

(1997) 09 DEL CK 0107

In the Delhi High Court

Case No : Civil Writ Petition No's. 5749 of 1993, 4677 and 4732 of 1994, 3106 of 1995 and 2264 of 1996

D.M.S.D.B.E.C.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 09-09-1997

Acts Referred:

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

Citation : (1997) 6 AD 617 : (1998) 71 DLT 58 : (1998) 44 DRJ 443

Hon'ble Judges : Dalveer Bhandari, J

Bench : Single Bench

Advocate : A.J. Madan, S.S. Sabharwal and R.G. Srivastava, for the Appellant;

Judgement

Dalveer Bhandari, J.

(1) All these petitions raise similar questions of law and they are being disposed of by this judgment. For convenience only facts of Cwp No.3106/95 are recapitulated. The petitioner Delhi Multi-storied Building Employees Congress, is a registered Trade Union. It has a membership of about 35,000 employees who are employed in various buildings in Delhi. In this petition, 14 petitioners have approached this Court by which they have prayed that the order dated 27.3.1995 issued by respondent No.4 threatening to terminate their services be quashed. The petitioners have further prayed in this petition that respondent No.2 be directed to absorb the petitioners.

(2) The members of the petitioner Congress have been employed by respondent No.4 on contract basis for doing the work for respondent No.2, Oil and Natural Gas Commission (hereinafter to be referred as ONGC). The Ongc has now decided to terminate the contract with respondent No.4. On termination of the contract, the employment of these petitioners would be jeopardised. It is stated that the petitioners have been exclusively working for respondent No.2 for several years and terminating their employment in this manner would severely affect their entire future.

(3) MRS.ASHA Jain Madan, learned Counsel for the petitioners submitted that the Government had issued a notification dated 8.9.1994 in exercise of the power conferred by Sub-section (1) of Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970. The Central Government after consultation with the Central Advisory Contract Labour Board in various works, specified in the scheduled. In the schedule, various categories have been mentioned such as Data Operators, Computer Operators, Telephone Operators, Radio Operators, Drivers, etc. It is submitted that these petitioners are covered by the said notification. Therefore, after the said notification came into force, all these employees who have been working with the Ongc have to be automatically absorbed by the ONGC.

(4) Mrs. Madan, learned Counsel for the petitioners submitted that the petitioners are involved in the work which is of perennial nature. After the notification, these workers have to be absorbed by respondent No.2. She submitted that there is a direct control and supervision of all these workers by respondent No.2, ONGC.

(5) Before adjudicating on the issues involved in these petitions, it would be pertinent to mention the view taken by the Supreme Court in some of its judgments.

(6) The Supreme Court in *The Standard-vacuum Refining Co. of India Ltd. Vs. Its Workmen and Others*, , had directed that the contract labour system should be abolished. The Supreme Court observed that "it is relevant to bear in mind that the industrial adjudication generally did not encourage the employment of contract labour in modern times. But whenever a dispute was raised by the workman with regard to the employment of contract labour by the employer, it becomes necessary for the Tribunal to examine the merits of the disputes, apart from the general condition that the contract labour should not be encouraged, and in a given case, decision should rest not merely on theoretical or abstract objections to contract labour but also on the terms and conditions on which contract labour was employed and the grievance made by the employees in respect thereof." = The Hon"ble Supreme Court also referred to the observations of the Royal Commission on labour in the said case :

"WHATEVER the merits of the system in primitive times, it is now desirable, if the management is to discharge completely the complex responsibility laid upon it by law and by equity, that the manager should have full control over the selection hours of work and payment of the workers".

(7) In *Catering Cleaners of Southern Railway Vs. Union of India (UOI) and Another*, , the Supreme Court held as under :

"The practice of employing labour through contractors for doing work inside the premises of the primary employer, known to researchers of the International Labour Organisation and other such organisations as labour only contracting "on inside contracting" system, has been termed as an archaic system and a relic of

the early phase of capitalist production, which is now showing signs of revival in the more recent period. Of late there has been a noticeable tendency on the part of big companies including public sector companies to get the work done through contractors rather than through their own departments. As pointed out by a group of researchers in the Economic and Political Weekly Review of Management, dated November 29, 1986, it is a matter of surprise that employment of contract labour is steadily on the increase in many organized sectors including the public sector, which one expects to function as a model employer".

In this case, the Supreme Court while considering the earlier judgments observed that in the contract labour there is no security of service. The workers are also paid much less wages by the Company. The workers are not entitled to other benefits and amenities such as provident fund, gratuity, bonus, privileged leave, medical facilities and subsidised food and housing to which the regular workmen of the Company are entitled to. The general argument is that though the work was of permanent nature, the contract system had been introduced to deny the workmen their rights and benefits which the Company gives to its regular employees.

