

State Vs. R.L. Sharma

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Court : Delhi

Decided On : Apr-18-1984

Reported in : 26(1984)DLT333; 2003(7)DRJ334

Judge : R.N. Aggarwal and; Malik Sharief-Ud-Din, JJ.

Acts : Contract Labour (Regulation and Abolition) Act, 1970 - Sections 23

Appeal No. : Criminal Appeal No. 235 of 1983

Appellant : State

Respondent : R.L. Sharma

Advocate for Pet/Ap. : S.T. Singh and; R.L. Sharma, Advs

Judgement :

Malik Sharief-Ud-Din, J.

(1) Respondent R. L. Sharma was tried under Section 23 of the Contract Labour (Regulation and Abolition) Act 1970 here in after called Act. The trial court by its judgment dated 3rd February 1982 convicted and sentenced him to the payment of Rs. 500.00 and also directed that he should undergo two months simple imprisonment if he fails to pay the fine. The respondent went in appeal which was heard by Sh. K. B. Andley. Sessions Judge, Delhi, who by his judgment dated 13-7-1983 set aside the' conviction and sentence and acquitted the respondent.

Leave to appeal against this judgment of learned Additional Sessions Judge was sought and was granted on 18-11-1983 by this Court.

(2) Stating briefly, the fa

(3) On receipt of a complaint, Shri O. P. Bindra Inspecting Officer Delhi; for registering/licensing Officer, Delhi, went for the inspection of accused establishment on 5-8-76. After satisfying himself that the workers engaged by the respondent were doing the same and similar type of work as was being done by the workers engaged by M/s. Voltas Limited, the principal employer, and that they were not being paid the same benefits as were paid by the principal employer to the labourers directly engaged by it he issued a show cause notice to the respondent to indicate as to why the benefits detailed in clause No. 5 of the Annexure attached to the license should not be extended to the workers engaged by him. This notice marked Ex. Public Witness I/D was followed by reminders dated 24-8-76 Ext. Public Witness I/E and 10th September 1976 Ext. PW1/F. The notice and the aforesaid reminders failed to evoke any response from the respondent as a result of which the inspecting officer was compelled to take recourse to the prosecution of respondent under Section 23 of the Act. In fact the whole case against the respondent has been put in a condensed form in the show-cause notice Ext. Public Witness 1/D wherein it has been conveyed to the respondent in most unambiguous terms that the workers engaged by him were performing the same and similar type of work as were being performed by the workers directly engaged by the principal employer M/s. Voltas Ltd. The attention of the respondent was clearly invited to condition No. 5 appearing in annexure appended to the license bearing No. CIA/C/88/76 dated 4-2-76 and he was called upon to show cause as to why the benefits extended by the principal employer M/s. Voltas Ltd. to the workers directly engaged by it should not be extended to the workers engaged by him. It may however be noted that the respondent in pursuance of this notice and the reminders that followed did not raise any dispute that the workers engaged by him were not performing same and similar functions as were being performed by workers engaged by the principal employer. This dispute was for the first time raised on 1-12-76 after the case went 'to court and after he was summoned by the court.

(4) Before proceeding further we may at this stage notice the contents of condition No. 5 of the license which are as under :

'IN case where the workman employed by the contractor performs the same or similar kind of work as the workman directly employed by the principal employer of the establishment, the wage rates, holidays hours of work and other conditions of service of the workmen of the contractor shall be the same as applicable to the workman directly employed by the principal employer of the Establishment on the same or similar kind of: work, provided that in the case of any disagreement with regard to the type of work the same shall be decided by the Labour Commissioner, Delhi Admn. whose decision shall be final.'

(5) In response to the show cause notice, on 13-8-76 the respondent wrote a letter to the Inspecting officer marked Ext. P-A seeking three weeks' time to study the matter. On 24th September 1976 another letter Ext P-B was written seeking further time till 15-10-76 on the pretext that further data was being collected to enable him to reply the show cause notice. On 12-10-76 by a letter Ext. P-C the respondent sought, a lull ensued and there was no further communication till the case went to the court on 4-11-76 and the Metropolitan Magistrate issued summons for his appearance in the court for 1-12-76. We, however, find on record a letter Ext. D-A dated 1st December 1976 addressed to the Registering Authority, Delhi Administration, 15, Rajpur Road Delhi, by the respondent in which for the first time he raised an averment that the labour engaged by him was not doing the same and similar kind of work as was being done by the workers employed by the principal employer. This would clearly go to show that this defense was raised by the respondent for the first time after the case went to the' court and in all probability after he received a summons for appearance in the court.

(6) The defense of the respondent as set out in his statement under Section 313 Criminal Procedure Code . before the trial court is that the labourers engaged by him were not doing the same and similar kind of work as was being done by the labourers engaged by the principal employer. He further stated that he does not remember now if he had received notice dated 5-8-76 from the inspecting officer. This he says despite the fact that he has written three letters Exts. Public Witness

A, Public Witness B, and Public Witness C consecutively to the inspecting officer in response to the notice and has also addressed a letter Ex. Da dated 1-12-76 to the Registering Authority.

