

(1999) 10 AHC CK 0092
In the Allahabad High Court
Case No : C.M.W.P. No. 59 of 1993

Himmat Singh and others

APPELLANT

Vs

State of U.P and others

RESPONDENT

Date of Decision : 07-10-1999

Acts Referred:

Constitution of India, 1950 — Article 19(1), 254
Contract Labour (Regulation and Abolition) Act, 1970 — Section 10, 10(1)
Contract Labour (Regulation and Abolition) Central Rules, 1971 — Rule 25
Uttar Pradesh Industrial Disputes Act, 1947 — Section 2

Citation : (2000) 1 AWC 287 : (2000) 84 FLR 794 : (2000) 1 LLJ 1104

Hon'ble Judges : Yatindra Singh, J

Bench : Single Bench

Advocate : Rastrapati Khare and K.P. Agrawal, for the Appellant; S.N. Yadav, S.N. Verma, P.K. Mukherjee, V.B. Upadhyaya and Abhinav Upadhyay, for the Respondent

Final Decision : Dismissed

Judgement

Yatindra Singh, J.—This writ petition, among others, raises the question regarding the effect of the Contract Labour (Regulation and Abolition) Act, 1970 (the Contract Labour Act) on the definition of the word "employer" as in clause (iv) of Section 2 (i) (the Section 2 (i), (iv)) of the U. P. Stale Industrial Disputes Act (the State Act). Docs the Contract Labour Act override Section 2 (i) (iv) of the State Act?

FACTS

2. The Indian Explosive Limited (the company), respondent No. 2, manufactures urea and is within the purview of the Contract Labour Act. It is registered under Chapter III of the same. It has many licensed contractors including one M/s. Abdul Rehman (the contractor Rehman). These licensed contractors engage many persons to do the work contracted out to them. The Fertiliser Workers Union (the Union) filed an application under Rule 25 (v) (a) of the Rules framed

under the Contract Labour Act before the Labour Commissioner. This was for the relief that the different persons working under different licensed contractors are doing work similar to the work assigned to the workmen of the company and should have similar conditions of service regarding wages, holidays, etc. The Labour Commissioner, by his order dated 15.12.1984 in proceedings under Rule 25 of the Contract Labour Act, allowed the applications so far as the persons engaged by the contractor Rehman and one more licensed contractor (not relevant here) were concerned, but for the rest of the persons, the application of the Union was dismissed. I have already upheld this order of the Labour Commissioner.

3. During pendency of the abovementioned proceedings under Rule 25 of the Contract Labour Act, the Union raised the present dispute for the benefit of the workmen (the petitioners) engaged by the contractor Rehman. The dispute was "whether 61 workmen (the petitioners) should be declared permanent employees of the company? If so, then from what date and with what description?" The State Government referred this industrial dispute to the Labour Court under the State Act. The labour court has recorded finding in negative as well as in positive form. These findings are as follows :

(a) It is not proved that the petitioners were :

(i) appointed by the principal employer.

(ii) working as helpers to the niters,

(iii) being paid by the company, and

(iv) not given work order by the contractor Rehman.

(b) It is proved that the petitioners were :

(v) engaged in a contract for intermittent work.

On the basis of these finding, the labour court decided the dispute against the petitioners and held that they are not entitled to become permanent with the company. Hence the present writ petition.

POINT TO BE DETERMINED

4. I have heard Sri K.P. Agrawal. Senior Advocate for the petitioners, Sri S.N. Verma, Senior Advocate for the company and Sri V.B. Upadhyaya, Senior Advocate for the contractor. Following points arise for determination in this case :

(i) What was the nature of the dispute? Was it to abolish contract labour in the company? Was it barred by Section 10 of the Contract Labour Act?

(ii) What is the effect of the Contract Labour Act? Does it override the definition of "employer" given in the Section 2 (i) (iv) of the State Act?

(iii) A few decisions have taken a view on the point No. 2. The Supreme Court

has also dismissed an SLP against one of them. What is the effect of these decisions on the controversy?

(iv) Whether the petitioners were employees of the company and the contract was merely a camouflage for the principal employer? What is the effect of the claim made by the petitioners under Rule 25 framed under the Contract Labour Act?