(8) In *Parimal Chandra and Others Vs. Life Insurance Corporation of India and Others*, , the Court observed as under :-

"Taking into consideration the relevant facts and circumstances on record, we are of the view that they should be deemed to have become the regular employees of the Corporation from the date of the filing of the writ petition before the High Court and should, therefore, be paid the arrears of salary and other monetary benefits, if any, from the said date after adjusting the salary and monetary benefits that they may have received. The years of continuous service put in by them even prior to the aforesaid date as canteen workers should, however, be taken into account for the purpose of calculating their retiral benefits.

The Court further observed that above direction to treat the appellants as the regular employees of the Corporation will be subject to two conditions, viz.,

(A) that they were above the minimum and below the maximum age limit and medically fit as per the regulations of the Corporation on the date of the filing of the writ petition, and

(B) that on the date of the filing of the writ petition before the High Court they had put in a minimum of three years continuous service as canteen workers in the canteens in question. For the purposes of calculating the said three years qualifying service and the retiral benefits, the service prior to the attainment of the minimum qualifying age under the Corporation's regulations shall be ignored.

(9) In *Gujarat Electricity Board, Thermal Power Station, Ukai Vs. Hind Mazdoor Sabha and Others*, , the Supreme Court had occasion to examine provisions of Contract Labour (Regulation and Abolition Act (37 of 1970). The Court observed

that undertakings in the public sector have been indulging in unfair labour practice by engaging contract labour when workmen can be employed directly even according to the test laid down by Section 10(2), of the Act. The only ostensible purpose in engaging the contract labour instead of the direct employees is the monetary advantage by reducing the expenditure. Apart from the fact that it is an unfair labour practice, it is also an economically short-sighted and unsound policy, both from the point of view of the undertaking concerned and the country as a whole. The economic growth is not to be measured only in terms of production and profits. It has to be gauged primarily in terms of employment and earnings of the people. Man has to be the focal point of development. The attitude adopted by the undertakings is inconsistent with the need to reduce unemployment and the Government policy declared from time to time, to give jobs to the unemployed. This is apart from the mandate of the directive principles contained in Articles 38,39,41,42,43 and 47 of our Constitution. Therefore, Court recommended that: (a) all undertakings which are employing the contract labour system in any process, operation or work which satisfies the factors mentioned in Clauses (a) to (d) of Section 10(2) of the Act, should on their own, discontinue the contract labour and absorb as many of the labour as is feasible as their direct employees; (b) both the Central and the State Governments should appoint a Committee to investigate the establishments in which the contract labour is engaged and where on the basis of the criteria laid down in Clauses (a) to (d) of Section 10(2) of the Act, the contract labour system can be abolished and direct employment can be given to the contract labour. The appropriate Government on its own should take initiative to abolish the labour contracts procedure laid down under the Act; (c) the Central Government should amend the Act by incorporating a suitable provision to refer to the industrial adjudicator the question of the direct employment of the workers of the ex-contractor in the principal establishment, when the appropriate Government abolishes the contract labour.

(10) The Court had occasion to also deal with this aspect of the matter that what would be the status of the workmen of the erstwhile contract once the appropriate Government abolished the contract labour. According to said judgment, Section 10 of the Act does not give clear guideline to this effect. According to the said judgment the Legislature probably did not consider it advisable to make a provision for automatic absorption of the erstwhile contract labour in the principal establishment on the abolition of the contract labour, fearing that such provision would amount to forcing the contract labour on the principal employer and making a contract between them.

(11) Learned Counsel for the petitioners has placed reliance on the judgment of the Supreme Court reported as *Catering Cleaners of Southern Railways Vs. Chief Commercial Supdt., Southern Railway*, . In this case, in the matter of work of cleaning catering establishments and pantry cars, in Railways, the Court directed the Railways

"(1) to absorb the petitioners and make them departmental employees on the expiry of a maximum period of 9 months from the date of the order, namely, February 4, 1987.

(2) to refrain in the meantime from employing contract labourers and to continue the services of the petitioners in the capacity in which they were working on the date of the decision of this Court, and;

(3) to regularise the services of such petitioners who have been absorbed and made departmental employees.

In paragraph 2 of this judgment, the learned Counsel for the Railways had asserted that in compliance of the order of the Supreme Court all the petitioners have been absorbed and made departmental employees w.e.f. April 1, 1987.

