

(2009) 10 MAD CK 0288

In the Madras High Court

Case No : Writ Petition No's. 14314 and 14315 of 2008

Coimbatore Cement Workers Union

APPELLANT

Vs

Management of A.C.C. Ltd. and Others

RESPONDENT

Date of Decision : 06-10-2009

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 10, 10(1), 13, 7
Industrial Disputes Act, 1947 — Section 10, 2

Citation : (2010) 2 LLJ 795

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Advocate : S. Arunachalam, for the Appellant; T.S. Gopalan and J. Venkatraj, ACGSC, for the Respondent

Final Decision : Allowed

Judgement

S. Nagamuthu, J.—Orders of the Central Government declining to refer the Industrial Disputes u/s 10 of the Industrial Disputes Act, 1947 are under challenge in these writ petitions.

2. The petitioner is a Trade Union. Its members are mostly contract labourers. According to the petitioner Union, its members, were engaged by the 1st respondent/Principal Employer through a Contractor - Dutta Enterprises, which is the 4th respondent in W.P. No. 14314/2008; but, the contract between the 1st respondent and Dutta Enterprises is sham and nominal and therefore, the members of the petitioner union, who are workmen in the factory of the 1st respondent, are entitled for reinstatement and for permanent absorption. In this regard, Industrial Disputes were raised. The conciliation failed. Considering the failure reports Nos. M.5/14/2007-B2 and M.5/15/2007-B2, dated January 29, 2008, the Central Government by orders in Ref. No. L-29011/4/2008-IR(M) and No. L-2901 1/3/2008-IR(M) dated April 15, 2008 declined to refer the same for adjudication to the Labour Court. Challenging the same, these two writ petitions have been filed by the petitioner Union.

3. As stated above, the main contention of the petitioner is that the contract said to have been entered into between the 1st respondent and Dutta Enterprises is sham and nominal and therefore, the members of the petitioner union should be treated as employees of the 1st respondent and as such they are entitled for absorption. In any view of the matter, since there are valid Industrial Disputes, the 3rd respondent ought to have referred the same for adjudication by the Industrial Tribunal/Labour Court, it is contended.

4. In the counter affidavit filed by the 1st respondent, inter alia, it is stated that there is no relationship of master and servant between the members of the petitioner union and the 1st respondent management. The 1st respondent is a registered establishment as per the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 (in short, "the CLRA Act"). Likewise, Dutta Enterprises is a licensed contractor under the provisions of the Act. There is no prohibition order issued u/s 10 of the Act, prohibiting the 1st respondent from engaging contract labourers through a licensed contractor. Therefore, a contract was entered into between the 1st respondent and Dutta Enterprises under which the members of the petitioner union were engaged as contract labourers. All the provisions of the Act have been scrupulously complied with. Therefore, the members of the petitioner union cannot be treated as workmen of the 1st respondent management and so there is no question of regularisation, it is contended. Having considered all the above, the Central Government on application of mind has come to the conclusion that the members of the petitioner union have not been employed directly by the 1st respondent and that is the reason why the impugned order has been rightly passed, which does not warrant any interference at the hands of this Court, it is contended.

5. The learned Counsel appearing for the respondents 2 and 3 in both the writ petitions would adopt the stand taken by the learned counsel appearing for the 1st respondent in both the writ petitions.

6. I have considered the rival submissions.

7. The CLRA Act regulates the service conditions of contract labourers, where abolition is not possible. Admittedly, there is no prohibition order issued u/s 10 of the CLRA Act against the 1st respondent prohibiting the said establishment from employing contract labours. Indisputably, the 1st respondent is a registered establishment as per Section 7 of CLRA Act. Therefore, the 1st respondent can employ contract labourers through a licensed contractor. Concededly, Dutta Enterprises is a licensed contractor as per Section 13 of the CLRA Act. Therefore, the said contractor can supply contract labourers to the 1st respondent.

