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Article 31C has no words to indicate that the ban is removed by it. It merely saves the law enacted after coming into force of the said Article. We therefore, must reject the argument of Mr. Ramamurthi with reference to Article 31C of the Constitution.

39. In the result all the petitions are allowed and it is declared that Section 25-O of the Act as a whole and Section 25-R in so far as it relates to the awarding of punishment for infraction of the provisions of Section 25-O are constitutionally bad and invalid for violation of Article 19(1)(g) of the Constitution. Consequently, the impugned orders passed under sub-section (2) of Section 25-O in all the cases are held to be void and the respondents are restrained from enforcing them. We must, however, make it clear that since the orders fall on the ground of the constitutional invalidity of the law under which they have been made, we have not thought it fit to express any view in regard to their merits otherwise. We make no order as to costs in any of the petitions.

(1978) 4 Supreme Court Cases 257

(BEFORE V. R. KRISHNA IYER, D. A. DESAI AND O. CHINNAPPA REDDY, JJ.)

HUSSAINBHAI, CALICUT

.. Petitioner ;

Versus

THE ALATH FACTORY THEZHILALI UNION,
KOZHIKODE AND OTHERS

Respondents.

Special Leave Petition No. 1853 of 1978, decided on July 28, 1978

Labour and Industrial Law — Industrial Disputes Act, 1947 — Section 2(s) — Employer and employee relationship — Workmen employed by independent contractor to work in employer's factory — Whether "workmen" — Tests for determining

The petitioner is a factory owner manufacturing ropes. A number of workmen were engaged to make ropes but they were hired by contractors who had executed agreements with the petitioner to get such work done. When 29 of those workmen were denied employment, an industrial dispute was referred by the State Government and the award was attacked on the ground that the workmen were not workmen of the petitioner but only of the contractor. The High Court rejected the contention. Dismissing the appeal, the Supreme Court

Held :

The facts found are that the work done by the workmen was an integral part of the industry concerned, that the raw material was supplied by the management, that the 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 concatenation of circumstances is conclusive that the workmen were the workmen of the petitioner.

(Para 2)

The true test is where a worker or 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, the naked truth is discerned, and especially since it is one of the myriad devices resorted to by managements to avoid the responsibility when labour legislation casts welfare obligations on the real employer based on Arts. 38, 32, 42, 43 and 43A. If livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefit and satisfaction of enterprise, the absence of direct relationship or the presence of dubious intermediaries cannot snap the real life-bond. If, however, there is total dissociation, in fact, between the disowning management and the aggrieved workmen, the employer is in substance and in real life-terms, by another. (Paras 5 to 7)

Mangalore Ganesh Beedi Works v. Union of India, (1974) 4 SCC 43: 1974 SCC (L & S) 205, *followed*.

VPS/3849/SL

The Judgment of the Court was delivered by

KRISHNA IYER, J.—The petitioner before us in this special leave petition is a factory owner manufacturing ropes. A number of workmen were engaged to make ropes from within the factory, but these workmen, according to the petitioner, were hired by contractors who had executed agreements with the petitioner to get such work done. Therefore, the petitioner contended that the workmen 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.

2. It is not in dispute that 29 workmen were denied employment which led to the reference. It is not in dispute that the work done by these workmen was an integral part of the industry concerned; that the raw material was supplied by the Management; that the 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 concatenation of circumstances is conclusive of the question. Nevertheless, 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 industrial law was compulsively applicable. Even so, let us look at the issue afresh.

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3. 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 shrift to the contention that the petitioner had entered into agreements with intermediate contractors who had hired the respondent-Union's intermediate workmen and so no direct employer-employee *vinculum juris* existed between the petitioner and the workmen.

4. This argument is impeccable in *laissez faire* economics 'red in tooth and claw' and under the Contract Act rooted in English Common 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 proclaimed in the Preamble to the Constitution. This Court in *Ganesh Beedi's* case¹ 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.

5. 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 the mischief and achieve the purpose of the law and not be misled by the *maya* of legal appearances.

6. If the livelihood of the workmen substantially depends on labour

1. (1974) 4 SCC 43; 1974 SCC (L & S) 205; (1974) 1 LLJ 367

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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.

7. 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.

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

(1978) 4 Supreme Court Cases 260

(BEFORE P. N. BHAGWATI AND V. D. TULZAPURKAR, JJ.)

SENTINEL ROLLING SHUTTERS AND
ENGINEERING COMPANY (PVT.) LTD.

.. Appellant ;

Versus

THE COMMISSIONER OF SALES TAX

... Respondent.

Civil Appeal No. 1001 of 1977†, decided on September 2, 1978

Sales Tax — Contract for work and labour or a contract for sale — Tests for determining — Contract for fabricating and erecting rolling shutters held to be a contract for work and labour — Mode of payment stipulated in the contract irrelevant

The appellant-assessee, who is carrying on the business as engineers, contractors and manufacturers and fabricators, entered into a contract for fabrication, supply, erection and installation of rolling shutters for a company. The contract was subject to the terms and conditions set out in a printed form but there were also special terms and conditions which were specifically written out in the contract. The appellant carried out his part of contract, manufactured the rolling shutters according to specifications and erected and installed them. The appellant applied to the Commissioner of Sales-tax for determining whether the contract was a contract for sale or a contract for work and labour. The Deputy Commissioner of Sales-tax and the Sales Tax Tribunal held that the contract was for sale. On a reference to the High Court of the question whether the tribunal was justified in its conclusions that the contract essentially is consisted of two contracts—one for supply of material for money consideration and the other for service and labour—the High Court answered the question in favour of the Revenue and against the assessee.

Allowing the appeal, the Supreme Court

Held :

(1) Whether a particular contract is a contract for sale or for work and

†Appeal by Special Leave from the Judgment and Order dated February 24, 1977 of the Bombay High Court in Sales Tax Reference No. 28 of 1975.