

M/S Tata Sons Ltd Vs. Workmen and anr

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Court : Delhi

Decided On : Jul-31-2013

Judge : Vipin Sanghi

Appellant : M/S Tata Sons Ltd

Respondent : Workmen and anr

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Order reserved on: % + 15. 04 .2013 Order delivered on:

31. 07.2013 W.P.(C) 1323/2010 M/S TATA SONS LTD Petitioner Mr.Sanjay Ghose , Advocate. Through: Versus WORKMEN & ANR Through: Respondents Mr. Sudhir Kathpalia, Advocate for R1. Mr. Atul T.N., Advocate for R2. CORAM: HONBLE MR. JUSTICE VIPIN SANGHI ORDER VIPIN SANGHI, J.

C.M.Appln. Nos. 4503/2012 & 10318/2012 1. The first application has been preferred under Section 17 B of Industrial Disputes Act, 1947(The Act) by the widow and son of Late Shri Attar Singh (respondent no 1C), Widow of Late Shri Ramesh Chand (respondent no 1E), Shri Suraj Kumar(Respondent No 1A), Shri Bir Singh (Respondent No 1B), and Shri Sunil Kumar (Respondent No 1D).

2. The petitioner has filed the writ petition to challenge the award dated 24.09.2009 passed by the Ld. Presiding Officer, Industrial Tribunal No. II in Industrial Dispute no 330/2001, whereby termination of the respondentworkmen

has been held to be illegal and the petitioner has been directed to reinstate Respondent No 1A , Respondent no 1B, Respondent no 1C and respondent no 1D with 30% back wages, and Respondent no 1E-who unfortunately expired during the labour court proceedings, was granted 30% back wages. The operation of the impugned award was stayed vide order dated 15.03.2010 on deposit of the awarded amount with the Registrar General until the present dispute is finally decided. However, vide order dated 03.05.2012, the court directed release of the 30% back wages which were deposited by the petitioner with the Registrar General, in favor of the three surviving workmen i.e respondent no 1A, 1B and 1D as well as the legal heirs of the two deceased workmen, i.e respondent no 1C and 1D and stayed the operation of the award to the extent of reinstatement of the workmen, during the pendency of the writ petition.

3. At the outset, it is to be noted that respondent no 1C passed away on 20.03.2011 i.e during the pendency of the present proceedings whereas, respondent no 1E had passed away even before the passing of the impugned award.

4. In the application under consideration, it has been averred that Respondent no 1A, Respondent no 1B and respondent no 1C are not working in any organization since the date of the award, despite making constant efforts to seek employment. Similarly, it has also been averred that respondent no 1C was also unemployed during the course of present litigation.

5. Accordingly, it is prayed that respondent no1A, respondent no 1D, and respondent no1B be granted full wages from the date of award, till the disposal of the writ proceedings, and respondent no 1C be granted full wages from the date of award up to the date of his expiry i.e 23.03.2012. It has also been prayed that the court may be pleased to grant interim financial protection under Section 151 Code of Civil Procedure, 1908 (the Code) in favor of the legal representative of the Respondent 1 E to meet the ends of justice.

6. The petitioner in its reply has stated that though, technically, reinstatement has been awarded by the Labour Court against the Petitioner, but it is well within the knowledge of the Respondent workmen that all the Respondent workmen were, at

the material time, working as employees of Respondent No 2 i.e Apartment Residents Welfare association (ARWA) at their premises, in the capacity such as electrician, plumber, etc. The Petitioner being merely a holding company of TATA group of Companies are not directly engaged in any business or trade where the services of the Respondent workmen could be utilized. However, with a view to honour the Award dated 24.09.2002 of the Labour Court , the Petitioner endeavoured to find out employment for the Respondent workmen with Respondent no 2 ARWA and Respondent No 2 also offered employment to them vide letter dated 25.01.2010.

7. But the same was declined by Respondent workmen. The petitioner submits that this fact of refusal to take up employment with Respondent No. 2 implies that the Respondent workmen have been gainfully employed elsewhere and are making more money than they would have earned, had they taken up the offer of employment made by Respondent No 2.