8. It is the contention of the 1st respondent that there was a valid contract entered into between the 1st respondent and Dutta Enterprises under which the members of the petitioner union have been engaged. This fact is disputed by the petitioner Union. According to the petitioner Union, though the members of the petitioner union were engaged by the 1st respondent through Dutta Enterprises,

as a matter of fact, they have been engaged directly by the 1st respondent and the contract said to have been entered into between the 1st respondent and Dutta Enterprises is sham and nominal and the said contract has been created only for the purpose of defeating the interest of the workmen, who enjoy protection under various labour enactments. In my considered opinion, this crucial question can be resolved only on evidence to be let in by both parties. From the mere assertion made by way of affidavit or from the averments in the Complaint before Conciliation Officer, it cannot be decided. It needs a thorough adjudication, which could be done only by the Industrial Tribunal/Labour Court. The power of the Central Government u/s 10 of the Industrial Disputes Act to decide this complex question is very limited. Though the Central Government is not like a post office to simply refer the Industrial Dispute for adjudication to the Industrial Tribunal or Labour Court, nevertheless, the Central Government has to merely satisfy itself prima facie as to whether there is a dispute worth reference made out by the trade union or not. The Central Government: cannot go deep into the disputed facts and to give a finding thereby taking the role of an industrial adjudicator.

9. A perusal of the impugned orders would; go to show that the Central Government has taken the view that the members of the petitioner union have not been directly employed by the 1st respondent and therefore, the dispute cannot be referred for adjudication. This conclusion has been arrived at by the Central Government presumably from the records produced by the parties. In my considered opinion, though from the records it could be seen that there is a contract entered into between the 1st respondent and Dutta Enterprises, from that, it cannot be concluded that the said contract is genuine. The said disputed question cannot be resolved by the Central Government u/s 10 of the Industrial Disputes Act, as evidence, both oral and documentary, is required to decide the same in greater depth by the Labour Court. For these reasons, I am convinced that the Central Government was not right in declining to refer the Industrial Disputes for adjudication.

10. The learned Counsel appearing for the petitioner Union would rely on the judgment in Dhanbad Colliery Karamchari Sangh v. Union of India and Ors. 1998 III LLJ 792, wherein the Hon'ble Supreme Court after having analyzed the legal position has held as follows:

After hearing learned counsel for the parties and having heard to the facts and circumstances of the case we are of the opinion that this appeal must succeed. The Central Government instead of referring the dispute for adjudication to the appropriate Industrial Court u/s 10 of the Industrial Disputes Act, 1947, it itself decided the dispute which is not permissible under the law. We, accordingly, allow the appeal, set aside the order of the High Court and of the Central Government and direct the Central Government to refer the dispute for adjudication to the appropriate Industrial Court u/s 10 of the Industrial Disputes Act, 1947. We further direct the Central Government to make the reference

within three months.

11. The said principle stated by the Hon"ble Supreme Court squarely applies to the facts of the instant cases.

12. The learned Counsel appearing for the 1st respondent would rely on a judgement of the Hon"ble Supreme Court in Steel Authority of India Ltd. Vs. Union of India (UOI) and Others, . In my considered opinion, the principle stated in the said judgment does not apply to the instant cases as facts are clearly distinguishable. In that case before the Supreme Court, reference made by the Government to the Labour Court was, "whether the contract workers employed under the principle employer can demand absorption as regular permanent employees." While dealing with such reference, the Hon"ble Supreme Court, held that neither the Labour Court nor the writ Court could determine the question whether the contract labour should be abolished or not as per Section 10 of the Contract Labour Act, 1970. But, in the instant case, the petitioner union does not plead that contract labour should be abolished and in pursuance of the same its members are to be regularized. Instead, the reference sought to be made is on the grievance that the members of the petitioner union are employed in the 1st respondent by means of a sham and nominal of contract. Therefore, the principle stated in the said judgment is of no application at all to the instant cases.

