
(2011) 08 DEL CK 0203

In the Delhi High Court

Case No : Writ Petition (C) 13663 of 2009

ICICI Prudential Asset Management Co. Ltd.

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 25-08-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10(1), 10(5), 2(a)

Citation : (2012) 133 FLR 505 : (2012) 3 LLJ 791

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : A.B. Dial with Sundeep Srivastava and Ujhwala K. Jha, for the Appellant; Rono Mohanty, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The petition impugns the reference u/s 10 of the Industrial Disputes Act, 1947 dated December 8, 2008 made by the respondent No. 1. Union of India as the appropriate government within the meaning of Section 2(a) of the Act of the dispute raised by the respondent No. 2 against the petitioner, for adjudication to the Industrial Adjudicator. Notice of the petition was issued and vide ex parte order dated December 8, 2009 which continues to be in force, further proceedings before the Industrial Adjudicator in pursuance to the reference were stayed. Counter affidavit and an application for vacation of stay have been filed by the respondent No. 2 and to which rejoinder has been filed by the petitioner. The counsels have been heard. The reference made to the Industrial Adjudicator is as under:

Whether the contract between the management of Prudential ICICI Asset Management Co. Ltd., New Delhi and the contractor Service Max Facility Management Pvt. Ltd. Delhi with regard to the employment of Shri Dharamvir Singh S/o Shri Rashi Singh, is sham and bogus? If yes, whether the action of the principal employer i.e., Prudential ICICI Asset Management Co. Ltd., in terminating service of the above workman w.e.f. December 4, 2005, is just, fair and legal? If not, to what relief is he entitled?

2. The case of the petitioner is that it had entered into an agreement with Service Max Facility Management Pvt. Ltd. (hereinafter called "the contractor") and the respondent No. 2 workman was an employee of the said contractor and was being paid his salary by the contractor only; that the respondent No. 2 however indulged in acts of forgery and manipulation and owing where to the petitioner asked the contractor to withdraw the respondent No. 2 from deployment; that the respondent No. 2 raised a false and frivolous dispute claiming to be an employee of the petitioner instead of the contractor.

3. The petitioner contends that the appropriate government, without impleading the contractor as a necessary party has made the reference; that though the petitioner applied to the Industrial Adjudicator for impleadment of the said contractor but the said application was dismissed by the Industrial Adjudicator vide order dated November 16, 2009.

4. The Industrial Adjudicator has in the order dated November 16, 2009 held that the presence of the contractor is not necessary for adjudicating whether contract between the petitioner and the contractor was sham and bogus. It was further held that if it were to be held that the said contract is bogus then the question of validity of termination of the services of the respondent No. 2 and of the relief to be granted to the respondent No. 2 would arise; however if the contract was to be held to be not bogus and sham, the respondent No. 2 would not be entitled to any relief. It was held that presence of the contractor would only delay the adjudication. I may however notice that the petitioner has in the present petition not expressly impugned the said order of the Industrial Adjudicator.

5. Attention of the senior counsel for the petitioner has been invited to The Management of Sterling Hi-Tech Ltd. Vs. Govt. of NCT of Delhi and Another where on conspectus of the case law, the practice of challenging the reference and during which challenge the reference lies dormant, as has happened in the present case also, was deprecated and it was held that the challenge if any has to be against the final award only of the Industrial Adjudicator. The intra Court appeal being L.P.A. No. 614/2011 against the said judgment was dismissed on August 2, 2011. It was thus enquired from the counsel as to why the petition should not be dismissed with costs for occasioning the delay in adjudication of the reference.

6. The senior counsel for the petitioner refers to Workmen of Wings Wear Corporation v. Governor of Delhi (1984) Lab 1C 798 : LNIND 1983 Del 89. However the same was a case of challenge to the order of refusal to make the reference and thus has no application to the facts of the present case.

