

(2008) 12 MAD CK 0068

In the Madras High Court

Case No : Writ Petition (MD) No. 2672 of 2004 and W.P.M.P. (MD) No. 2757 of 2004

Bharat Heavy Electricals Ltd.

APPELLANT

Vs

State of Tamilandu, BHEL Society Sanitary Workers Union
and BHEL Complex Co-operative Labour Contract Society
Limited

RESPONDENT

Date of Decision : 10-12-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Contract Labour (Regulation and Abolition) Act, 1970 — Section 10, 10(1)
Industrial Disputes Act, 1947 — Section 10, 2

Citation : (2008) 12 MAD CK 0068

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Advocate : Sanjay Mohan for Ramasubramaniam and Associates, for the Appellant; R. Anitha, Addl. Govt. Pleader for 1st respondent and R. Vijayakumar, for 3rd respondent, for the Respondent

Final Decision : Allowed

Judgement

S. Nagamuthu, J.—The petitioner is a Government of India undertaking Company and is having its unit at Thiruchirapalli. The Company has

registered itself as a principal employer under the Contract of Labour (Regulation and Abolition) Act of 1970 and is engaged in the manufacture of

High Pressure Boilers, Boiler Component, Balls and Auxiliaries etc.

2. The third respondent is a society known as ""BHEL Complex Co-Operative Labour Contract Society Limited"" governed by the Tamilnadu Co-

operative Societies Act and the same is administered by a Board of Directors. Now it is understood that it is administered by A Special Officer

duly appointed. The third respondent is one of the labour contractors of the

petitioner Company and the services of the members of the third respondent are engaged by the petitioner for maintenance of its buildings like white washing, loading and unloading, sanitation and sweeping etc., in terms of Contract Labour (Regulation and Abolition) Act of 1970. The services of employees of the third respondent society are regulated by the third respondent society itself.

3. It is the further case of the petitioner that the petitioner never exercised control or supervision over the employees of the third respondent society who are engaged as contract labours by the petitioner.

4. The second respondent herein is BHEL Society Sanitary Workers Union, registered as a Trade union. The second respondent filed W.P. No.

5398 of 1995 for regularising the services of the members of the Union who were employed as sweepers and scavengers in the petitioner's

concern in view of G.O.Ms. No. 2082, Labour and Employment Department, dated 19.9.1988. In the said Writ Petition, the 2nd respondent

Union had categorically admitted that all the contract labourers engaged by the petitioner company were workers only under the third respondent contractor.

5. During the pendency of the said Writ Petition, the second respondent Union filed another Writ Petition in W.P. No. 10933 of 1999 seeking to

quash the proceedings of the petitioner in Ref.SSTP:DGM:PRS:MP dated 27.5.1999 wherein the petitioner declined to regularise the services of

the contract labourers engaged during the contract. The said Writ Petition was filed once again based on G.O.Ms. No. 2082 referred to above.

6. While so, the G.O.Ms. No. 2082 dated 19.8.1988 was challenged before the Hon"ble Supreme Court in L & T Mc.Neil Ltd. v. Government

of Tamil Nadu. By Judgment dated 30.1.2001, the Hon"ble Supreme Court quashed the said G.O.,. The judgment is reported in L and T Mc.

Neil Ltd. etc. Vs. Government of Tamil Nadu, .

7. In view of the above Judgment of the Hon"ble Supreme Court, when Writ Petition Nos. 5398 of 1995 and 10933 of 1999 came up for final

hearing, a learned single Judge of this Court by order dated 25.7.2007 passed the following order:

Since the issues raised in both the Writ Petitions are common, both the Writ Petitions are taken up together for hearing and disposal by this

common order, which basis the writ petitions were filed had been quashed
quashed by the Supreme Court. However, in view of the directions

issued by the Supreme Court in Municipal Corporation's case (cites supra),
liberty is given to the petitioner union to move the State Government

or the industrial adjudicating authority within four weeks from today and in case
such applications are filed, the same shall be considered by them

and orders passed within a period of six months thereafter. Till such time orders
are passed as directed above, status quo that prevails as on today

shall continue. In the event, no application is filed as directed above, the order of
status quo shall automatically stand vacated. It is also made clear

that this order will not prevent the State Government to proceed in accordance
with law in the matter of abolition of the contract labour system.

No costs. consequently, W.M.P. Nos. 8872 and 8873 of 1995 are also dismissed.