1st POINT : NATURE OF THE DISPUTE

5. The nature of the dispute before the labour court is important ; its jurisdiction depends upon it. Was the dispute in substance one of the following two categories, namely, that (1) the labour court should abolish the contract labour, or (2) the petitioners were seeking permanent status with the company in view of Section 2 (i) (iv) of the State Act.

6. The company is an establishment under the Contract Labour Act. The State Government can abolish contract labour in any establishment u/s 10 of the Contract Labour Act. This may be done after consultation with the authorities and on the satisfaction of the conditions mentioned in that section. There is no dispute with the proposition that the jurisdiction to abolish the contract labour in an establishment is with the State Government only and not with the labour court. Let's consider if the petitioners are asking for abolition of contract labour in the company?

7. The State Government by its reference dated 20th March, 1984, in substance had referred the dispute, "If the petitioners should be declared permanent." This reference was in light of the claim of the petitioners that they were workmen of the company in view of Section 2 (i) (iv) of the State Act, and not of the contractor Rehman. The petitioners were not claiming that the contract labour in the company should be abolished. The nature of the dispute before the labour court was not. "Whether the contract labour should be abolished" but was. "Whether the petitioners should be declared permanent". It is the labour court that has jurisdiction to decide this dispute and not the State Government. The petitioners cannot be non-suited on this ground.

2nd POINT : THE EFFECT OF THE CONTRACT LABOUR ACT

The State Act--Workman of a Contractor

8. The State Act defines the words "workman" and "employer" in Section 2 (z) and 2 (i) of the State Act. The definition of the word "employer" is inclusive definition. The Section 2 (i) (iv) of the State Act states that an owner of an industry will be an employer in respect of a workman employed by a contractor, where work contracted out to him is ordinarily part of the industry. This is clear from the following observations of the Supreme Court in the Basti Sugar Mills Ltd. Vs. Ram Ujagar and Others, , (the Dasti Sugar Mills Case). The Supreme Court held :

"The obvious purpose of this extended definition of the word "employer" (in Section 2 (i) (iv) of the State Act) is to make the owner of the industry, in the circumstances mentioned in the sub-clause, the employer of the workmen engaged in the work which is done through contract. The words used in the sub-clause are clearly sufficient to achieve this purpose.

.....The position thus is : (a) that the respondents (workmen employed by the contractor) are workmen within the meaning of Section 2 (z) being persons employed in the industry to do manual work for reward and (b) they were employed by a contractor with whom the appellant company had contracted in the course of conducting the industry for the execution by the said contractor of the work of removal of press-mud which is ordinarily a part of the industry. It follows therefore from Section 2 (z) read with sub-clause (iv) of Section 2 (i) of the Act that they are workmen of the appellant company and the appellant company is their employer."

9. Does the Contract Labour Act override Section 2 (i) (iv) of the State Act? Has the decision of the Supreme Court become redundant? Are these two provisions inconsistent with each other? The Contract Labour Act was enacted after Section 2 (i) (iv) of the State Act. According to Sri Verma and Sri Upadhyay, the Contract Labour Act will prevail over Section 2 (i) (iv) of the State Act, in view of Article 254 of the Constitution and Section 30 of the Contract Labour Act. But this can only be, if Section 2 (i) (iv) of the State Act is inconsistent with the Contract Labour Act. In order to understand this ; let's consider the purpose and scope of Section 2 (i) (iv) of the State Act and the Contract Labour Act.

The Purpose of Section 2 (i) (iv) of the State Act

10. The Supreme Court explains the purpose of the Section 2 (i) (iv) of the State Act in the Basti Sugar Mill case as follows :

"The second point, viz., that this definition contravenes the appellant's fundamental rights under Article 19(1)(g) is equally devoid of substance. Assuming that the result of this definition of employer in sub-clause (iv) of Section 2 (i) is the imposition of some restrictions on the appellant's right to carry on trade or business, it cannot be doubted for a moment that the imposition of such restrictions is in the interest of the general public. For, the interests of the general public require that the device of the engagement of a contractor for doing work which is ordinarily part of the industry should not be allowed to be availed of by owners of industry for evading the provisions of the Industrial Disputes Act. That these provisions of the Industrial Disputes Act are in the interests of the general public cannot be and has not been disputed. That being the position, the impugned definition which gives the benefit of the provisions of the Act to the workmen engaged under a contract in doing work which is ordinarily part of the industry cannot but be held to be also in the interest of the general public." (Italics mine)

