

(2000) 08 KL CK 0032

In the High Court Of Kerala

Case No : W.A. No's. 1381 and 1719 of 1993-A

Fertilisers and Chemicals Travancore Ltd.

APPELLANT

Vs

T. Chandra Mohan Nair and Others

RESPONDENT

Date of Decision : 25-08-2000

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 10, 10(1), 30(1)

Citation : (2001) 3 ILR (Ker) 248 : (2001) 1 LLJ 1458

Hon'ble Judges : Kurian Joseph, J; K.A. Abdul Gafoor, J

Bench : Division Bench

Advocate : Antony Dominic, for the Appellant; P. George William and Nandini Menon, for the Respondent

Judgement

K.A. Abdul Gafoor, J.—These writ appeals are against the judgment in O.P.No. 6464/1993. Both the petitioners as well as the 1st respondent in the Original Petition have preferred these writ appeals. The former is by the 1st respondent-company and the latter is by the petitioners-workmen.

2. The appellants in the Writ Appeal No. 1719/1993 will hereafter be described as workmen whereas the appellant in W.A. 1381/1993 will be described as the employer. The workmen and 34 others were employed in the establishment of the employer since its inception in 1976 through a contractor. These workmen were employed for the work in the establishment of the employer. Because of the perennial nature of the work for which they were being employed and their continuous period of work, they agitated for abolition of contract system of labour. Finally, on the basis of the finding entered into by the State Board appointed in terms of the Contract Labour (Regulation and Abolition) Act, 1970, hereinafter referred to as the Act, Government issued Ext. P1 notification abolishing the contract system of labour in the establishment of the employer. Exhibit P1 is the notification. This was followed by Ext. P2, another notification extending the period until December 31, 1992 to do away with the contract system of labour in the establishment of the employer. The employer did not give

direct employment to all the contract workers including the petitioners; instead the employer entered into a settlement Ext. P3 that too with recognised Unions of the contract workers, which provided for direct employment immediately of eight persons based on a selection process and employment of certain others made mention of in Annexure-A to the said settlement during the course of two years during which the said list was effective. The other contract workers were paid certain monetary benefits calculated on the basis of the formula agreed upon by the management and Unions. The workmen have approached this Court challenging the said settlement Ext. P3 and seeking a direction that they shall be continued to be employed, even after the abolition of the contract labour system as per Ext. P1 read with Ext. P2, on regular basis in the establishment of the employer.

3. The learned single Judge did not accept the contention of the petitioners. The single Judge held that the Act, did not contemplate direct employment of the contract workers on abolition of contract labour by way of notification u/s 10(1) of the Act. Therefore, the relief sought for by the workmen was not granted. At the same time, the learned single Judge felt that the settlement which provided for employment on regular basis for only eight workmen or those mentioned in Annexure-A to Ext. P3 was not fair and, therefore, held that depending upon the occurrence of vacancies for the subsequent period, the remaining workers ought to have been provided employment. The first part of the judgment is challenged by the workmen whereas the latter part of the judgment is challenged by the employer in these writ appeals.

4. The issue arising in these writ appeals, in the aforesaid fact situation is with regard to the resultant position arising out of a notification issued u/s 10 of the Act abolishing the contract system of labour. In other words, are the workers entitled to direct employment in the establishment under the employer, on disappearance of the contractor. It is also contended as a corollary to that issue, when the Act does not provide for any benefit to direct employment either on regular basis or otherwise, on abolition of the contract labour system, whether it is open for the employer on the one side and the workmen represented by the Unions on the other side to enter into settlement regarding absorption, payment of compensation and related matters as done in Ext. P3. Therefore, whether Ext. P3 is as settlement, which can be avoided in terms of Section 30(1) of the Act, is also a moot point arising in this case.

5. It is contended by the workmen heavily relying on *Air India Statutory Corporation, etc. Vs. United Labour Union and others* [overruled], that on issuance of a notification u/s 10 of the Act the contract labour system available in a company stood abolished and on such abolition a direct linkage is created between the contract workers and the erstwhile principal employer. By reason of Section 10 no employer can dispense with the service of the existing workers under the contractors nor can he adopt a selective process to employ few among such workers. It has been pointed out by the Supreme Court, the workmen