8. Subsequent to the above said order passed by the learned single Judge, the
second respondent union raised industrial dispute u/s 2(k) of the

Industrial Disputes Act before the Deputy Commissioner of Labour Thiruchirapalli
and for the first time in the said dispute, the Union claimed that

members of the third respondent society were directly employed by the
petitioner company and the contract said to have been entered into

between the third respondent and the petitioner is sham and nominal. The said
petition was entertained by the Deputy Commissioner and by means

of the impugned order u/s 10 of the Industrial Disputes Act, he has referred the
same to the Industrial Tribunal for adjudication. The said order of

reference is under challenge in this Writ Petition.

9. I have heard the learned Counsel appearing for the petitioner and the learned
Counsel appearing for the respondents 1 and 3. The learned

Counsel on record for the second respondent is not present but his junior informs
the Court that the Counsel on record has no instructions from the

second respondent and so he is not in a position to argue the matter. This Writ
Petition has been pending from the year 2004 and it was listed on

several occasions for final hearing. Recently, the case was listed on 18.11.2008,
26.11.2008 and also today.

10. Having regard to the above background, I do not propose to adjourn the case
to issue one another notice to the second respondent as it is not

at all necessary. If the second respondent is really interested in the case, the

second respondent would have very well made some alternative arrangements to argue the case. Therefore, on hearing the arguments of the learned Counsel appearing for the petitioner and the learned Counsel appearing for the respondents 1 and 3 and after perusing the records, I proceed to dispose of the Writ Petition.

12. The main contention of the learned Senior Counsel appearing for the petitioner is that the dispute raised by the second respondent would not fall within the ambit of industrial dispute as defined in the Industrial Disputes Act and therefore, the reference made is not at all legally sustainable.

The learned Senior Counsel would rely on the counter affidavit filed on the earlier occasion in W.P. No. 5398 of 1995 and W.P. No. 10933 of

1999 wherein categorically, the second respondent Union has stated that the members of the third respondent society have been engaged by the

petitioner as contract labours and therefore, there is no relationship of employer and employee between the petitioner and the said contract labours

viz, members of the third respondent. He would rely on the judgment of the Hon''ble Supreme Court in National Engineering Industries Ltd. Vs.

State of Rajasthan and Others, wherein the Hon''ble Supreme Court has held that unless the dispute raised is an industrial dispute falling within the

scope of the Act, reference made u/s 10 is not at all sustainable under law.

13. Applying the said law laid down by the Hon''ble Supreme Court, now I have to decide whether the dispute raised in this case is an industrial dispute.

14. In Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., , the Hon''ble Supreme

Court has held that the contract labours would not fall within the ambit of the Act so as to have the reference made u/s 10 of the Act. Relevant

portion of the judgment is as follows:

122. (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.

15. In this case, it is now claimed for the first time in the industrial dispute that the contract said to have been entered into between the third

respondent and the petitioner is sham and nominal. The said stand cannot be accepted for the simple reason that as rightly pointed out by the

learned Counsel for the petitioner, in the earlier Writ Petitions viz., W.P. No. 5398 of 1995 and 10933 of 1999, the second respondent Union has

categorically stated that they are the members of the third respondent society and there was a contract between the third respondent society and

the petitioner company.

16. It has been further admitted that as per the contract entered into, the members of the second respondent union were engaged as contract

labours by the petitioner through the third respondent. When this is the categorical admission, it is too late for the second respondent now to take a

different stand. Therefore, undoubtedly, the members of the second respondent union are only contract labours who were engaged by the

petitioner through the society viz., the third respondent. When that be so, as per the law laid down by the Hon"ble Supreme Court as extracted

above, there is no such relationship of employer and workmen between the petitioner and the contract labours. As a corollary, I am of the

confirmed view that the contract labour would not fall within the ambit of workmen as against the petitioner so as to attract Section 10 of the

Industrial Disputes Act. Therefore, the impugned order is not sustainable and the same is without jurisdiction.

17. In ANZ Grindlays Bank Ltd (now known as Standard Chartered Grindlays Bank Ltd.) Vs. Union of India (UOI) and Others, , the Hon"ble

Supreme Court has held that a Writ Petition challenging the order of reference made u/s 10 of the Industrial Disputes Act is not maintainable in the

event it is contended that the said reference is without jurisdiction. It is needless to say that the Deputy Commissioner gets the jurisdiction to refer

the dispute u/s 10 of the Act if only the dispute is an industrial dispute. When it is not an industrial dispute, the Deputy Commissioner lacks

jurisdiction to refer u/s 10 of the Act and thus, the order passed by him is without jurisdiction, which can be certainly challenged under Article 226

of the Constitution of India.

18. In view of the above said position of law and in the above background of the facts enumerated above, I hold that the impugned order is not at all sustainable and therefore, the same is liable to be quashed and accordingly, it is quashed. The Writ Petition is allowed. Connected Miscellaneous Petition is closed. No costs.