(7) The learned Additional Sessions Judge accepted the appeal on two grounds, namely, that the complaint was time barred under Section 27 of the Act and that the Registering Authority has failed to make a reference to the Labour Commissioner as envisaged by Condition No. 5 of the license and this was done despite the fact that the respondent never agreed or admitted any such violation as was referred to in the show cause notice, Ext. Public Witness 1/D and the subsequent reminders. In this case we are, therefore, faced with two short points which are (1) whether the complaint is time barred as has been held by the Additional Sessions Judge and (2) whether there has been a failure on the part of the complainant to refer the matter to the Labour Commissioner and what is the effect thereof on the complaint. This also calls for an examination of the question as to the stage at which a dispute of the aforesaid nature could be raised to enable the authority to make a reference to the Labour Commissioner.

(8) On successive dates the respondent failed to appear either in person or through his counsel. We have as such heard Sodhi Teja Singh counsel for the State, on giving our careful and anxious consideration to the facts and evidence, we are of the view that the learned Additional Sessions Judge has completely fallen into an error of judgment as a result of not caring to read evidence on the point of limitation and by misconstruing condition No. 5 of the license. On the..... point of limitation, the learned Addl. Sessions Judge has said that neither in the complaint nor in the notice dated 5-8-76 the complainant has stated as to when the violation came to his notice and as such it is reasonable to assume that the violation came to the knowledge of the complainant prior to 5-8-76 (the date of inspection by the inspecting officer). In doing so the learned Additional Sessions Judge has failed to take notice of what the complainant had stated at trial. We find that during the course of cross-examination the complainant Shri O. P. Bindra has clearly stated as under :

'I inspected the record of the accused establishment on 5-8-1976. On the same day of my visit I compared the nature of duties with M/s. Voltas Limited. I met the Administrative Officer of M/s. Voltas Ltd, on 5-8-76. A show-cause notice was issued to the accused on 5-8-76 by registered A.D.'

(9) This part of the testimony of the complainant clearly goes to show that he came to possess the knowledge regarding the violation of condition No. 5 of the license of 5-8-76 while inspecting the accused establishment and after verifying it with the principal employer, M/s. Voltas Limited and it was on the same day that a notice was issued to the respondent. Under the circumstances ought we to know if any more evidence was required that the violation was detected for the first time by the complainant on 5-8-76. In view of this clear and categorical testimony of the complainant there is no room for assumption that the violation came to his knowledge earlier to that date. The learned Additional Sessions Judge in this regard has based his finding on speculation and conjectures. Relevant portion of Section 27 of the Act reads as under :

'NO court shall take cognizance of an offence punishable under Act unless the complaint thereof the made within three months from the date on which the alleged commission of the offence came to the knowledge of an Inspector.'

(10) In the present case obviously the knowledge about the commission of offence came to be possessed by the inspector on 5th August 1976 and the complaint was made on 4th November 1976. This clearly goes to show that the complaint is within time and we hold accordingly.

(11) Adverting to the other point we may at once point out that condition No.5, as Reproduced above in this judgment, is in two parts. The first part relates to the equal treatment to which the contract labour would be entitled to for the same and similar kind of work irrespective of the fact that they are not engaged directly by the principal employer. The second part of condition No. 5 relates to the fact that in case of any dispute or disagreement with regard to the type of work done by the contract labour a reference is to be made to the Labour Commissioner whose decision shall be final)

(12) Second part of condition No. 5 clearly envisages a reference only in case of dispute regarding the type of work being done by the workers. The pre-condition is the existence of a dispute or disagreement of the point. In the present case the only person who could raise such a dispute was respondent but he failed to raise any such issue despite notice dated 5-8-76 and the subsequent reminders dated 24-8-76 and 10th September 1976. This he has done despite the fact that in the notice dated 5th August 1976 the inspecting officer had clearly indicated that on his enquiry he has found the contract labour being engaged in the same and similar type of work as was being done by the labourers directly engaged by the principle employer. All that the respondent has done in reply to this notice is to seek time and in one of his letters dated 24-9-76 (Ext. PB) he has said that he was collecting further data to reply the notice. The fact whether the workmen were engaged in the same or similar type of work or not was within the knowledge of the respondent. If his workmen engaged in a work different that the workmen engaged by the principal employer he would have at once said so. The respondent has raised this dispute for the first time on 1-12-76 when the case had already gone to the Court. This is obviously an after-thought. If this was the defense he could have raised it in reply to the notice dated 5-8-76 and in that case the complainant had no option but to refer the matter to the labour commissioner. The very scheme of condition No. 5 clearly goes to show that the defense that his workmen were performing duties dissimilar to the ones performed by the workmen engaged by the principal employer could only be raised by the respondent time after a show-cause notice is served upon him. In that case condition No. 5 makes it obligatory on the complainant to make a reference of the dispute to the labour commissioner. If no such disagreement or dispute is raised the complainant is under no obligations to refer the matter for adjudication of the labour commissioner. If this defense is not raised by the respondent before the complainant it cannot be raised for the first time in the court. This goes to show that even up to 1-12-1976 to grievance of the respondent never was that his labourers were not doing the same or similar type of work. In the light of these facts we are of the view that the learned Additional Sessions Judge has clearly misconstrued condition No. 5 and has wrongly held that there has been no reference of dispute to the labour commissioner. If the dispute or disagreement was not in existence the question of

reference to the labour commissioner did not arise at all. We are, therefore, of the view that this appeal must be accepted. We accordingly accept the appeal, set aside, the judgment dated 13-7-1983 of the learned Additional Sessions Judge acquitting the accused and we hereby restore and affirm the judgment of the trial Magistrate dated 3-2-83 convicting and sentencing the respondent to the payment of Rs. 500.00 as fine directing him to undergo two months simple imprisonment in default of payment offline]

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