8. The Ld counsel for the Petitioner submits that the letter and spirit of Section 17B is fully met by the offer of employment by Respondent no 2 at the behest of the Petitioner, at the very place where the Respondents were earlier employed.

9. The Petitioner has moved the second application-being C.M.Appln. No. 10318/2012, under Section 151 of the Code to take on record additional evidence of gainful employment in respect of the Respondent no 1A, 1B and 1D. It is submitted that the Petitioner had sent decoys as make-believe customer and potential clients to test the veracity of the statement of un-employment of the Respondent workmen, and also to trace the gainful activities of the respondent no 1A,1D and 1 B , if any. The Petitioner claims that it has been successful in filming the Respondent Nos. 1A, 1D, 1B at their respective places of employment. In this regard, a Video CD marked as Annexure P-A/Colly, the transcripts of the said video recordings marked as annexure P-B/Colly and the video grabs (pictures captured from the CD) marked as annexure P-C/Colly have been filed by the petitioner.

10. The Ld Counsel for the Petitioner submits that the Petitioners investigative efforts have revealed that Respondent no 1A is running a press/ironing business

and has admitted to having a daily income of Rs 250, whereas the Respondent no 1B is operating a plumbing contractor business himself employing 2-3 other workmen, and Respondent no 1D is working as a tailor in an establishment called M.H Garments at Kanti Nagar Extn . Delhi for 8 years and earning more than Rs 300-400 per day. The petitioner claims that they employed a well known surveillance and detective agency called M/s Sleuths Indian Consultancy (P) Ltd., 109, LGF, Ansals Fortune Arcade, K Block, Sector 18, NOIDA 20130 (U.P.), to carry out the said operation.

11. The Ld Counsel of the Petitioner relies on a Division Bench judgment of Gujarat High Court in Rauf Mohamed Sheikh v Pragati Glass Works Pvt Ltd. 2010 Lawsuit (Guj) 919 to submit that the word establishment has to be given an expansive meaning. The Court held as follows: .. the word establishment has a wider connotation even for the sector of commerce and industry. While the workman is required to have not been employed in any establishment for the purpose of grant of benefits under Section 17B, the proviso clearly excludes the workman who had been employed and had been receiving adequate remuneration. Thus, the express language of the provisions of Section 17B of the Act excludes from its benefit such workmen who have been employed and had been receiving adequate remuneration. Accepting that the employment of the workman has to be in an establishment for application of the proviso, the words employment and establishment have to be given full scope and meaning to prevent abuse of the benevolent provision of Section 17B. The phrase receiving adequate remuneration is also capable of throwing contentious issues of facts and values. But there again the Court must adopt a pragmatic approach to subserve the original purpose and object of the provision which is to provide sustenance to the workman during pendency of proceedings before the higher courts. In view of limited scope of enquiry under Section 17B, the Court has to draw necessary inferences from the material available on record. Therefore, considering the material placed on record in the proceeding before learned single Judge and before this Court, the conclusion which is inescapable, in spite of his denials, is that the Appellant is employed, he is in receipt of more than adequate remuneration and his attempt at claiming the benefit of Section 17B is not bona fide.

12. Reliance is also placed on North East Karnataka Road Transport Corporation v M. Nagangouda AIR 2000 SC 97 wherein the Supreme Court has held in the context of grant of back wages that, gainful employment includes self employment wherefrom income is generated.

13. Ld. Counsel for the petitioner also relies on a division bench judgment of the Bombay High in U.P. State Bridge Corporation Limited Vs. Maharashtra General Kamgar Union 2008 Lawsuit(Bom)80 to submit that the initial onus to state that the workman is not gainfully employed is on the workman. However, the employer may deny the said averment and establish that the workman is gainfully employed- in which case, the workman would not be entitled to the statutory benefit of Section 17B of the Act. The Court held as follows:

17. In the light of the judgments that we have noted above, there can be no doubt that the onus for seeking statutory interim protection is upon the workman and where Management claims benefit of the proviso of Section 17B, the onus is upon the Management. The onus on the workman is a very limited one and once an affidavit as contemplated under the provisions of Section 17B is filed and the court is satisfied that the workman was not employed in any establishment during the relevant period, direction for payment of wages under Section 17B would be issued. Such an affidavit filed by the workman has to be true and correct description of facts as per the requirements of law. It is expected that the workman would make a definite and correct averment in the affidavit in regard to his non-employment and would show that he could not be employed despite his efforts. It will be for the workman to state categorically that he was not gainfully employed and was not in self-gainful employment which dependent on the facts and circumstances of the case would be a consideration before the court to pass a directive for payment of wages and determination of such wages even at the interim stage.