contend, that the implication available in Section 10(1), on issuance of a notification provided for therein, was to absorb contract workers. Therefore, Ext. P6 is a settlement which takes away the right available to the workmen in terms of the notification. Naturally that settlement will have no legal efficacy in terms of the provisions contained in Section 30(1) of the Act; even though under normal circumstances a settlement reached between the workmen and the management cannot be challenged in a proceeding under Article 226 of the Constitution of India. That settlement could be avoided on the basis of the statutory provision which confers certain benefits on the workmen, they contended. It is their further contention that once a notification is issued u/s 10 of the Act abolishing the contract system and as held by the Supreme Court in *Air India Statutory Corporation case* (supra), there is an automatic absorption of the contract workers on disappearance of the contractor. There cannot be any selection to employ only few among the erstwhile contract workers. There is no such option for the management. When all the workmen available are found to be in excess of the necessity or in surplus the provisions contained in the Industrial Disputes Act shall operate, if the management chooses so to retrench the surplus workmen.

6. On the other hand, it is contended by the employer that Ext. P3 is a settlement at the free will of the contract workers represented by two recognised Unions and the management on implementation of the notification, Ext. P1. Such a settlement has got statutory force in terms of Section 18(3) of the Industrial Disputes Act, 1947 binding not only the management; but also all the workmen in the establishment. Therefore, the workmen cannot escape out of the clutches of that settlement, which has statutory binding force so far as they are concerned. It is further contended that Section 30(1) of the Act will have no application unless the settlement transgresses any of the provisions contained in the Act. None of the provisions is violated or none of the benefits arising out of the Act is taken away by reason of the settlement. The Act does not provide for automatic absorption or automatic direct employment of the contract workers under the erstwhile principal employer. In such circumstances, Ext. P3 settlement is not vitiated based on Section 30(1) of the Act. When it is not so vitiated, because of the binding force statutorily attributed to it by Section 18(3) of the Industrial Disputes Act. It cannot be challenged by the workmen. That is the settled position in view of several decisions of the Supreme Court reported in *P. Virudhachalam and Others Vs. Management of Lotus Mills and Another*, ; *Tata Engineering and Locomotive Company Limited Vs. Their Workmen*, . So, the challenge against Ext. P3 shall fail, the employer contends.

7. It is further contended by the employer that in the decision in *Air India Statutory Corporation case* (supra) Supreme Court confirmed order of the High Court granting the relief under public law remedy exercising the powers under Article 226 of the Constitution. In this case, such a situation cannot arise because there was a settlement for the purpose of implementation of the notification Ext. P1 and the contract workers had been given whatever benefit

they would have been granted even if they had been regularised and retrenched subsequently based on surplusage.

Therefore, there arises no situation for the application of the dictum laid down in Air India Statutory Corporation case (supra).

8. The counsel also contends that the Bench consisting of Hon'ble Judges of the Supreme Court which decided the Air India Statutory Corporation case (supra) did not advert to the earlier decision of the Supreme Court with equal Judges, in Writ Petition Nos. 619/1995 and 620/1995 in All India General Mazdoor Trade Union v. Delhi Administration and Ors.. It is further contended that the Supreme Court as per the decision reported in F.C.I., Bombay and Others Vs. Transport and Dock Workers Union and Others, referred the very same issue to a larger Bench. Therefore, the issue has not become concluded.

9. It is in the light of these rival contentions that we have to consider the position arising out of Ext. P1 notification issued u/s 10(1) of the Act and the challenge against Ext. P3 settlement.

10. We need not now consider whether at the time of issuance of Ext. P1 notification the relevant factors as mentioned in Sub-section (7) of Section 10 were existing or not. Exhibit P1 was never under challenge at the instance of the employer. Workmen had been in employment continuously for several years and the nature of the work performed by them was of regular nature taking into account the functioning of the employer and that of the similar establishments. There was contract labour, in the establishment of the employer, is an admitted fact. That contract labour has been regulated in terms of the Act. Finally, taking into account the relevant factors mentioned in Section 10(2) a notification has been issued. There was work continuously and that work had to be continued. In similar other establishments such work was being conducted directly under the establishment concerned. The employer was acting in terms of the provisions contained in Section 10, protecting the interest of the contract labour and the contract workers were being employed through the contractor. Contract labour was being regulated in terms of the Act. When the work performed by the contract labour is of perennial nature and is the part of regular work of the establishment concerned, necessarily, the Government shall have power to issue a notification in terms of Section 10(1) of the Act prohibiting contract labour. That means, the contractor disappears from the field. The work still remains in the establishment and the work is being carried out by the same workers. In such circumstances, the principal employer will get into the shoes of a direct employer. The effect of notification u/s 10 cannot do away with the workers along with the contractor. In such circumstances, during the process of employment of the contract labour, if the contractor vanishes from the field, necessarily, a direct linkage forms, by reason of such notification, between the erstwhile principal employer and the erstwhile contract workers. What shall be the tenure of the contract between them is not an important factor for consideration of the Court. That is a matter between the employer and employee to be decided. But, the

