

GATWU

Reg No. ALCBW/DRETCU/118/2003-06

Garments and Textile Workers Union

ಗಾರ್ಮೆಂಟ್ ಅಂಡ್ ಟೆಕ್ಸ್ಟೈಲ್ ವರ್ಕರ್ಸ್ ಯೂನಿಯನ್
(Affiliated to New Trade Union Initiative - NTUI)

BEFORE THE DEPUTY LABOUR COMMISSIONER

DIVISION 1, BANGALORE

PTN/CR-93/2017-18

106

Between:

Garment and Textile Workers Union

First Party

AND:

Avery Dennison (India) Pvt. Ltd.,
Plot No. 6B 1st main,
Phase 1, KIADB layout,
Peenya Industrial Area,
Bengaluru - 560058
Represented by its Director, Human resource

2. Sri Udyog Enterprises
No. 252, 4th Main, 2nd Block,
Opp.Dr.Raj Kumar Memorial,
Nandini Layout,
Bengaluru - 560 090

3. Adecco India Pvt. Ltd.,
No 7A, 2nd floor, SLVP complex,
2nd cross road, Chikkamaranahalli,
New BEL Road, Bangalore - 560 094

Second Party

REJOINDER TO THE OBJECTIONS FILED BY SECOND PARTY No. 2

AND 3

The First Party above named states as follows:

1. It is submitted that all the averments made by the Second Party No. 2 and 3 are specifically denied as false and misleading. The Second Party No. 2 and 3 has made baseless and false claims without any substance whatsoever, and the same is denied herein.

2. The averments made in regard to the independent nature of the Second Party No. 2 and 3 are denied as false and misleading. All the workmen in question are the employees of the Second Party No. 1. The Second Party No. 2 and 3 have been introduced to deprive the workmen of their legitimate rights. They act as a camouflage and a sham contractor, but in reality are just a mere name-lender, and in this context the statement in regard to their independent entity and so-called sham agreements are all clearly false. The Second Party No. 2 and 3 are merely parroting the words of the Second Party No. 1 being an artificial intermediary with no independent existence.
3. Reg. Locus Standi: Baseless allegations have been raised in regard to the locus standi of the First Party Union. It is submitted majority of the workmen the Second Party No. 1 are members of the First Party Union, and hence the First Party has the locus standi to raise the instant dispute. The Second Parties are raising the issue of locus standi of the First Party Union merely as a means of deadlocking any attempts towards conciliation and the same is blatantly mala fide. Such objection is without any merit, and is made with the sole intention of delaying the proceedings and in order to render the conciliation proceedings meaningless.
4. The First Party Union being a registered trade union working with garment and textile factories and other related accessories companies across Karnataka has the right to enrol the workers of the factory/company as its members, represent them and raise and espouse disputes / demands on their behalf.
5. Hence, the First Party Union has the *locus standi* to raise the instant dispute and this Authority has the jurisdiction to entertain

the Petition of the Union and these proceedings are proceedings under the Industrial Disputes Act, 1947.

6. Reg. Sham Contract: As stated, the Second Party No. 2 and 3 have been made parties in these proceedings only by way of abundant caution, and the contract that subsists between them and the Second Party No. 1 is a sham and the workmen are actually workmen of the Second Party No. 1. The averment made by the Second Parties are all unsubstantiated averments, and not a single piece of paper has been submitted to substantiate the same. It is denied that the engagement of the contractors is in conformity with the provisions of the Contract Labour Act. As stated in the Claim Petition, false and sham records have been fabricated and built up to camouflage the direct employer and employee relationship between second party No.1 and the workers of the second party No.1, including the first party workers. Further, workmen were not in a bargaining position and therefore the second party No.1 used to compel individual workmen to sign on certain documents and blank sheets of paper from time to time even without revealing the contents and hence the workers were totally unaware of the contents of the said alleged documents and the second party has not provided any copies of the same. Any such document will have to be treated as documents created and fabricated by them to circumvent statutory provisions, and therefore the said alleged documents cannot be relied upon.

7. It is denied that the workers in the list fall under the direct supervision and control of the Second Party No. 2 and 3. The averments that the contract workers are employees of the contractor and that there is no jural relationship of employer and employee is false.

8. It is reiterated that the contract labour system perpetrated by the Second Parties is nothing but a sham and a camouflage. The Second Party No. 1 has employed these workmen on the guise of contract labourers which is nothing but "bonded labour system" with the sole intention of depriving them of their legitimate rights and also to avoid and evade various benefits which they are entitled to under various other labour laws. The Second Party No. 2 and 3 are merely brought in as an artificial intermediary to deny these workmen security of service and other benefits on par with the permanent employees. The sham contractor, is merely a name lender who has no role to play in so far as the workmen is concerned except to pay them wages with the intention to deny them their rightful dues. Hence, the arrangement with the alleged labour contractors is neither bonafide nor genuine and is intended to hoodwink and deny workers of their legitimate dues & their legal rights. Pertinently, it has been admitted that the workmen have been working for upto 12 years under such sham and bogus contracts. Hence, it is necessary that the sham and bogus contracts be set aside and the workers recognized as the workmen of the Second Party No. 1.

9. The Hon'ble Supreme Court of India in case of *Bhilwara Dugdh Utpadak Sahakari S. Ltd. [AIR 2011 SC 3546]*, has recognized this subterfuge practiced by companies to deprive workmen of their basic rights where it has held as follows:

"4. In order to avoid their liability under various labour statutes employers are very often resorting to subterfuge by trying to show that their employees are, in fact, the employees of a contractor. It is high time that this subterfuge must come to an end. 5. Labour statutes were meant to protect the

employees/workmen because it was realised that the employers and the employees are not on an equal bargaining position. Hence, protection of employees was required so that they may not be exploited. However, this new technique of subterfuge has been adopted by some employers in recent years in order to deny the rights of the workmen under various labour statutes by showing that the concerned workmen are not their employees but are the employees/workmen of a contractor, or that they are merely daily wage or short term or casual employees when in fact they are doing the work of regular employees.

6. This Court cannot countenance such practices any more. Globalization/liberalization in the name of growth cannot be at the human cost of exploitation of workers."

10. The Hon'ble Supreme Court in Sankar Mukherjee vs Union of India and Ors. [AIR 1990 SC 532] has held:

"It is surprising that more than forty years after the independence the practice of employing labour through contractors by big companies including public sector companies is still being accepted as a normal feature of labour employment. There is no security of service to the workmen and their wages are far below than that of the regular workmen of the company. This Court in Standard-Vacuum Refining Co. of India Ltd. v. Its Workmen, [1960] 3 SCR 466 and Catering Cleaners of Southern Railway v. Union of India & Anr., [1987] 1 SCC 700 has disapproved the system of contract labour holding it to be 'archaic', 'primitive' and of 'baneful nature'. The system, which is nothing but an

improved version of bonded labour, is sought to be abolished by the Act."

11. It is evident that the Second party No. 1 is engaging in such gross forms of labour violations depriving the workers of their basic rights by resorting to such unfair labour practices.

Hence, it is prayed that this Authority be pleased to advise the Second Party No. 1 to recognize the First Party Workmen as their permanent employees and afford them all the benefits in accordance thereof to meet the ends of natural justice and equity.

Place: Bengaluru

Date:

Prathish

First Party Union