14. Petitioner places reliance on another Judgement of the Supreme Court in Kamala Nehru Memorial Hospital v Vinod Kumar(2006) 1 SCC 498 where the Court denied the relief under Section 17B of the Act on account of the respondent being in receipt of adequate remuneration as a professional advocate. To the

same effect is the judgment reported as Metropolitan Transport Corporation v V. Venkatesan(2009) 9 SCC 601.The Supreme Court held that income received while pursuing legal profession to be treated as income from gainful employment, as gainful employment would also include self employment and in this view, reasonable deduction needs to be made while determining the back wages to which the respondent workman may be entitled.

15. Ld Counsel for the Petitioner then places reliance on a Division Bench judgement of this court in Municipal Corporation of Delhi v Santosh Kumari & Anr , Gail (India) Ltd v Tarkeshwar Prasad Kharawar and Mangemant of International Students House v Fakruddin Farooqui in LPA Nos. 165, 345, and 342 of 2012 to submit that, gainful employment of the workman; unreasonable and unexplained delay in making the application by the workman after the filing of the petition challenging the award/order; offer by the employer to give employment to the workman would be a relevant factors and consideration for the date from which the wages are to be permitted.

16. On the scope and application of Section 17B, learned counsel for the petitioner finally refers to a division bench judgement of this court in Shriram Institute of Industrial Research v Ramesh Kumar Gandhi 2012LLR113, wherein the Court held: It is difficult to accept the contention of the respondentworkman in this behalf. No doubt, Section 17B uses the expression "industrial establishment". However, while interpreting this provision, one cannot ignore the purport and objective with which this provision was introduced. While considering an application under Section 17B of the ID Act, it is necessary to bear in mind that the spirit, intendment and object underlying the statutory provision of Section 17B is to mitigate and relieve, to a certain extent, the hardship resulting to a workman due to delay in the implementation of an Award directing reinstatement of his services on account of the challenge made to it by the employer.

17. The Ld Counsel for the Petitioner submits that the impugned award was passed on 24.09.2009. On 25.01.2010, the offer of employment was made by respondent no 2 to the respondent workmen. On 04.03.2010 the present writ petition was filed by the Petitioner and, almost after two years, the Respondent

workmen and the legal representatives of the deceased workmen preferred this application, which clearly goes on to show that the Respondent workmen were gainfully employed somewhere else.

18. To prove the evidentiary value and admissibility of the sting operation carried out by the petitioner, Ld Counsel for the Petitioner further relied on Division Bench judgement of this court in Lumax Automotive Systems Ltd v Its Workmen 187 (2012) DLT 270. In this case, this Court had admitted the CD got prepared by a private detective agency as evidence, and held that self employment would be gainful employment, if sufficient income is generated through such employment, and the measure of sufficient income could be the minimum wages fixed. However, it was also held in the same decision that small time petty business run by family members of the respondent workmen, in which business the said respondent participated on account of being jobless, would not affect his right to the enforcement of section 17B.

19. Ld Counsel for the Petitioner also places reliance on a judgment of this Court in Index International (P) Ltd v Presiding officer, Labour Commissioner, Manorath Sharma 2006 Lawsuit (Del) 1359 where the court accepted the report of a detective agency who was entrusted with the work of finding out the whereabouts and job of the Respondent workman.

20. On the other hand, Ld counsel for the Respondent workmen submits that the investigation done by the Petitioner is not admissible in evidence-as it has been made without due compliance of law and merits outright rejection. The Petitioner must be put to strict proof with respect to the device used for tapping the conversation, and the same should be deposited in court as the CD is just the copied record of the conversation, whereas the original chip has not been submitted in the court for reference.

