
(2001) 03 GUJ CK 0028
In the Gujarat High Court
Case No : S.C.A. No. 12531 of 2000

B.I. Acharya

APPELLANT

Vs

O.N.G.C. Ltd.

RESPONDENT

Date of Decision : 30-03-2001

Acts Referred:

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

Citation : (2001) 90 FLR 359 : (2001) 2 LLJ 93

Hon'ble Judges : D.C. Srivastava, J

Bench : Single Bench

Advocate : A.K. Clerk, for the Appellant; Rajni H. Mehta and K.V. Gadhia, for the Respondent

Final Decision : Dismissed

Judgement

D.C. Srivastava, J.—Notice of this petition was issued on December 7, 2000 making it returnable on December 20, 2000. The respondents are served. Counter Affidavit has been filed by the respondent No. 1 opposing the admission of the writ petition. No counter affidavit has been filed by the respondent No.2.

2. Shri A.K. Clerk, learned counsel for the petitioner and Shri Rajni H. Mehta, learned counsel for the respondent No. 1 were heard on admission of this petition.

3. The contention of Shri A.K. Clerk has been that the petitioners were working as Boiler Operators and by virtue of notification dated September 8, 1994 from the Government of India, Ministry of Labour, Boiler Operators, in the respondent No. 1, Oil & Natural Gas Commission, were inter alia in prohibited employment of contract labour as Boiler Operators and as such the petitioners have become direct employees of the respondent No. 1 and since they are working for a period of about 9 years as Boiler Operators they should be absorbed by the respondent No. 1 and that direction be also issued to the respondent No. 2 the Contractor to continue the petitioners in Service. Shri Mehta, however, contended that the

petitioners are not working with the respondent No. 2 as Boiler Operators and as such they cannot be placed in the category of prohibited labourers under the Contract Labour (Regulation and Abolition) Act, 1970. Shri Clerk has also relied upon the Apex Court's verdict in *Air India Statutory Corporation v. United Labour Union and Ors.* reported in AIR 1997 SC 645 : 1997 (9) SCC 377 : 1997-I-LLJ-1113. In this case the Apex Court observed that abolition of contract labour system ensures right to the workmen for regularisation of them as employees in the establishment in which they were hitherto working as contract labour through the contractor. The contractor stands removed from the regulation under the Act and direct relationship of "employer and employee" is created between the principal employer and workmen. There can be no escape but to follow the aforesaid verdict of the Apex Court. However, it has to be seen whether the petitioners fall within the prohibited category as laid down by the Apex Court and also as mentioned in the notification referred to above. In the counter affidavit of the respondent No. 1 it is deposed in Para 10 that the petitioners are not working as Boiler Operators as alleged or at all. It is further deposed that the petitioners are the employees of the contractor who possesses requisite statutory licence. It is further deposed that Boiler operation requires competence of operation by highly qualified engineers and such engineers are regular employees of ONGC. It is further deposed that the contract awarded to the contractors by ONGC is given to carry out jobs for assisting ONGC officers and cover low-tech areas of sophisticated and state of the art boilers owned by ONGC in the said boiler operation. It is thus clear from this deposition that according to the respondent No. 1 Boiler Operators are highly qualified engineers employed by the ONGC and the petitioners were employed by the Contractors from time to time to assist highly qualified engineers working as Boiler Operators. This involves decision on disputed question of fact whether the petitioners are working as Boiler Operators or they are simply assisting highly qualified engineers working as Boiler Operators. Shri Clerk has referred to list of Boiler Operators at Page 7 of the compilation. However, Grade I & II in this list has been scored off and only Boiler Operators has been mentioned against the name and designation of the petitioners, Page 8 of the 1 compilation is the entry pass of one of the petitioners. Here also the purpose is shown as M.P. Boiler Work and not as Boiler Operators. So is the case with Paper No. 9 employment card where the name of the work and location of the work is shown as D.P.S. of M.P. Boilers. Here also it is not mentioned that one of the petitioners is working as Boiler Operator. Such disputed question of fact cannot be decided without proper evidence and such exercise cannot be done in exercise of writ jurisdiction under Article 226 of the Constitution of India.