The Purpose of the Contract Labour Act

11. The purpose of the Contract Labour Act is similar. The statement of objects and reasons" of the Contract Labour Act states that the system of contract labour was lending to various abuses and the Contract Labour Act was enacted to remove it. The purpose of the Contract Labour Act, in the words of the Supreme Court in the Gujarat Electricity Board, Thermal Power Station, Ukai Vs. Hind Mazdoor Sabha and Others, (the Gujrat Electricity Board case) is as follows :

The Act has been placed on the statute book for two purposes, viz.. Hi to regulate the employment of contract labour and (ii) to provide for its abolition in certain circumstances and for matters connected therewith. The object as well as the provisions of the Act also show that the Parliament while realising the need for abolishing the contract the contract labour system in certain circumstances also felt the need to continue it in other circumstances by properly regulating the same."

Section 2 (i) (iv) and the Contract Labour Act--Not inconsistent

12. Section 10 of the Contract Labour Act lists the relevant factors, which have to be considered before abolition of the contract labour. Among the others, is the factor--whether the work contracted out is of perennial nature ; and whether it is done ordinarily through the workman of the establishment. In other words, if the work is ordinarily part of that establishment. The State Government has already abolished contract labour in such a situation by legislative enactment as manifested in the Section 2 (i) (iv) of the State Act--May be before the Contract Labour Act came into force. The system of contract labour is not in public interest. It should be abolished. The abolition of the contract labour u/s 10 of the Contract Labour Act is with the State Government and it is the State Legislature which has already abolished it prior to enactment of Section 10 in the State of Uttar Pradesh under the State Act. Then can it be still said that Section 2 (i) (iv) of the State Act is inconsistent with the Contract Labour Act?

13. The Section 2 (i) (iv) of the State Act and the Contract Labour Act are--for the benefit of the workman, and for abolition of the contract labour. They are not in conflict with each other. These provisions require harmonious interpretation. If an industry is an employer of the workman engaged by a contractor u/s 2 (i) (iv) of the State Act, then the workman does not lose that status merely for the reason that the industry and the contractor engaging them are registered or licensed under the Contract Labour Act. The Contract Labour Act does not take away his (workman"s) status of being a workman of that industry and convert him into a workman of the contractor. Whenever such a dispute is raised then the labour court should first see "If the industry u/s 2 (i) (iv) of the State Act is an employer of the workman engaged by the contractor." In case such an industry is the employer, then the right of the workman cannot be defeated merely for the reason that they are engaged by a licensed contractor of a registered company under the Contract Labour Act. It is only when the labour court comes to conclusion that the industry is not an employer, then the other questions namely--whether the contractor is licensed or not ; or whether the contract was

sham, non-genuine may arise.

14. Let's see it from another angle. Can a contract that defeats the rights of a workman u/s 2 (i) (iv) of the State Act ever be a genuine contract? I think such a contract is sham on the face of it. Section 2 (i) (iv) of the State Act is neither ultra vires, nor the law laid down by the Supreme Court in the Basti Sugar Mill case has lost its efficacy. It still governs the relationship between an industry and the workman of a contractor, even though the contractor is a licensed contractor of a registered industry (or company) under the Contract Labour Act.

A Comment about the Gujrat Electricity Case

15. I have placed reliance on the Gujrat Electricity Board case in paragraph 10 of the Judgment. This case has been partly overruled in the Air India Statutory Corporation, etc. v. ULU and others JT 1996 (11) SC 109 (the Air India Corporation case). I would like to add a comment about the same.

16. The question involved in the Air India Corporation case was different, namely, "What is the effect of abolition of contract labour u/s 10 of the Contract Labour Act?" The Supreme Court, while considering this question, held :

Thus, we hold 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 the qui vive is required to direct the appropriate authority to act in accordance with law and submit a report to the Court and based thereon proper relief should be granted.

.....Considered from this pragmatic perspective, with due respect to the learned Judges, the remedy carved out in Gujarat Electricity Board case would be unsatisfactory. The shortcomings were not brought to the attention of this Court. So that part of the direction in Gujrat Electricity Board case is not, with due to respect to the Bench, correct in law.