21. Ld. counsel for the Respondent workmen strongly denies the findings of the Investigation and submits that Respondent No 1D is neither on the pay roll of MH garments, nor a regular employee of the same. He has filed an affidavit of the manager of the said concern who deposes that the said respondent gets paid according to the work done by him 22. Ld. counsel for the Respondent workmen

further submits that Respondent No 1 B is a plumber, but he is not engaged in any organization, nor does he do a contracting business himself. Similarly, the Respondent No 1A is himself not engaged in the business of ironing clothes, but merely assists his parents in their ironing business since he is unemployed.

23. Ld Counsel for the Respondent workmen submits that the Respondent no 1A, 1D and 1B have satisfied the ingredients of Sec 17 B of the Act and the petitioner has failed to rebut the same with any kind of documentary evidence. It is submitted that the Respondents doing odd jobs in order to eke out a living, in order to survive does not amount to gainful employment. The term gainful employment does not mean that the Respondent Workmen should not be engaged in any kind of activity to earn their basic livelihood, or that they should be dependent on members of their family to sustain themselves.

24. Ld counsel for the Respondent workmen submits that it is not true that the Respondent workmen were not willing to take up the employment offered, but the fact of the matter is that during the pendency of the dispute before the Labour Court, the Respondent workmen worked for a period of 1 year with the Respondent no 2 , whereafter the Respondent no 2 removed them from their services by claiming them to be surplus manpower vide letter dated 06.01.2006 and, therefore, the Respondents were rendered unemployed again. Ld Counsel for Respondent workman submitted that the Respondent workmen were employed in various capacities since 1992, whereas Respondent No 2 (ARWA) came into existence only in 1999. The respondents submit that despite repeated requests made on their behalf to give alternative employment in any TATA establishment, they were terminated from their services by Respondent no 2.

25. Respondent-workmen rely on a judgment of this court in Court on its own motion v State and Ors 2008(151)DLT695, where the court after going through the views of various scholars, based on the law in some other countries, concluded in respect of on sting operations as follows:

1. A sting operation by a private person or agency is, by and large, unpalatable or unacceptable in a civilized society. A sting operation by a State actor is also unacceptable if the State actor commits an offence so that an offence by another

person is detected.

2. A State actor or a law enforcement agency may resort to hidden camera or sting operations only to collect further or conclusive evidence as regards the criminality of a person who is already suspected of a crime.

3. The law enforcement agency must maintain the original version of the actual sting operation. Tampering with the original video or audio clips of a sting operation may lead to a presumption of the spuriousness of the entire operation.

4. A sting operation cannot be initiated to induce or tempt an otherwise innocent person to commit a crime or entrap him to commit a crime.

5. Normally, if a private person or agency unilaterally conducts a sting operation, it would be violating the privacy of another person and would make itself liable for action at law.

6. A sting operation must have the sanction of an appropriate authority. Since no such authority exists in India, and until it is set up, a sting operation by a private person or agency, ought to have the sanction of a court of competent jurisdiction which may be in a position to ensure that the legal limits are not transgressed, including trespass, the right to privacy of an individual or inducement to commit an offence etc.

26. Ld counsel for the respondent workmen submits that in light of the above principles laid down in the aforesaid judgement, no value can be attached to the sting operation carried out by the Petitioners.

27. Reliance is also placed on the judgment of this court in Delhi Transport Corporation v Inderjeet Singh in L.P.A no 392/2008, where the delay in filing the application under Section 17B was held to be not sufficient to deny benefit to the workman.

28. The Respondent relies on Regional Authority, Dena Bank v Ghanshyam (2001) 5 SCC 169.to submit that the power of this Court to grant interim relief to the workman in whose favour an award of his reinstatement is rendered, is not

restricted by Section 17B of the Act. Reliance is also placed on Mrs. Kiran Uppal Prop. M/s Clas v. Ashok Kumar & Ors. 2012 LLR 918.

29. Ld Counsel for the Respondent workmen finally sums up his argument by placing reliance on another judgement of this court in Airport Authority of India v Puran Chand And Ors in L.P.A no 190/2006, where the Court relied upon Taj Services Ltd. Vs. Industrial Tribunal - & Others 2000 (1) LLJ 101.to hold that self employment is not gainful employment.

