

(2004) 05 AHC CK 0139

In the Allahabad High Court

Case No : C.M.W.P. No. 40660 of 1999 and Others Writ Petitions

Hridayanand Pandey and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 21-05-2004

Acts Referred:

Constitution of India, 1950 — Article 226

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

Citation : (2004) 3 AWC 2798

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : A.K. Pandey, L.R. Khan and Niranjana Kumar Verma, for the Appellant; Sabhajeet Yadav and A.K. Misra, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Ambwani, J.—Heard Sri A. K. Pandey, L. R. Khan and Sri Niranjana Kumar Verma for petitioners and Sri Sabhajeet Yadav for U. P. Jal Nigam.

2. The petitioners are employees engaged by the Piece Rate Worker (P.R.W.) of the Constructions and Design Services of U. P. Jal Nigam in its various units. By these writ petitions they have prayed for writs of mandamus commanding the respondents not to discontinue their services ; to regularise their services like regular employee of U. P. Jal Nigam and its unit named as Construction and Design Services, and to pay wages in regular pay scales.

3. The U. P. Jal Nigam has been constituted u/s 14 of the U. P. Water Supply Sewerage Act, 1975. The Constructions and Design Service of U. P. Jal Nigam is a separate and independent wing of U. P. Jal Nigam to function on commercial basis, and to undertake various constructions works in the State of U. P. on the pattern of U. P. Rajkiya Nirman Nigam Limited. The Constructions and Design Services are engaged in various constructions works as well as mechanical constructions works of different Local Bodies and Government Departments. The main purpose of the establishment of its units including unit No. 30 of

Construction and Design Services in District Varanasi in 1994 was for laying down P.S.S. Pipeline in the pattern of Constructions and Design Service in the city of Varanasi under a scheme financed by World Bank. The work is not executed by the contractors. The unit engages Piece Rate Workers (P.R.W.), who arrange necessary labour and manage and take work from them. The petitioners, however, claim that they are directly employed by the Constructions and Design Service which is an integral part of U. P. Jal Nigam and does not have any separate existence and that they are paid and their work is under direct control and supervision of the officers of Constructions and Design Services who are all the officers of U. P. Jal Nigam. He submits that the body employer is unregistered and the contractor (P.R.W.) is unlicensed and thus the entire defence of contracted employment through P.R.W. is a camouflage. He has relied upon the Supreme Court decision in Secretary Haryana State Electricity Board v. Suresh and Anr. (1999) 5 SCC 601 where it was held that where at the relevant time the establishment was not registered as a Principal employer under Act No. 37 of 1990 and the so called contractor was not the licensed contractor under the Act the inevitable conclusion is that the so called contract system is a mere camouflage.

4. In the counter-affidavit of Sri J.N. Upadhyay, Project Manager, Unit No. 30, Construction and Design Services, U. P. Jal Nigam Varanasi, it is stated in para 8 that the petitioners have been engaged through P.R.W. and have no direct dealing or supervision of the Construction and Design Division of the U. P. Jal Nigam. The P.R.W. is neither a contractor and Sub-contractor. He is an experienced worker in construction work of small means so that units engage competent persons of limited means to overcome disadvantage in the field.

5. The parties have placed reliance, on various documents on record with regard to their engagement, payments, orders issued by the Officers of the Constructions and Design Division and the experience certificate given by them, which I do not consider appropriate to discuss in detail in these proceedings under Article 226 of the Constitution of India.

6. Counsel for petitioners submit that the Construction and Design Services are extended limb of U. P. Jal Nigam. The manual applicable to the engagement of P.R.W. by the U. P. Rajkiya Nirman Nigam, under the U. P. Public Works Department has been adopted for the manner and method of making engagement and payment to the petitioners. The P.R.W. is merely a commissioned agent and once the petitioners are engaged, they are under direct control and supervision of the Constructions and Design Services and that the petitioners are nothing but work charge employees of the Jal Nigam, and their services are charged to the contracts and works undertaken by the Constructions and Design Services of U. P. Jal Nigam. It is contended that the contract labour has been abolished by the Contract Labour (Regulation and Abolition) Act, 1970, in the employment and that all the contract labours shall be treated to the employees of the principal employer namely the Jal Nigam. The petitioners are

working since 1990-95 and are entitled to be considered for regularisation under the Regularisation Rules applicable to Class III and Class IV employees of the State Government which have been made applicable to Jal Nigam as a local body.

