decisions of the Apex Court, it has been held that an owner of the factory is under a statutory obligation to provide and maintain the canteen as provided under Section 46 of the Act, and the owner of the Factory is under a statutory obligation to provide and maintain the canteen/s for benefit of workers of the factory as a part of manufacturing activity of the company as incidental to the business of the factory. The Goa, Daman and Diu Factories Rules, 1985 have made elaborate provisions for establishment and management of Canteens by the occupier and owner of the factory under Rules 96 to 101 of the said Rules. Similar provisions were made by the earlier Rules made by the Government.

4. The [Factories Act, 1948](#) was extended to the Union Territory of Goa, Daman and Diu by Regulation No. 11 of 1963 and the said Act came into force in the Union Territory of Goa, Daman and Diu on and from April 1, 1964. Sometime in the year 1964 itself the Respondent No. 2 Co-operative Society was formed by the employees of the Respondent No. 1 Company inter alia for the purpose of maintaining the said canteen. The Respondent No. 2 also looks after a Co-operative Store and a Fair Price Shop, in addition to the canteen. All the members

of the Society are the employees of the Respondent No. 1. No non-employee of the Respondent No. 1 can become a member of the Respondent No. 2 Society. By the original Bye-Law No. 27(a) of the Bye-laws of the said society, it was provided that the Works manager of Goa Shipyard Ltd., Goa Branch, shall be ex officio President of the Society. The said Bye-laws were later on amended at the General Body Meeting held on March 26, 1975. The amended Bye-laws of the Respondents No. 2 provided that the President of the Society shall be elected at the General Body Meeting from amongst the Members of the said Society.

5. On June 29, 1977, the General Manager of the Respondent No. 1 Company issued a Circular stating therein that the Employees Canteen of the Goa Shipyard Ltd. will be inaugurated on June 30, 1977 under the management of the Goa Shipyard Employees 'Consumers' Co-operative Society Ltd. it was also stated in a circular issued by the General Manager of the Respondent No. 1 that a committee had been appointed to supervise the affairs of the new Canteen which would start functioning from July 1, 1977. It was stated in the said Circular that the Company (meaning thereby Respondent No. 1) will meet the, expenses in respect of the salary and wages of the canteen staff, fuel, electricity, water besides providing utensils, equipments, furniture and fixtures. There is considerable material on record of this petition to indicate that the Respondent No. 1 has been in substantial de facto and de jure control of the management of the said Canteen even though the running of the said Canteen is entrusted by the Respondent No. 1 to the Respondent No. 2 to same extent. The Respondent No. 1 is discharging its statutory obligation to provide the Canteen for its workers through the Respondent No. 2.

6. The General Manager of the Respondent No. 1 issues instructions from time - to time regulating the working of the said Canteen. The Respondent No. 1 has created a new post by the designation of Welfare Officer (Canteen). The said officer also has been looking after the affairs of the said Canteen for and on behalf of the Respondent No. 1. The petitioner has annexed a large number of documents to the petition consisting of Exhibits 'A' to 'U' indicating that the Respondent No. 1 has been reimbursing the wages of the Canteen employees and meeting the deficit whenever necessary. The Respondent No. 1 has been

placing orders for purchase of various articles and equipments for the said Canteen. In substance, the said Canteen is of the Respondent No. 1 though looked after by the Respondent No. 2.

7. As far back as April 29, 1982, the Respondent No. 2 Society through its, Honorary Secretary addressed a letter to the General Manager of the Goa Shipyard Ltd. (Exhibit 'J' to the petition) stating therein that the wages paid to the employees of the canteen were very low when compared to those paid to the employees of the Respondent No. 1 working in similar categories. It was stated in the said letter that the employees of Respondent No. 2 were naturally agitated and were therefore making a demand for revision of their wages on par with the workmen directly employed by the Respondent No. 1. The Respondent No. 1 did not agree to treat the employees of the said statutory Canteen as its direct employees.

8. In this situation, one of the employees who was working in statutory canteen of Respondent No. 1 at one time (i.e. the petitioner herein) and who is now transferred to work in the Fair Price Shop filed the present petition for the reliefs already summarised in the opening part of this judgment.

9. The basic question which arises for consideration of the Court is as to whether the employees of the Canteen provided and maintained under Section 46 of the [Factories Act, 1948](#) are liable to be treated as absorbed direct employees of the factory itself, the said Canteen being a part of the establishment of the factory. A reference is to be found in the petition here and there to the provisions contained in Section 10 of the Contract Labour and Regulation Act, 1970. It emerges from the discussion at the Bar as well as from the decided cases that reference to the provisions contained in the Contract Labour (Regulation and Abolition) Act, 1970 is not relevant for the purpose of deciding this petition.