30. So far as the claim of the heir of respondent no.1E i.e. the widow of late Sh. Ramesh Chand is concerned, the same does not lie as there is no award directing his reinstatement made by the tribunal. The existence of such an award is a prerequisite for maintaining an application under section 17B of the Act.

31. In respect of the claim made by the widow of late Sh. Attar Singh- respondent no.1C is concerned, though the petitioner has not filed any particulars or evidence to refute the case set up by the said legal representatives-that late Sh. Attar Singh remained unemployed throughout till he passed away 20.03.2011, it is to be noted that the present writ petition was filed by the petitioner/employer in March 2010. On 05.03.2010, the court had stayed the operation of the impugned award, subject to the awarded amount being deposit in this court. The respondent had put in appearance through counsel on 03.06.2010. Yet, the present application was not preferred till February 2012. Delay in filing the said application would disentitle the applicant to claim relief in respect of the past period. Though, the respondent workmen had filed an application for condonation of delay being C.M no 4504/2012 for re-filing the application under Section 17B belatedly-stating that the delay caused in re-filing the said application is bona fide on account of a pending mediation between the parties which was ultimately unsuccessful, however, I am not inclined to condone the delay on account of this fact because, as revealed from the order sheets, it is clear that the matter was referred to mediation only on 14.02.2012, and the direction for payment of 30% backwages to the workmen made thereafter, on 03.05.2012. There is no explanation furnished by the respondent/applicant as to why the said application was not preferred soon after the grant of stay of the impugned award by this court in March 2010. They have

waited for nearly two years to file the said application and, in the interregnum, late Sh. Attar Singh passed away on 20.03.2011. In these circumstances, the widow and son of late Sh. Attar Singh, respondent no.1C cannot be granted any relief.

32. This leaves me to consider the application on behalf of Sh. Suraj Kumar respondent no.1A, Sh. Bir Singh respondent no.1B and Sh. Sunil Kumar respondent no.1D. Though the said respondents have claimed that they have not been gainfully employed since the time of passing of the impugned award and during the pendency of the writ petition, the said fact has been disputed by the petitioner. To substantiate its claim that the respondents have gainfully employed, the petitioner has sought to place on record the evidence collected by it by conducting a sting operation. The petitioner had disclosed the agency who has conducted the sting operation. A CD has been placed on record and the transcript of the same has also been filed.

33. Pertinently, though the respondents in their response to C.M. No.10318/2012 (to bring on record the CD and its contents) have at one stage claimed that the same is forged and fabricated, they have not disclosed as to what is the forgery or fabrication the petitioner has resorted to. At the same time, a perusal of para 5 of their reply to C.M. No.10318/2012 shows that the respondents did not deny the fact that Sh. Sunil Kumar was working though it is claimed that he was working only part time. In respect of Sh. Bir Singh, respondent no.1B, what is claimed is that he was bragging in front of customers about his work, which is common in every profession and the same was done by the answering respondent. Therefore, even the said respondent does not deny the conversation recorded in the sting operation, but seeks to discount the same by claiming that respondent no.1B had made inflated claims. In respect of sting operation conducted of respondent no.1A, once again, I find that there is no denial of the fact that respondent no.1A is working as a local presswala in the locality of GK Part II. However, the said respondent has sought to explain the same by claiming that he is only assisting his parents.

34. From the reply of the respondents to C.M. No.10318/2012, what one gathers is that the respondents have practically admitted though with their own interpretation

and explanation, the contents of the CD which contains the sting operation. The authenticity of the sting operation, therefore, in my view, appears to be unassailable, and the same has not been assailed with any seriousness. There are several instances where the courts have founded their decisions on such like sting operations. Some of them, which have been relied upon by the petitioner, are in the case of Lumax Automotive Systems Ltd (supra) and Index International (P) Ltd (supra). There are several other such like cases including Anirudh Behl v. State, 172 (2010) DLT 268. Sri Bhardwaj Media Pvt Ltd v State 2007 X AD Del 561; and R.K. Anand v. Registrar, Delhi High Court

11. SCR 1026.

35. It is well settled that if evidence is relevant, it is admissible irrespective of the method by which it is obtained subject to certain exceptions. (See Pushpadevi M. Jatia v M.L wadhawa

3. SCC 367). Consequently, I am inclined to allow the petitioners application i.e. C.M. No.10318/2012 and take the additional evidence filed by the petitioner on record.