(12) Learned Counsel for the petitioner has based her case primarily on the judgment of the Supreme Court reported as *Air India Statutory Corporation, etc. Vs. United Labour Union and others* [overruled], . The Court observed on the said judgment that though there is no express provision in the Act for absorption of the employees whose contract labour system stood abolished by publication of the notification u/s 10(1) of the Act, in a proper case, the Court as sentinel in *qua vive* is required to direct appropriate authority to act in accordance with law and submit a report and based thereon proper relief should be granted.

(13) The Court further observed that on abolition of the contract labour system, by necessary implication, the principal employer is under statutory obligation to absorb the contract labour. The linkage between the contractor and the employee stood snapped and direct relationship stood restored between principal employer and the contract labour as its employees. Considered from this perspective, all the workmen in the respective services working on contract labour are required to be absorbed in the establishment of the appellant.

(14) The Court also held that it would be *indicia* to absorb the employees on regular basis in the respective services in the establishments. The date of engagement will be the criteria to determine their inter-se seniority. In case, there would be any need for retrenchment of any excess staff, necessarily, the principle of "last come, first go" should be applied subject to his reappointment as and when the vacancy arises. It is also observed in this case that the contract labour gets into the service of the principal employer; the Union of the existing employees may not espouse their cause for reference u/s 10 of the Industrial Disputes Act. The workmen, who on abolition of contract labour system have no right to seek reference u/s 10 of the Industrial Disputes Act. Moreover, the workmen immediately are kept out of job to endlessly keep waiting for Award and thereafter resulting in further litigation and delay in enforcement. The management would always keep them at bay for absorption. It would be difficult for them to work out their right. Moreover, it is a tardy and time-consuming process and years would roll by. Without wages, they cannot keep fighting the litigation endlessly. The right and remedy would be a teasing illusion and would

be rendered otiose and practically compelling the workman at the mercy of the principal employer, considered from this pragmatic perspective. The Court observed that the contractor is an intermediary between the workmen and the principal employer. The moment the contract labour system stands prohibited u/s 10(1), the embargo to continue as a contract labour is put an end to and direct relationship has been provided between the workmen and the principal employer. Therefore, the principal employer directly becomes responsible for taking the services of the workmen hither to regulated through the contractor. The Apex Court has referred large number of judgments and came to the following conclusion:

"On the scope and ambit of Section 10 of the Act and hold that on abolition of contract labour system from any establishment u/s 10 of the Act by the appropriate Government the logical and legitimate consequences thereof will be that the erstwhile regulated contract labour covered by the sweep of such abolition for the concerned activities would be entitled to be treated as direct employees of the employer on whose establishment they were earlier working and they would be entitled to be treated as regular employees at least from the day on which the contract labour system in the establishment for the work which they were doing gets abolished."

(15) Learned Counsel for the petitioner placed reliance on the order delivered on 8.1.1997 in C.W.P.No.2244/92 by the Bombay High Court Petroleum Employees Union and Another v. Oil and Natural Gas Commission and Others. In this case the Bombay High Court while following the decision of the Supreme Court in Air India Statutory Corporation case (supra) observed that the notifications dated 9.12.1976 and 8.9.1994, the contract labour in 13 occupations as mentioned in the notification dated 8.9.1994 has been prohibited. The Bombay High Court had also considered some earlier judgments of the Supreme Court and directed respondent No.1 Corporation to absorb contract. The court further observed that it is needless to mention that the concerned workmen will be entitled to difference of wages and other incidental benefits from respective dates of their absorption.

(16) The learned Counsel placed reliance on another judgment of the Bombay High Court delivered in Writ Petition No.1240/96 in which following directions were given :

(i) The Ongc is directed not to engage the contract labour in respect of the jobs covered by the notification dated 8th September, 1994 with effect from 1st April, 1997.

(ii) Before the aforesaid date, the Ongc shall determine the complement of different categories of workmen mentioned in the notification dated 8th September, 1994.

(iii) With effect from 1st April, 1997 such number of workmen from amongst the present contract workers determined as the required complement, shall stand

absorbed as regular workmen in the employment of the ONGC.

(iv) Upon absorption into service of the Ongc, the concerned workmen shall be extended all emoluments and conditions of service as are applicable to the workmen of corresponding departments in the establishment of the ONGC.

(v) If any workmen from amongst, the existing contract labour are found surplus to the requirement in any category, the Ongc shall discharge such workmen after complying with the provisions of Chapter V-B of the Industrial Disputes Act, 1947.

