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(2021) 06 CAL CK 0020

In the Calcutta High Court

Case No : Writ Petition No. 3692 Of 2020

Kartick Chandra Mahish & Ors. — APPELLANT

Vs

Union Of India & Ors. — RESPONDENT

Date of Decision : 11-06-2021

Acts Referred:
Constitution Of India, 1950 — Article 226
Contract Labour (Regulation And Abolition) Central Rules, 1971 — Rule 64
Contract Labour (Regulation And Abolition) Act, 1970 — Section 2(1)(b), 21, 21(4)
General Clauses Act, 1897 — Section 3(35)

Citation : (2021) 06 CAL CK 0020

Hon'ble Judges : Abhijit Gangopadhyay, J

Bench : Single Bench

Advocate : Arunava Ghosh, Dwaipayan Sengupta, Pranati Das, Biswadeb Roy Chowdhury

Final Decision : Allowed

Judgement

1. This writ application has been filed by 51 Contract Labours who worked under some Contractors being the respondent No. 8,9,10 and 11. These

petitioners are members of a union namely â??BSNL Nationalist Thika Workers' Congress? which has a Registration No. 25933. This trade union has

been arrayed as respondent No. 7. The 51 petitioners have moved this application after paying full court fees in respect of all of the petitioners.

2. The prayer of the writ petitioners is that they are working under the contractors for doing job as contract labourers in BSNL (i.e. Bharat Sanchar

Nigam Limited) for a long period of time but of late they have not been paid their salary/wages from April 2019.

3. The case made out by the petitioners is that the corporate office of respondent No. 2 (BSNL) did not release any fund to the local office and as

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such no fund could be transmitted to the contractors and their wages were not disbursed. Therefore, they have prayed that in terms of Section 21(4)

of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as the 1970 Act), the principal employer being the Bharat

Sanchar Nigam Limited (BSNL, in short) should pay the salary/wage of the contract labours as BSNL is the principal employer. The petitioners?

further case is that they do not come under the purview of the Industrial Disputes Act, 1947 and therefore for enforcing their right under the 1970 Act

as contract labours the writ petition is maintainable. The petitioners have also stated that for making payment to them the Regional Labour

Commissioner also issued letters to BSNL requesting payment to the contract labours in June 2019 and July 2019 (which has been annexed as

annexure P-4 of the writ application) and despite that no payment to them has been made by BSNL i.e. the principal employer.

4. This Court directed the Chief General Manager, Bharat Sanchar Nigam Limited (BSNL), Calcutta Telephones being the respondent No. 4 to file a

report in the form of an affidavit disclosing the reasons for such non payment. Pursuant to the direction of the Court such a report was filed in the

form of an affidavit which was affirmed on 23rd December, 2020.

5. Regarding maintainability of the writ application no objection has been raised by BSNL. On a reading of the said report it is found that it has not

been denied by BSNL that BSNL is the principal employer. It has also not been denied by BSNL that the salary/ wages of the petitioners were not

paid from April 2019 as has been alleged in paragraph 11 of the writ application. It has been disclosed in the said report that the respondent Nos. 9

and 10 i.e. the contractor?s under whom the petitioners work had not submitted invoice/bill for August 2019 onwards and the invoice for June 2019

onwards respectively.

Thus there is no denial of the fact as appears from the said report that salaries/ wages of the petitioners are due from April 2019 and that BSNL is the

principal employer within the meaning of the Section 21(4) of the 1970 Act.

6. Section 21(4) of the 1970 Act is as follows:

In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be

liable to make payment of wages in full or the unpaid balance due, as the case

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may be, to the contract labour employed by the contractor and recover

the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the

contractor"".

(Emphasis mine) Rule 64 of the Contract Labour (Regulation and Abolition) Central Rules, 1971 prescribes that no wage period shall exceed one

month.

7. Therefore, the prescribed period in Section 21(4) as quoted above is not more than a month. According to Section 3 (35) of the General Clauses

Act ""month"" means a month reckoned according to British Calendar. Therefore, according to this calendar the salary was required to be paid to the

labourers who worked under the principal employer as contractors? employees. Therefore, petitioners who were working under the contractors are

required to be paid as per the 1970 Act by the principal employer from April 2019 as has been mentioned in paragraph 11 of the writ application.