13. The learned counsel relies on yet another judgement in Steel Authority of India Ltd. and Another Vs. State of West Bengal and Others, In that case, factually, the Hon"ble Supreme Court found that there was no plea by the workmen regarding the agreement being sham and bogus and such a plea was made belatedly for the first time without full supportable materials. In those circumstances, the Hon"ble Supreme Court held that the High Court ought not to have entertained the plea of the workmen to direct the Government to refer the dispute u/s 10 of the Industrial Disputes Act. But, in the cases on hand, a perusal of the documents would go a long way to show that there is a plea in the complaint preferred at the first instance itself that the so called contract entered into between the 1st respondent and Dutta Enterprises is not genuine. In para 3 of the complaint made u/s 2(k) of the, Industrial Disputes Act, the petitioner union has stated "The 2nd respondent is a name lender and intermediary as a contractor, who is having limited control or liability over the workmen of the 1st respondent company. The 1st respondent is a principal employer and he is liable out and out statutorily." Thus, at the earliest point of time a definite stand has been taken by the petitioner union that the so called contract between the 1st respondent and Dutta Enterprises is not genuine. Therefore, the view held by the Hon"ble Supreme Court in the above case does not help the 1st respondent in any manner.

14. The learned counsel for the 1st respondent would further submit that the condition precedent for referring a dispute for adjudication by an Industrial Adjudicator is passing of a prohibition order u/s 10 of the CLRA Act. According to the learned counsel, in the absence of such prohibition order, it is not at all

permissible under law for the Labour Court to go into the question as to whether the contract is genuine or not and so, reference to the Labour Court cannot be made. The said argument, in my considered opinion, is untenable. As I have already stated, if there is a prohibition order u/s 10(1) of the CLRA Act, the establishment cannot employ any contract labourer. It is only in the absence of a prohibition order, contract labourers can be engaged by the registered establishment. Simply because, the establishment is registered and the contractor is also licensed, it cannot be concluded that the so called contract entered into between a registered establishment and a licensed contractor, is genuine. It is also possible that there may be a sham and nominal contract entered into between a registered establishment and a licensed contractor. Therefore, it needs to be established by means of evidence before the Labour Court that the contract is genuine and the same is not sham and nominal. The Central Government, with its limited power u/s 10 of the Industrial Disputes Act, 1947 cannot go into the intricacies of this question and to give a finding in respect of the same. That is the reason why a consistent view has been taken by the Hon"ble Supreme Court as well as this Court in number of judgements (vide Dhanbad Colliery Karamchari Sangh v. Union of India and Ors. (supra)), that Central Government has to refer the dispute to the Labour Court leaving the issue open for the said Court to decide on the basis of the evidence to be let in by the parties.

15. The learned counsel for the 1st respondent would point out that in the affidavit filed in support of the writ petitions there is a positive assertion that the members of the petitioner union were contract labourers and so they cannot now take a different stand that they were directly employed by the 1st respondent. Though at one place in the affidavit it has been stated by the petitioner Union that its members were transferred by Dutta Enterprises for other work spot, in a different place it has been stated that the members of the petitioner union have been terminated from service directly by the 1st respondent, the learned counsel pointed out. When there is such a conflict, according to the learned counsel for the 1st respondent, the Central Government was right in going by the records to hold that the members of the petitioner union are only contract labourers. Though the said argument, at first blush, appears to be reasonable, the same does not persuade me. The stands taken by the petitioner Union, in my considered opinion, cannot be treated as conflicting. It is the admitted case of the petitioner union that its members were employed through the contractor. But, what all they would say is that the contract is not genuine. Therefore, there is no conflicting stand taken by the petitioner union at all. Even assuming that there is such a conflict in the stand taken by the petitioner union, the effect of such conflict has to be gone into only by the Industrial Tribunal/Labour Court and the Central Government cannot go deep into this and give a finding. As held by the Hon"ble Supreme Court, the power of the Central Government is very limited and since it is beyond the power of the Central Government to decide the question as to whether the contract is genuine or sham and nominal, it ought to

have referred the disputes for adjudication by the Labour Court.

16. For the above reasons, I am inclined to interfere with the impugned orders and to direct the Central Government to refer the disputes for adjudication before the appropriate Labour Court.

17. In the result, the writ petitions are allowed; the impugned orders passed by the 2nd respondent are set aside; and the Central Government is directed to refer the Disputes for adjudication by the appropriate Labour Court (Central), Chennai, within a period of three months from the date of receipt of a copy of this order. No costs.