10. The learned counsel for the petitioner has invited the attention of the Court to the various judgments of the Supreme Court and this Court whereby it has been held that the employees working in a Canteen provided and maintained under Section 46 of the [Factories Act, 1948](#) are liable to be treated as direct employees of the owner of the factory.

11. We shall now refer to some of the decisions cited at the bar on this aspect.

12. In *The Saraspur Mills Co. Ltd. v. Pamanlal Chimanlal & Ors.* : (1973)IILLJ130SC Grover J, speaking for the Court held that Section 46 of the Factories Act imposed an obligation on the Mill to maintain a Canteen for its employees. The Court held that the Canteen if entrusted to the Cooperative Society to run on its behalf, the workers employed by the Society became the employees of the mill for the purpose of emoluments and such other ancillary benefits.

13. *M. M. R. Khan & Ors. etc. v. Union of India & Ors.* the Supreme Court held that the employees in the statutory Canteens of the Railways will have to be treated as Railways Servants. The Supreme Court held that the relationship of employer and employee stands created between the Railway Administration and the Canteen employees from the very inception. The Court held that it was obligatory on the Railway Administration to provide a Canteen under Section 46 of the [Factories Act, 1948](#) and the Rules made thereunder and these Canteens are therefore incidental to or connected with manufacturing process. The Court held that the provision of the Canteen is deemed by the statute as a necessary concomitant of the manufacturing activity. It was specifically held by the Apex Court that even where the employees are appointed by the Staff Committee or a Co-operative Society as the case may be. Paras 20 and 31 of the said judgment are directly relevant for our purpose. Para 31 of the judgment sets out the relief granted by the Apex Court to the workers engaged in statutory Canteens as well as non-statutory recognised Canteens. The Apex Court declared that the Canteen employees were direct employees of the Railway Establishment and were entitled to all the benefits on par with the Railway employees with effect from the date fixed by the Court according to the service conditions prescribed for them under the relevant Rules or Orders. This judgment as well as the judgment in the case of *Saraspur Mills* (supra) are directly helpful to the petitioner.

14. In the latest judgment of the Supreme Court in the case of *Parimal Chandra Raha & Ors. v. Life Insurance Corporation of India & Ors.* : (1995)IILLJ339SC the Supreme Court held that the Canteen employees were liable to be treated as

regular employees of the Life Insurance Corporation and the said employees were entitled to the benefit of the pay scales and other service conditions available to regular employees of the Life Insurance Corporation. The Court directed the Life Insurance Corporation to pay the minimum of the salary paid to Class IV of the Corporation for the time being, prescribe appropriate service conditions of Canteen workers and absorb the Canteen employees in regular service by the employees. The Court held that the Canteen employees were entitled to the benefit of all the service conditions available to regular employees. The Court held that the years of continuous service put in by the Canteen employees even prior to the date fixed for award of emoluments should be taken into account for the purpose of calculating their retiral benefit. The Court attached certain conditions to the direction issued by the Court directing the Life Insurance Corporation to treat the appellants as regular employees of the Corporation. The Court directed that only such employees who had put in a minimum of three years Continuous service as Canteen workers in the Canteen would be entitled to avail of the benefit of the said Order. The Apex Court attached these conditions to the operation of the operative part of the order having regard to the provisions made in the Regulations made by the Life Insurance Corporation for its own direct employees and having regard to the facts of that case. This judgment is also directly helpful to the petitioner.

15. The learned counsel for the Respondent No. 1 raised two submissions during the course of his arguments at the Bar. The learned counsel submitted that the petitioner had no locus standi to maintain this petition as the petitioner was working at the Fair Price Shop of the Respondent No. 1. The Court did enquire from the learned counsel for the petitioner as whether at no point of time the petitioner was working in the statutory Canteen set up by Respondent No. 1 and run by Respondent No. 2 at the factory premises of the Respondent No. 1 for the benefit of its workmen. The learned counsel for the Respondent No. 1 fairly and candidly conceded that at some point of time the petitioner was working in the Canteen at the factory premises of Respondent No. 1. We leave it at that. The petitioner has locus standi to file the petition. The issues raised by the petitioner for the benefit of the employees of statutory Canteen shall have to be decided by the Court on merits particularly when the said issues are directly concluded

