

HUSSAINBHAI, CALICUT

v.

ALATH FACTORY THOZHILALI UNION,  
KOZHIKODE AND ORS.

July, 28, 1978

[V. R. KRISHNA IYER, D. A. DESAI AND O. CHINNAPPA REDDY, JJ.]

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

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' 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, 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 substantially 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]

**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.

A *N. Sudhakaran* for the Petitioner.

The Order of the Court was delivered by

B KRISHNA IYER, J.—The petitioner before us in this special leave  
 C petition is a factory owner manufacturing ropes. A number of  
 D workmen were engaged to make ropes from within the factory, but  
 E those workmen, according to the petitioner, were hired by contrac-  
 F tors who had executed agreements with the petitioner to get such  
 G work done. Therefore, the petitioner contended that the workmen  
 H were not his workmen but the contractors' workmen. The industrial  
 award, made on a reference by the State Government, was attacked  
 on this ground. The learned 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.

D It is not in dispute that 29 workmen were denied employment  
 E which led to the reference. It is not in dispute that the work done  
 F by these workmen was an integral part of the industry concerned;  
 G that the raw material was supplied by the Management; that the  
 H 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-  
 catation of circumstances is conclusive of the question. Neverthe-  
 less, 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.

G 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 conten-  
 tion that the petitioner had entered into agreements with inter-  
 mediate contractors who had hired the respondent-Union's workmen  
 and so no direct employer-employee *vinculum juris* existed between  
 the petitioner and the workmen.

H This argument is impeccable in *laissez faire* economics 'red in  
 tooth and claw' and under the Contract Act rooted in English Com-  
 mon 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 pro-  
 claimed in the Preamble to the Constitution. This Court in *Ganesh  
 Beedi's* case 1974 (I)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 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.

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

S.R.

*Petition dismissed.*