

(2006) 12 DEL CK 0103

In the Delhi High Court

Case No : WP (C) No's. 9438-42 and 9445-49 of 2004

Ashok Kumar and Others

APPELLANT

Vs

The State and Another

RESPONDENT

Date of Decision : 20-12-2006

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 10, 10(1)

Citation : (2006) 12 DEL CK 0103

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Rameev Kumar and Neha Sikka, for the Appellant; Latika Chaudhary, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—By these writ petitions, the petitioner has challenged the validity of award dated 4th February, 2004 passed by the Industrial Tribunal No. 1 in ID No. 143/96 whereby the reference was answered against the petitioner.

2. Briefly, the facts are that the petitioners claimed that they were working as security guards with the respondent management. The management was not providing them legal facilities like conveyance allowance, house rent allowance etc. and the management was not regularizing them though they were doing the same work as those persons who were working in the management on regular basis. They prayed that the contract labour system be abolished and they be regularized. The management dismissed the claim of the petitioners and following disputes were referred by the appropriate Government for adjudication to the Industrial Tribunal:

i. Whether the workmen engaged for security jobs are entitled to be regularized if so, what directions are necessary in the respect?

ii. Whether the security employees are entitled for (a) Conveyance allowance (b)

House Rent Allowance, if so, what directions are necessary in this respect?

iii. Whether the security employees are entitled to inform, shoes and socks, if so, what directions are necessary in this respect?

3. In the statement of claim, the respondent took the stand that none of the petitioners was the employee of the respondent management. There was no relationship of employer and employee. The management had awarded a contract of hospital security to Senital Security Systems, Faridabad, who used to look after the security of hospital and employed security guards at the hospital as per the requirement. The presence of the security guards, their timings, supervision etc was with the contractor. The management had no control over the claimants. They were employees of the contractor. The learned Labour Court framed an additional issue regarding relationship of the claimants with the management. The evidence of both parties was recorded and after recording evidence and considering the same, the Tribunal came to conclusion that it was the case of the claimants themselves that they were the employees of Senital Security Services and nowhere, either in the statement of claim or in the affidavit, they had stated that they were direct employees of the management. The evidence also showed that they were being paid salary by the contractor and the supervision was also with the contractor. The Tribunal came to conclusion that there was no employer and employee relationship between the management and the claimants and the claimants cannot be granted any relief of regularization and other reliefs as sought by them in the industrial dispute referred to it.

4. Learned Counsel for the petitioner argued that the Tribunal went wrong in holding that there was no relationship of employer and employees. The contract entered into between Senital Security Services and the management was sham and camouflage. The contractor was merely a name lender. The real supervision and control was with the management/hospital and, Therefore, the Tribunal should have held that they were the employees of GTB Hospital and there was a relationship of employer and employee.

5. I consider that this argument of the counsel of the petitioner must fail. The petitioners, before Conciliation Officer as well as before the appropriate Government, did not raise any dispute about the contract being sham and camouflage. They rather claimed that they were direct employees of the management and did not claim that they were employees of the contractor. It is now settled law that where the workmen claim that the contract between principle employer and contractor was sham and camouflage, they have to raise an industrial dispute to that effect and it is industrial adjudicator who, after going through the evidence and the terms and conditions of the contract and other circumstances has to decide whether the contract between principal employer and the contractor was sham and camouflage. If the Industrial Adjudicator comes to conclusion that the contract was sham and camouflage, the industrial adjudicator can order the absorption of the workman by the principal employer.

Similarly in a case where the workman considered that though they were contractor's employees but the contract labour system should be abolished, they have to approach the appropriate Government u/s 10 of the CLRA Act and it is the jurisdiction of the appropriate Government to consider the demand of the workman and after taking into account the parameters, as laid down u/s 10 of the CLRA Act, issue a notification of abolition of the contract labour system in the industry/establishment in respect of specific jobs. The Tribunal or the High Court cannot exercise powers u/s 10 of the CLRA Act. This power vests with the Government.

6. The Supreme Court had crystallized the position in respect of Contract labour in In Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., , the Supreme Court considered the question of contract being sham and camouflage and after surveying the entire case law, Supreme Court held as under:

125. The upshot of the above discussion is outlined thus:

2.(a)A Notification u/s 10(1) of the CLRA act prohibiting employment of contract labour in any process, operation or other work in any establishment has to be issued by the appropriate Government

(1)after consulting with the Central Advisory Board or the State Advisory Board, as the case may be, and

(2) having regard to

(i)conditions of work and benefits provided for the contact labour in the establishment in question; and

(ii) other relevant factors including those mentioned in Sub-section (2) of Section 10

(1)(b) inasmuch as the impugned notification issued by the Central Government on December 9,1976 does not satisfy the aforesaid requirements of Section 10, it is quashed but we do so prospectively i.e. from the date of this judgment and subject to the clarification that on the basis of this judgment no order passes or no action taken giving effect to the said Notification on or before the date of this judgment, shall be called in question in any Tribunal or Court including a High Court if it has otherwise attained finality and/or it has been implemented.

(3).Neither Section 10 of the CLRA Act nor any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by appropriate Government under Sub-section (1) of Section 10 prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order absorption of the contract labour working in the concerned establishment.

(4) We overrule the judgment of this Court in Air India's case (supra)

prospectively and declare that any direction issued by any industrial adjudicator/ any Court including High Court, for absorption of contract labour following the judgment in Air India's case (supra), shall hold good and that the same shall not be set aside, altered or modified on the basis of this judgment in cases where such a direction has been given effect to and it has become final.

(5) On issuance of prohibition notification u/s 10(1) of the CLRA Act prohibiting employment of contract labor or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.

7. It is obvious that the workmen in this case did not raise correct dispute and did not approach the appropriate Government with the contentions that the contract was sham and camouflage or that the contract labour system should be abolished. They got referred a dispute that they were the employees of the management and were not being regularized. This claim was found false. The Labour Court had no alternative but to dismiss the claim. It is settled law that the Labour Courts/Tribunals cannot travel beyond the terms of reference. If no reference had been made to the Labour Court for determining whether the contract was sham and camouflage, the Labour Court could not have entered into this issue and decided whether the contract was sham and camouflage.

8. In view of my foregoing discussion, I find no force in the writ petition. Same is hereby dismissed. No orders as to costs.