36. The additional evidence placed on record by the petitioner shows that Sh. Suraj Kumar, respondent no.1A is working as a presswala. He is self employed. He admits to be earning about Rs.3-5 per piece of cloth and when the work was good, he was ironing 50 pieces of cloth a day. He claims that the business is not as good due to competition. If one were to apply a discount of 60%, and assume that he would be ironing 20 pieces of cloth a day, he would be earning in the range of Rs.80 per day on a conservative estimate. The same would translate to Rs.2,400/- per month. His last drawn wages were Rs.2,448/-. Therefore, respondent no.1A was gainfully employed since he was earning more or less the same amount as his last drawn wages, even on a conservative estimate.

37. So far as Sh. Bir Singh is concerned, from the evidence placed on record by the petitioner, it appears that the alleged termination of his services has turned out to be a blessing in disguise for him. Today, he is in a position to employ others under him and take work from them. He has turned into a contractor i.e. an

employer, from being an employee. He talks about his capacity to take up construction works and complete the same. Certainly, he is not unemployed. He is gainfully self employed. Similarly, Sh. Sunil Kumar, respondent no.1D is working as a tailor. In the sting operation, he admits to be working in that capacity for eight years with M.H. Garments. His endeavour to distance himself from the said employers by, subsequently, producing the affidavit of one Sh. Mansav Ali, working as manager in M.H. Garments-who claims that he was not working as a permanent employee, clearly appears to be an afterthought. The statement made by him-as recorded in the video recording, was made innocently without being mindful of the fact that the said statement was being recorded and would be used against him. There is no reason to assume that he was lying then. At the same time, there is every reason to assume that he is lying now by claiming that he was not permanently working with M.H. Garments. It is pertinent to note that the affidavit has been filed by the manager of M.G. Garments and not M.H. Garments, whereas in the sting operation, Sh. Sunil Kumar admits to be working with M.H. Garments.

38. As held by the Supreme Court, self employment is also gainful employment. The decisions relied upon by the respondents to the contrary are of no avail. What is relevant is that the workman has an avocation whether it is his own creation, or as an employee with another employer, and that the workman gets remunerated for the same adequately. What is adequate is dependent on what was the wage being drawn by the workman while in employment with the erstwhile employer. In the present case, the wages of Sh. Suraj Kumar were Rs.2,448/-, Sh. Bir Singh were Rs.3,200/- and Sh. Sunil Kumar were Rs.2,448/-. There is no reason to assume that the wages being drawn by them in their respective employment/self employment were less than those wages. Pertinently, these respondents have falsely stated before this court that they were not employed, and they have lost credibility and their statement that they are not earning adequate wages has to be taken with a pinch of salt.

39. The decisions relied upon by the respondent have been examined by me and do not advance their case, particularly in the facts as mentioned above. The decision in Court on its own motion v. State & Ors. (supra) does not lay down a

universal rule that sting operation by a private person or agency cannot be accepted in judicial proceedings. As noted above, there are several instances where sting operations have been made the basis of their decision by the courts. No doubt, the safeguards laid down in the aforesaid decision would have to be adhered to. However, in the facts of the present case, the respondents have practically admitted the correctness of the sting operation and, therefore, the present is a case akin to the one decided by the Supreme Court in R.K. Anand (supra).

40. The decision in DTC v. Inderjeet Singh (supra) was a case where the court entertained the application under section 17B despite delay, for the reason that the filing of the writ petition challenging the award itself was belated. That cannot be said about the present case since the impugned award was passed on 24.09.2009 and the writ petition was preferred in early March 2010. No doubt, the powers under section 17B does not inhibit this Court, in appropriate cases, to pass orders granting interim financial relief to the workman. However, the facts of the present case do not call for any such exercise to be undertaken by the court.

41. For all the aforesaid reasons, I find no merit in the respondents application under section 17B of the Act and dismiss the same leaving the parties to bear their respective costs. VIPIN SANGHI, J.

JULY 31 2013 sr

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