7. The senior counsel for the petitioner has next contended that without a prohibition notification under the Contract Labour (Regulation & Abolition) Act, 1970, an agreement of contract labour as entered into by the petitioner with the contractor cannot be challenged. He has further contended that contract labour has not been prohibited in the work for which the petitioner had entered into the

agreement with the contractor. Reliance is placed on Steel Authority of India Ltd. Vs. Union of India (UOI) and Others, Attention is also invited to Section 10(5) of the Industrial Disputes Act empowering the appropriate government to, at the time of making the reference or at any time thereafter but before the submission of the award, include in that reference any other establishment likely to be interested in or affected by the dispute.

8. I am unable to accept the contention of the senior counsel for the petitioner of the reference being in contravention of the Contract Labour (Regulation and Abolition) Act, 1970. The question is not of prohibition of contract labour but of the validity of the agreement which the petitioner claims to have entered into with the contractor. The Supreme Court in International Airport Authority of India Vs. International Air Cargo Workers' Union and Another, has held that a dispute as to whether a labour contract is genuine or sham is maintainable before the Industrial Adjudicator even when there is no notification for abolition of contract labour u/s 10(1) of the Contract Labour (Regulation & Abolition) Act and that the Industrial Adjudicator can declare that the so called contract labour are in fact direct employees of principal employer and contract is only a camouflage to deny employment benefits to employees. It was further held that only if the contract is found to be genuine and also there is no notification abolishing the contract labour u/s 10(1), that the principal employer cannot be directed to absorb the contract labour. In fact the Apex Court in SAIL relied upon by the senior counsel for the petitioner had also reiterated (the view earlier taken in Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., that an Industrial Adjudicator even in the absence of a notification u/s 10(1) of the Contract Labour (Regulation & Abolition) Act would have jurisdiction to determine whether the contract purportedly awarded by the management in favour of the contractor was really a camouflage or a sham one.

9. I am also unable to accept the contention that the reference without inclusion of the contractor can be said to be bad. The question to be adjudicated by the Industrial Adjudicator is as to whether the agreement between the petitioner and contractor is sham and bogus. The evidence to be led in this regard is in control and possession of the petitioner and if at all the petitioner feels that the presence of the contractor is necessary, the petitioner can always summon the contractor as its witness. Even otherwise, all the said questions as are being raised by the petitioner ought to be raised by the petitioner before the Industrial Adjudicator and if the petitioner remains aggrieved from the award of the Industrial Adjudicator, will have his remedy there against.

10. Faced with the aforesaid, the senior counsel for the petitioner has contended that the reference ought to have been as to whether the respondent No. 2 workman is the employee of the petitioner.

11. In my opinion, the reference as worded is to the same effect. If the Industrial Adjudicator finds the contract to be sham and bogus, the necessary corollary thereof would be of the respondent No. 2 being an employee of the petitioner

and then the question of the validity of termination of services and the relief if any to which the respondent No. 2 is entitled would be gone into. However if the petitioner succeeds in establishing that the contract is not sham and bogus, and in which case the necessary corollary would be of there being in existence no relationship of employer and employee between the petitioner and respondent No. 2 workman, the question of the petitioner being required to justify the termination of services of the respondent No. 2 would not arise. In my view, the reference does not suffer from any ambiguity and the present petition has been filed in the abuse of the process of this Court and to delay the adjudication of the reference.

12. I may also notice that the Supreme Court recently in Bhilwara Dugdh Utpadak Sahakari S. Ltd. Vs. Vinod Kumar Sharma Dead by L.Rs. and Others, has observed that the employers, in order to avoid their liability under various labour statutes are very often resorting to subterfuge by trying to show that their employees are, in fact, the employees of a contractor and it is high time that this subterfuge must come to an end and the Court cannot countenance such practices anymore. I have in the Management of Sterling Hi Tech Ltd. v. Govt. of NCT of Delhi (supra) imposed costs of " 1 lac on the employer for delaying the process of adjudication of the industrial dispute so as to send a message to the Bar to desist from such frivolous litigation. The petitioner herein also has succeeded in delaying the adjudication for nearly two years. In the circumstances, it is deemed expedient to impose costs on the petitioner herein also of " 30,000/- payable to the respondent No. 2 workman on the date next before the Industrial Adjudicator, The Industrial Adjudicator is also requested to adjudicate the dispute as expeditiously as possible.