8. Learned advocate for the respondent BSNL has relied upon one judgment reported in (1989) 2 SCC 116 (Bareilly Development Authority -versus-

Ajai Pal Singh & Ors.). Relying upon this judgment the said respondent submitted that his client, i.e. the authority, has entered into ordinary contract

with private persons and the parties should be governed by the contract and aggrieved party cannot seek reliefs under Article 226 for the breach of

contract.

Such objection is not only wholly irresponsible but also has been taken for the sake of taking objection.

Here in this case it is not the contractor (with whom the authority being BSNL entered into a contract) who has come to Court claiming the

contractual amount. Here the petitioners are the contract labourers who are covered by section 21(4) of the above mentioned 1970 Act. The 1970 Act

was enacted with an object inter alia, for regulating the service conditions of contract labour where abolition is not possible. Payment of wages is

essentially a matter comes within the meaning of service conditions. The object and reason of the said 1970 Act has also taken care of the defaults in

the matter of wage payment and that is why a separate chapter being chapter VI intituled â??wages? has been framed by the Central Rules of 1971

under the above mentioned 1970 Act.

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It is to be noted that Section 21 is a matter under chapter V of the aforesaid 1970 Act which chapter is intituled as ""welfare and health of contract

labour"".

I do not know how the respondent authority can make such wholly untenable objection for continuation of the non payment of wages to the contract

labourers, being wholly oblivious of the definition of contract labour within the meaning of Section 2(1)(b) of the above mentioned Act of 1970. I have

no hesitation to observe that such submission is not only irresponsible, it is mischievous also.

9. Further the respondent BSNL has relied upon another unreported judgment dated 24.12.2019 passed in FMA 1 of 2020, (MAT 1485 of 2019) and

emphasised that the claim of the writ petitioners in the connected writ application is required to be proved.

(i) upon cogent evidence and

(ii) if demonstrated that BSNL was not entitled to withhold any payment on account of the bills raised by the writ petitioners.

While showing this judgment the respondent authority has clearly suppressed that the judgment was in an appeal which arose out of a writ application

being W.P. 6346 (W) of 2019 which was a writ application filed by a Contractor and not by or on behalf of the contract labourers. The respondent

authority has suppressed the origin of the appeal but it can easily be found out from the computerised system of this court, which I have done, against

which order of the writ court the appeal was preferred. I have found from the computerised system of this court that the above appeal, observations

whereof have been relied upon by the respondent, arose out of a writ application for payment of outstanding service bills submitted by a contractor.

From the order passed by the writ court in W.P. 6346 (W) of 2019 it is found that the writ petitioner (contractor) was a proprietorship concern who

claimed payment of outstanding service bills from BSNL. In such factual situation the above observations were made by the court. This court

seriously deprecates such unfair reference of an order passed in an appeal, observation wherein is not only inapplicable in the present case, but also

suppressed that the matter originated in the writ court by a proprietorship farm, a contractor, and not by the contract labourers. I hold this as an

unusual unfair practice on the part of the respondent BSNL and those two

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judgments have no value and applicability in the present controversy.

10. On the basis of the discussion made above I allow the writ application with a cost of Rs. 51,000 upon BSNL to be paid to the 51 petitioners @

1000/- per head individually by cheques within a period of 30 days from the delivery of this judgment.

11. The contract labourers have raised their claim which is a legal right as has been recognised and laid down in Section 21(4) of the above said 1970

Act and therefore, it cannot be urged that the contract labourers cannot claim their unpaid wages from the principal employer.

12. In such circumstances applying the applicable law i.e. the 1970 Act, I direct the principal employer being BSNL the respondent No. 2 and the

Chief General Manager, Bharat Sanchar Nigam Limited (BSNL), Calcutta Telephones, being the respondent No. 4 to clear the entire dues from April

2019 till date in respect of salaries/wages of the petitioners within a period of 60 days from the date of pronouncement of this judgment.

13. It goes without saying that the BSNL shall have the right to recover the amount that will be paid to the petitioners (except the costs imposed on it)

as laid down in Section 21(4) of the 1970 Act from the contractors under whom the petitioners worked.

14. Thus the writ application is allowed with the cost as has been indicated above.

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