moment a notification u/s 10(1) is issued, the worker continues in the establishment to perform the work in connection with the establishment. That is the effect. That is why no further provision is made in the Act with regard to the tenure of workers on adjudication of contract labour. The Act is to regulate the contract employment and during such regulatory measures certain benefits are conferred to the contract workers. Government is enabled to prohibit such contract labour. That shall not reduce the workmen to a position far less than the existence of contract labour subjected to regulatory measures as mentioned in the Act. Abolition of the contract labour in terms of Section 30(1) is a beneficial measure to the workmen. When regulatory measures are adopted, the employment of the contract labour in connection with the affairs of the employer continues. The resultant position of notification issued u/s 10(1) cannot place the workmen in a position worse than that. No further provision for continuance of contract labour is necessary in the Act as the resultant position because of the abolition of contract labour u/s 10, is the continuance of the workmen without a contractor. That is why the Legislature wisely did not make any provision, because that is the logical corollary arising out of notification abolishing contract labour u/s 10(1).

11. While overruling the earlier views of the Supreme Court in *Dena Nath and others Vs. National Fertilisers Ltd. and others*, as well as in *Gujarat Electricity Board, Thermal Power Station, Ukai Vs. Hind Mazdoor Sabha and Others*, , the Supreme Court specifically adverted to the phraseology used in Section 10(2) that a notification has been issued taking into account, "the matters connected therewith". That means the matters connected with the abolition of contract labour. The Supreme Court also held that abolition shall not leave the workmen "denuding them of the means of livelihood", but would be that source of regular employment become open to the workmen on issuance of a notification u/s 10.

12. The Supreme Court again examined two questions as to what would be the consequence that arises from abolition of the contract labour system and also did the Act really intend to deny the workmen to continue when a notification is issued. The Supreme Court was of the view that the preamble would furnish the consequence of the abolition of the contract labour and held that, the Act did not intend to denude them of the source of the livelihood and means of development throwing them out of employment". The Supreme Court further held that:

"..... It is a socio-economic welfare legislation. Right to socioeconomic justice and empowerment are constitutional rights. Right to means of livelihood is also constitutional right. Right to facilities and opportunities are only part of and means to right to development. Without employment or appointment, the workmen will be denuded of their means of livelihood and resultant right to life, leaving them in the lurch since prior to abolition, they had the work and thereby earned livelihood."

13. True, as contended by the counsel for the employer, the Supreme Court had in the said decision considered the power of the Court to mould the relief under

Article 226 to abate any situation of injustice. In a separate concurring judgment, majMUDAR, J. held that:

"If it is held that on abolition of contract labour system, the erstwhile contract labourers are to be thrown out of the establishment lock stock and barrel, it would amount to throwing the baby out with the bathwater,"

That obviously cannot be the scope and purport of Section 10 of the Act.

The Hon"ble Judge further held that:

"Implicit in the provision of Section 10 is the legislative intent that on abolition of contract labour system, the erstwhile contract-workmen would become direct employees of the employer on whose establishment they were earlier working and were enjoying all the regulatory facilities on that very establishment under Chapter V prior to the abolition of such contract labour system. Though the Legislature has expressly not mentioned the consequences of such abolition, but the very scheme and ambit of Section 10 of the Act clearly indicates the inherent legislative intent of making the erstwhile contract labourers direct employees of the employer on abolition of the intermediary contractor."

It was over and above, considering the effect of Section 10 as well as the notification issued thereunder, that the power of the Court under Article 226 was also examined. Even in the absence of a finding based on the powers under Article 226 which was confirmed by the Supreme Court in the aforesaid case, the finding with reference to the effect of Section 10 and the legislative intent are sufficient, to hold that there arises a direct linkage between erstwhile contract workers and the erstwhile principal employer on the moment of the abolition of the contract labour system. The same situation arises in this case also. The employer in this case is also an authority coming under Article 12 as held by the decision in K. S. Sofi v. FACT 1984 Lab 1C (NOC) 110. Of course, that is with respect to denial of fundamental right. Even though what the workmen agitate is for a statutory right available in terms of the provisions contained in the Act, that being a situation of denial of employment from out of a public sector undertaking, necessarily, the concept of equality will also crop up.