4. Shri Rajni Mehta has rightly argued that it is immaterial in what capacity they were working prior to December 1, 2000. According to him the respondent No. 1 has engaged respondent No. 2 as contractor for the period between December 1, 2000 to November 30, 2001 and pursuant to this contract 9 petitioners are working as Plant Assistants. In the additional affidavit filed by the respondent No.

1, Annexure IV has been annexed which is the appointment letter containing agreement with one of the petitioners and the respondent No. 2. In this the job offer to one of the petitioners was Plant Assistant, Grade II and not Boiler Operator. This letter was issued on March 8, 2001. Shri Clerk, however, contended that Clause (1) of the Agreement shows that one of the petitioners was appointed with effect from December 1, 2000 whereas the letter was issued on March 8, 2001 and it does not appear that retrospective appointment could have been given to the petitioners. According to him this letter was subsequently prepared to defeat the claim of the petitioners. I, however, do not find much merit in the contention inasmuch as the contract was between December 1, 2000 to November 30, 2001 and since the petitioners were raising certain disputes with respondent No. 2 this letter was issued after the so-called disputes were settled by the competent Authority, the Labour Enforcement Officer (Central), Baroda, by letter dated February 20, 2001, Annexure III to the Counter Affidavit of respondent No. 1. It may be mentioned that from Annexure III (E), page 26 the only disputes raised by the petitioners were regarding non-payment of wages, non-issuance of Employment Cards by the contractor and not that the petitioners were direct employees of the respondent No. 1. So is Annexure E, pages 26 to 31. Through Annexure E page 33 only these disputes were settled by the Labour Enforcement Officer. As such there is no prima facie material to hold at this stage that the petitioners were working under the contract for the period between December 1, 2000 to November 30, 2001 as Boiler Operators. On the other hand from Annexure IV to the Additional Counter Affidavit of respondent No. 1 it is clear that the petitioners were appointed as Plant Assistant Class II and this type of employment is not covered under Notification dated September 8, 1994. Thus, prima facie the petitioners do not fall within the prohibited category and it cannot be held that they are direct employees of respondent No. 1. If this is so then no relief can be granted to them directing the respondent No. 1 to absorb them on permanent basis with all consequential benefits.

5. Shri Mehta has rightly contended that the petitioners approached the competent Authority for their grievances and at that time no grievance was raised that they are direct employees of the Corporation hence in view of the decision of the competent Authority given on February 20, 2001, the petitioners have no cause of action to file this writ petition.

6. It is also mentioned in the Counter Affidavit of the respondent No. 1 that the petitioners have not come with clean hands and have suppressed material facts and have also deposed and suggested false facts hence they are not entitled to discretionary relief under Article 226 of the Constitution of India.

7. In the end Shri Clerk has referred to Model Order in Special Civil Application No. 7615 and 7616 of 1999 passed on March 13, 2000 and argued that such order may be passed in this petition directing the petitioners to approach Conciliation Officer for conciliation proceedings in respect of their demands. However, this model order cannot be used in the instant cases because operative

portion of the model order shows that both the learned advocates for the parties appeared and agreed that order be passed in these matters in term of order passed in Special Civil Application No.5433 of 1999. No such agreement was given by Shri Mehta. Hence one sided order as suggested by Shri Clerk cannot be passed.

8. In my opinion the writ petition against the respondent No. 1 is not maintainable. The respondent No. 1 could have treated the petitioners as its employees only when procedure for recruitment would have been followed as disclosed in Para 8.2 of the Counter Affidavit.

9. So far as the petition against the: respondent No. 2 is concerned this is also not maintainable. Annexure IV at Page 38 of the Additional Counter Affidavit viz. the agreement contains arbitration clause which provides that in the event of any dispute/difference arising out of this Agreement, the same shall be decided by the competent Authority as appointed by the concerned relevant Authority as per Industrial Disputes Act. This Agreement was signed by one of the petitioners. Others have also signed similar agreements. Since there is Arbitration Clause in the Agreement writ jurisdiction under Article 226 of the Constitution of India cannot be exercised ignoring the Arbitration clause in the Agreement between the contractor and the petitioners.

10. For the reasons given above the writ petition cannot be admitted and is hereby summarily rejected. No order as to costs.

11. On the request of Shri A. K. Clerk for extension of interim relief in order to enable him to file L.P.A., interim relief is extended upto April 12, 2001 against the respondent No. 3 only.