The Air India Corporation Act has overruled that part of the Gujrat Electricity Board, where the Court had given its reasons on the effect of abolition of labour contract u/s 10 of the Contract Labour Act and the procedure to be followed thereafter. But so far as the other aspects are concerned, the Air India Corporation case has approved the Gujrat Electricity Board case.

3rd POINT : OTHER DECISIONS-CONTRARY VIEW

17. Sri Verma and Sri Upadhya have cited one decision of the Rajasthan High Court and three unreported single Judge decisions of this Court for the proposition that : the provisions of Section 2 (i) (iv) of the State Act are ultra vires, ineffective ; and the labour court should not first confine its inquiry within the sphere of Section 2 (i) (iv) of the State Act. According to them if the contract is genuine or not sham then it should be an end of the matter. Nothing further should be seen. Let's consider these decisions.

The Rajasthan Decision

18. It is true that a single Judge of the Rajasthan High Court in *Delhi Cloth Mills Company v. State of Rajasthan* 1992 (65) PLR 847, has held that the Contract Labour Act will prevail over the Rajasthan Amendment in the Industrial Disputes Act, 1947 (the Central Act) in view of Article 254 of the Constitution. The Rajasthan amendment had amended the definition of the word "workman" in the Industrial Disputes Act, 1947 (the Central Act), instead of redefining the word "employer" as in the present case. But the effect was the same. The decision of the Rajasthan High Court has persuasive value though it does not bind me. But, with due respects. I wish to differ ; there is no inconsistency between these two provisions. They are for the benefit of a workman and for abolition of contract labour. They supplement rather being in conflict with each other. Let's consider the three decisions of our Court.

The Decisions of this Court

19. In *Sri Hart Shanker Sharma u. M/s. Artificial Limbs Manufacturing Corporation of India*, Civil Misc. Writ Petition No. 7597 of 1996 decided by Justice Markandey Katju on 11.4.1997 this Court has rightly held that *Gujrat Electricity Board* case has been partly overruled by the *Air India Corporation* case. I have also pointed it out under the sub-heading "A comment about the *Gujrat Electricity Board* case" (paragraphs 15-16 of the judgment). The Court then confined itself on the question as to whether the labour court can abolish contract labour or not. It was rightly held that the labour court could not abolish the contract labour. The Court neither referred to Section 2 (i) (iv) of the State Act nor it appears that the workmen placed any reliance on the same. I have already held under point No. 1 (paragraphs 5-7 of the judgment) that the petitioners in this case are not seeking that the labour court should abolish contract labour. They are claiming permanency in view of Section 2 (i) (iv) of the State Act. This decision is not applicable to the facts of the present case.

20. The two other decisions of this Court--(1) *ICI India Ltd. v. State of U. P. and others*, W. P. No. 14758 of 1990 decided by Justice Palok Basu on 25th January, 1991 and (2) *M/s. IEL v. State of U. P. and others*, W.P. No. 15399 of 1988 decided by Justice B.S. Chauhan on 6th November, 1996--nowhere specifically hold that Section 2 (i) (iv) of the State Act is ultra vires due to enactment of the Contract Labour Act. But, in substance, these two decisions have proceeded on the footing that the status of a workman should be first determined under the Contract Labour Act and if the contract is bona fide and is not sham then it would be the end of the matter. And it may not be necessary to look into Section 2 (i) (iv) of the State Act : it has been rendered ineffective.

The Effect of Dismissal of the SLP

21. *Sri Verma* and *Sri Upadhyay* also brought to my notice that an SLP against the decisions of this Court in *M/s. IEL v. State of U. P. and others* (mentioned in the previous paragraph) has been dismissed by the Supreme Court. They wanted

to impress that in this light, the view taken in that writ petition should be followed in this case also. The Supreme Court had dismissed the SLP by observing, "Heard both sides. The SLPs are dismissed." It is a non-speaking order. The dismissal of an SLP by non-speaking order does not mean that the Supreme Court has affirmed or approved the reasoning of the High Court. It only means that the Supreme Court did not consider proper to grant leave in that case, There is no bar for another Judge to take a contrary view. But this may only be done in accordance with the established practice of referring a case to a Larger Bench.