against the Respondent No. 1 by the judgments of the Supreme Court. The issues raised are a general issue for benefit of all the Canteen employees unconnected with individual claim of the petitioner as such. The learned counsel for the petitioner invited the attention of the Court to the fact that no leave was obtained from the Court as contemplated under Order 1 Rule 8 of the Code of Civil Procedure. We do not attach any importance to this submission as well. We must decide the subject matter of this petition on merits. The learned counsel for the Respondent No. 1 submitted that as a matter of reality Canteen employees were employees of the Respondent No. 2 Society and not of the Respondent No. 1. We do not agree. The Society was undoubtedly running the Canteen. The Canteen was provided and maintained by Respondent No. 1 in discharge of statutory obligation of the owner of the factory, i.e. the Respondent No. 1. It matters not as to whether the said Canteen is run by the Respondent No. 2 or by a Contractor or departmentally by the staff of the Respondent No. 1. Having regard to the ratio of three Supreme Court judgments discussed above, we have no hesitation in rejecting this submission of the learned counsel for the Respondent No. 1 also.

16. In this view of the matter we have no hesitation in making the rule absolute in terms of prayer (b) of the petition.

17. The next relevant question which arises for consideration of the Court is as to what consequential relief ought to be granted in favour of the Canteen employees working as at present or in the past at the factory premises of the Respondent No. 1.

18. The Respondent No. 1 is directed to treat all the employees who have been in the said Canteen for 240 days in any year as direct employees of the Respondent No. 1 from the date of expiry of 240 days of such service in the initial year of service, even if the said employees are later on transferred to the Consumer Stores or the Fair Price Shop. It would make no difference to their status as direct employees of the Respondent No. 1 or to their emoluments and service conditions. All such employees who are covered by this order shall be entitled to payment of salary, allowances and the benefit of all service conditions available to the regular employees of the Respondent No. 1 with effect from the date of filing of

this petition.. The Respondent No. 1 is hereby directed to fit in all such employees in an appropriate pay scale in the light of the pay scale fixed for regular employees of the Respondent No. 1 within eight weeks from today. All such employees who are beneficiaries under this Order of the Court shall be entitled to all the facilities, allowances and other benefits including retiral benefits which are available to the regular employees of the Respondent No. 1. While computing the retiral benefits the entire service period of such employees including the period during which they have worked in the statutory Canteen prior to the filing of this petition shall also be taken into consideration. All the employees who are beneficiaries under this order of the Court shall be entitled to the benefit of emoluments including salary, allowances and other benefits for the period commencing from the date of filing of this petition. As a matter of immediate interim relief pending prescription of pay scale and the fitment of individual employees in the appropriate grade, the Respondent No. 1 shall make payment of emolument including salary and other financial benefits to the workmen at least on par with the minimum salary of a workman employed in the factory in a more or less equivalent status having regard to the pay scales prescribed for factory employees. All the arrears to be computed on the above basis for the period commencing from the date of filing of this petition till July 31, 1995, shall be paid by the Respondent No. 1 to all the Canteen employees concerned by August 31, 1995. In the event of there being any controversy between the parties regarding the identity of the workmen entitled to be treated as Canteen employees or their fitment or the pay scale or allowances and benefits paid to the workmen concerned are entitled to, the parties shall be at liberty to approach the appropriate forum for necessary adjudication. We hope that the Respondent No. 1 shall adopt a generous attitude in the matter and shall start paying appropriate amounts to the concerned employees as direct employees of the Respondent No. 1 forthwith. Since we have directed the Respondent No. 1 to pay all the arrears i.e. differential amounts for the period commencing from the date of filing of this petition till July 31, 1995, as aforesaid, we hereby direct that the appropriate amount of salary and other allowances shall be paid by the Respondent No. 1 to the concerned workmen as directed above with effect from August 1, 1995. In the event of there being any difficulty concerning interpretation and application of this order, parties shall be at liberty to apply to this Court for

further directions. As far as the quantification of the amount is concerned, the parties shall have to make necessary application to the appropriate forum in case any dispute arises between the parties. The Respondent No. 1 shall prescribe the requisite pay scale and make necessary decision regarding fitment of all the employees covered under this order latest within three months from today.

19. Having regard to the facts and circumstances of the case there shall be no order as to costs.

20. For further directions adjourned to Monday July 10, 1995 at 2.30 p.m.

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