7. Sri Sabhajeet Yadav appearing for U. P. Jal Nigam submits that the petitioners are not employees of Jal Nigam, The Construction and Design Services is a commercial wing of U. P. Jal Nigam and has no statutory existence. It undertakes independent contract work. The petitioners were engaged through P.R.W. There is no contract or jural relationship between the Jal Nigam and the petitioners and that Jal Nigam has no direct control and supervision over these workmen, who are not paid by Jal Nigam. The petitioners are under the supervision and control of the P.R.W. and that the payment is made to the P.R.W. Sri Sabhajeet Yadav has relied upon judgment of this Court in Sandeep Verma and Others Vs. Union of India (UOI) and Others, in which following the decision of Constitution Bench of Supreme Court in Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., , it was held by this Court that the submission with regard to the nature of contract, to the effect whether it is sham or only smoke screen cannot be considered by this Court, and that as directed by Supreme Court the matter can be resolved only by an industrial adjudicator under the industrial law of the land. Sri Sabhajeet Yadav has also placed on record a decision of U. P. Jal Nigam, dated 25.7.2002, by which all Chief Engineers of Jal Nigam were informed that after retrenchments in 1991 directions were given to remove all ad hoc/contract/P.R.W. employees, and several reminders were sent to the officers to take immediate steps to remove them. He submits that U. P. Jal Nigam is suffering huge losses.

8. There is no dispute between the parties that by Notification dated 5.10.1988 the State Government decided to cease the practice of engaging office assistants, stenographers, typists, peons and messengers etc. on P.R.W. basis, and to engage them on Muster Roll. This notification was adopted by U. P. Jal Nigam by a resolution of Board of Directors circulated on 14.10.1988. The notification is not issued under C.L.R.A. Act, 1970. It does not meet the essentials and does not reveal compliance of Section 10(2) of C.L.R.A. Act, 1970.

9. In Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., , the Supreme Court after considering all the previous decisions explained the nature of right of contract employees in various contingencies such as, where there exists a notification issued u/s 10(2) of the C.L.R.A. Act, 1970, prohibiting the employment of contract labour in a particular labour and where there is no such prohibition. The Constitutional Bench also explained the legal position of the contract labour, where it is employed through the agency or contractor, although in reality such employment is directly under the principal employer, and the effect of notification u/s 10(2) of the Act of 1970. In the Municipal Corporation of Greater Bombay Vs. K.V. Shramik Sangh and Others, , relying upon Steel Authority of India (supra) the employees were directed to seek remedy by availing the forum of industrial adjudication under

the Industrial Disputes Act. It was held that it is only for industrial adjudication that the facts and circumstances can be investigated to ascertain the nature of employment.

10. In *Ram Singh and Others Vs. Union Territory, Chandigarh and Others*, , the Supreme Court held that control is one of the important test, is the sole context in determining the relationship between employer and employee and other relevant facts and circumstances are required to be considered including the terms and conditions of the contract. A multiple pragmatic approach weighing up all the factors available and against an employment instead of going only by the context of control is required. An integrated approach is needed to be adopted. Whether the person was fully integrated into the employer concern or remained apart from or independent of it. The other relevant factors are with regard to selections, dismissal, payment of remuneration, deduction of insurance and contribution, organisation of the work, supply of tools and material and the mutual obligations between them. The *Secretary, Haryana State Electricity Board v. Suresh and Anr.* (supra) arose out of proceedings initiated in labour court, in which findings were recorded that there existed a relationship of employer and workman between appellate Board and the workman.

11. In view of clear and binding precedent laid down by the Constitution Bench of Apex Court in *Steel Authority of India* (supra) the reliefs prayed for in these writ petitions cannot be granted to the petitioners/employees. In the facts and circumstances, the petitioners are relegated to the remedy before the Industrial Adjudicator/Forum to determine the disputes as question of fact as to whether the petitioners are employees of U. P. Jal Nigam and are entitled for regular wages, regularisation and reinstatement. .

12. All the writ petitions are accordingly dismissed on the ground of availability of alternative and efficacious remedy, available to the petitioners, for industrial adjudication, of the disputed question of facts. Costs are made easy.