22. I have taken a view contrary to the two decisions mentioned in the previous paragraph (20) and I should have referred the following two questions to the Larger Bench before deciding this writ petition :

(i) Whether the Section 2 (i) (iv) of the State Act stands repealed in view of the Contract Labour Act?

(ii) How should a dispute, where a workman claims to be an employee of the principal employer instead of the contractor, be resolved? Should the labour court first proceed to decide it in the light of Section 2 (i) (iv) of the State Act or the Contract Labour Act?

I am not referring these questions to the Larger Bench and deciding the case on merits in view of the fact that no useful purpose will be served. Even if the aforesaid two questions are decided in favour of the petitioners by the Larger Bench (as I have done), the petitioners cannot get any relief. This is in view of my finding on the fourth point that the company is not the employer of the petitioners even in view of Section 2 (i) (iv) of the State Act. I have expressed my views on the first two points due to following reasons :

* I could not have come to the fourth point without deciding the first two points.

* The first two points were argued at length before me.

* The provisions, whose interpretation is involved, are beneficial piece of legislation in favour of the workman. It is proper that I should, with due respect to the learned Judges with whom I have deferred, express my views that are in favour of the workmen.

4th POINT : WHETHER THE COMPANY IS THE EMPLOYER OF THE PETITIONERS

23. Let's assume that Section 2 (i) (iv) of the State Act is applicable and inquiry is to be made first under this section. Are the petitioners employees of the Company? The labour court has considered the case on the merit. The findings of the labour court have been mentioned in paragraph 3 of the judgment. The 1st finding that the petitioners have not been appointed by the company is irrelevant in view of the Supreme Court decision in the Basti Sugar Mills case. The Supreme Court has specifically held :

This brings us to Mr. Pathak's main contention that in any case the respondents

are not workmen within the meaning of the standing orders and so cannot get the benefit of the minimum wage prescribed thereby. In the standing orders the word "workman : is defined to mean any person (Including an apprentice) employed by a factory, to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward whether the terms of employment be express or implied" but does not include any person mentioned in els. (i) and (ii). We are not concerned in this case with these clauses. Mr. Pathak argues that on a reasonable construction, the words "employed by a factory". In this definition can only mean "employed by the management of the factory" and cannot include persons employed by a contractor of the factory. He points out that this definition of "workmen" in the standing orders uses the words "employed by a factory" though the definition of "workmen" in the Act itself uses the words "employed in any industry" and contends that the words "by a factory" were deliberately used instead of the words "in a factory to exclude persons other than those employed by the management of the factory from the benefit of the standing orders. Neither grammar nor reason supports this argument.

On the ordinary grammatical sense of the words "employed by a factory" they include, in our opinion, every person who is employed to do the work of the factory. The use of the word "by" has nothing to do with the question as to who makes the appointment. The reason why "by" was used instead of "in" appears to be to ensure that if a person has been employed to do the work of the industry, whether the work is done inside the factory or outside the factory, he will get the benefit of the standing orders. (Italics mine).

But the other findings are relevant.

24. The labour court has held that the petitioners were not working as helpers to the fitters : they were not paid by the company : and were engaged on contract for intermittent work, i.e., they did not have regular or permanent work. The work that the petitioners do may be similar to the work of the workman of the company, but they are not doing the work that is ordinary part of the Industry. This is for the reason that they-

- * did not have permanent work ;
- * were engaged in intermittent work and
- * themselves claimed to be workmen of the contractor Rehman in proceedings under Rule 25 of the Contract Labour Act and got benefit under the same.

In order that the work should be ordinarily part of the Industry, it should be perennial, permanent : it cannot be intermittent. The petitioners on the finding recorded by the Labour Court are not the workmen of the company even in view of the definition u/s 2 (i) (iv) of the State Act.

CONCLUSION

25. Section 2 (i) (iv) of the State Act is neither ultra vires nor the law laid down

by the Supreme Court in the Basil Sugar Mill case has lost its efficiency in view of the Contract Labour Act. The labour court should first see if an Industry is an employer of the contracted labourers or not in light of Section 2 (i) (iv) of the State Act and then proceed to decide the case. This proposition of law is in conflict with two other single Judge decisions of this Court. I have not referred these questions to a Larger Bench due to the reason that the petitioners are not workmen of the company even in view of Section 2 (i) (iv) of the State Act and cannot be made permanent. The writ petition is dismissed.