(17) Learned Counsel for the petitioner also placed reliance on the judgment of the Madras High Court delivered in Writ Petition No.15211/91 on 29.1.1997. The Court while following the judgment of the Supreme Court in Air India Statutory Corporation (supra) v. United Labour Union, (supra) the writ petition was allowed and it is mentioned that after the judgment of the Supreme Court, the linkage between the contractor and the employees stood snapped and direct relationship stood restored between the principal employer and the contract labour and its employees. The Madras High Court gave the direction in terms of the judgment of the Supreme Court where the Apex Court has observed :

"The contract labour are required to be absorbed in the establishment of the appellant ONGC. Though there exists no specific scale of pay to be provided as regular employees, it is for the establishment to take such steps as are necessary to prescribe scale of pay."

On the strength of aforesaid judgments, petitioners prayed that they are also entitled for the same relief.

(18) Mr. Ashok Srivastava who appeared in connected writ petition has adopted the arguments advanced by the learned Counsel for the petitioner Mrs. Asha Jain Madan. He mentioned that the petitioners in his writ petition are covered by the two notifications dated 8.12.1976 and 8.9.1994 and after these notifications came into force, all the petitioners need to be absorbed automatically.

(19) MR.R.G.SRIVASTAVA, learned Counsel appearing for the respondents submitted that absorption of contract labour would create chaos in the respondent organisation. He submitted that it would amount to a back door entry. Mr. Srivastava also submitted that employees in the respondent organisation are recruited on the basis of recruitment rules. He submitted in appointment and absorption with the respondent following considerations are paramount :

(a) Age

(b) Educational Qualifications

(c) Medical Fitness

(d) Antecedents of the employee

(e) Suitability according to the Recruitment Rules

(f) Absorption in this manner would mean back door entry.

(20) He further submitted that since the petitioners were not the employees of the respondent Therefore, they had never collected or verified aforesaid information regarding the employees.

(21) MR.SRIVASTAVA also submitted that if the contract labour ipso facto are made employees of the respondent organisation, without taking into consideration any of the aforementioned factors then it would create chaos and immense problems for the respondent organization. All these appointments would be contrary to the recruitment rules and would amount to almost back door entry.

(22) MR.SRIVASTAVA also submitted that there may be cases where employees of the contractor are either minor or beyond the age of superannuation. If the respondent is compelled to absorb them as their employees, it would seriously affect the functioning of the entire organisation. Similarly for every category, there is a certain minimum requirement of educational qualifications. By absorbing in this manner it may create two classes in the same category, one adhering to the minimum educational qualifications and others who do not possess such qualification. Similarly, in one category the employees who are medically fit are only appointed and absorbed with the respondent whereas there may be certain categories because of absorption in this manner may lead to a situation that even those candidates who are not medically fit are also made permanent employee of the respondent organization. Mr.Srivastava also submitted that there may be cases where some people who have been screened by the respondent and rejected but later on employed by the contract labour that employee otherwise could not have been eligible to become employee but because of the order of the Court, would become employee of the respondent.

(23) MR.SRIVASTAVA further contended that there would be a tremendous problem of the inter se seniority of the existing employees with all those who are directed to be absorbed by the orders of the Court. Learned Counsel for the petitioners fairly submitted that these petitioners are entitled to be absorbed from the date of notification, but in order to resolve the problem of inter-se seniority, the petitioners are willing to be absorbed from the date of the judgment. Learned Counsel for the petitioners also submitted that so far as the inter se seniority of the contract labour is concerned, their, inter se seniority for further promotion and benefits be evaluated on the basis of their length of service with the Contractor. I find the suggestions given by learned Counsel for the petitioners just, fair and reasonable and accept the same and I order accordingly.

(24) I have carefully considered rival contentions of the parties and the judgments cited at Bar by learned Counsel appearing for the parties. I find some force even in the submissions of the learned Counsel for the respondent Mr.Srivastava but the three Hon''ble Judges of the Supreme Court in the Air India

case (supra) have clearly observed that the moment the contract labour system stands prohibited u/s 10(1), the embargo to continue as a contract labour is put an end to and direct relationship has come into existence between the workmen and the principal employer. Thereby, the principal employer directly becomes responsible for taking the services of the workmen hitherto regulated through the Contractor and such employees have to be absorbed. Law laid down by the Supreme Court is the law of the land and under Article 141 of the Constitution, it is binding on all concerned.

(25) In view of the aforesaid findings of Hon"ble the Supreme Court the petitioners in these writ petitions shall be absorbed by their respective principal employers. The petitioners shall become employees of the principal employer subject to the condition that they are above the minimum and below the maximum age and medically fit. The writ petitions are accordingly allowed but in the facts and circumstances of these petitions I direct the parties to bear their own costs.