14. The decision of the Supreme Court in Writ Petition Nos. 619/1995 and 620/1995 pointed out by the counsel for the employer, which is stated to have been not brought to the notice of the Supreme Court while considering the Air India Statutory Corporation case (supra) does not really contain any dictum except to relegate the parties to the appropriate forum in the matter of feasibility of employment. That order was rendered at the time of the preliminary hearing when the said writ petitions came up for admission before the Court.

15. The Supreme Court has further held in Secretary, H.S.E.B Vs. Suresh and Others etc. etc., that consequent to issuance of a notification u/s 10 of the Act, there shall be preservation of contract labour into the direct employment of t;he employer. This Court also considered the issue in the decision reported in Pawan

Kumar Vs. State of Haryana and another, and held in the same lines.

16. Therefore, it has to be taken that the effect of notification issued u/s 10 of the Act is only to abolish the contract system. The contractor alone vanishes away from the field and every other ingredient of labour system continues.

17. Viewed in that angle, we have to consider whether Ext. P3 settlement has binding force so far as the workmen are concerned. Under normal situation, a settlement reached u/s 12(3) shall have binding effect as specified in Section 18(3) of the Industrial Disputes Act, 1947. Such a settlement reached at between the workmen and the management cannot be challenged in a proceeding under Article 226 because by reason of such settlement, both the parties give and take certain things willingly and such settlement will be binding on them. There arises no judicial review of a consented act like that. That is a situation of normal circumstances. But, when such a settlement is given a go-bye by reason of statute, necessarily, it cannot be taken that, it is binding on the parties. It is contended by the workmen that such settlement has no effect as the benefit arising u/s 10(1) is taken away by that settlement. On the other hand, it is contended by the employer that by reason of that settlement none of the provisions of the Act has been transgressed. No benefit available to the workmen has been taken away. On the moment the notification was issued u/s 10(1) of the Act, the operation of the Act ceases to have force so far as the establishment and the workmen therein are concerned; because there is no contract system of labour. Any settlement arrived at thereafter cannot be said to be offending any of the provisions in the Act. Section 10 is a provision where Government is enabled to abolish contract labour system. When the provision gives rise to such an effect a settlement cannot thereafter be entered into to take away the benefit available to the workmen from out of that notification issued u/s 10. That will also amount to violation of the provision in the Act. If the settlement is thus given effect to necessarily, all the erstwhile contract workers in employment at the time of issuance of Ext. P1 will not get continued employment. Necessarily, even without quashing, it can be stated that so far as the workmen are concerned, the notification will prevail rather than Ext. P3 settlement. Viewed in that angle, the decision cited by the counsel for the employer as mentioned at the threshold while dealing with the contention, cannot have any application to the facts of the case.

18. It is true that as seen from the decision in F.C.I., Bombay and Others Vs. Transport and Dock Workers Union and Others, at 1390:

"5..... the question of automatic absorption of contract labour as a consequence of a notification issued u/s 10 of the Act is also an important question."

and it is also seen referred to a larger Bench. But it is a fact that two decisions of the Supreme Court in Dena Nath (supra) as well as Gujarat Electricity Board case (supra) referred to above had been specifically overruled in the decision in Air

India Statutory Corporation case (supra).

That being the position necessarily, until any other position is authoritatively held, the decision in Air India Statutory Corporation case shall have application to this case. Had the Air India Statutory Corporation case been pronounced before the impugned judgment, necessarily, the situation would have been perhaps different. In the aforesaid circumstances, we are of the view that the impugned judgment has to be set aside and it has to be declared that Ext. P3 will not have any effect so far as the workmen (petitioners in the original petition) are concerned. W.A.No. 1719/1993 is consequently allowed. W.A. No. 1381/1993 is dismissed.

19. The workmen/petitioners in this case, were out of employment since the implementation of Ext. P3. As a result of this judgment, they get continuity of employment. The workmen-petitioners are entitled to get back wages until today but the amount paid or payable in terms of Ext. P3 shall be treated towards the full satisfaction of such back wages. The benefit arising out of this judgment will be confined to the petitioners alone because none of the other workmen had termed Ext. P3 as less advantageous.