(1997) 11 KAR CK 0049

In the Karnataka High Court

Case No : Writ Petition No''s. 20738 to 20775 of 1997 (L)

Manjunatha Rao K.V. and others APPELLANT

Vs

Karnataka Vidyuth Karkhane Ltd. and others RESPONDENT

Date of Decision : 28-11-1997

Acts Referred:

Constitution of India, 1950 — Article 226, 32
Contract Labour (Regulation and Abolition) Act, 1970 — Section 10, 10 (2)

Citation : (1998) ILR (Kar) 461

Hon'ble Judges : H.L. Dattu, J

Bench : Single Bench

Judgement

K.L. Dattu, J.—The petitioners are workmen and members of KAVIKA Contract Workers Union. The respondent is a company incorporated under the provisions of the Companies Act. The company is engaged in the manufacture and distribution of transformers of various capacities.

Their main customer is the State Electricity Board. To carry out the the repairs of failed transformers within the factory premises, the company has engaged the services of one Sri Ethiraj and Sri Siddaramaiah on contract basis. In turn, these contractors have engaged the services of the petitioners to carry out the work within the factory premises as contract labourers. The initial contract with the contractor was for a period of six months with effect from September 1, 1992, with an option for extension for a further period of six months with an interval of three months at the sole discretion of the respondent-company. Indicating several clauses including the above clause, the company had executed a valid contract with the contractor. This contract was extended from time to time and the latest is the one which extends the period of contract up to July 31, 1997, or till such time as the company makes alternate arrangements, whichever is earlier. During the subsistence of the contract, a meeting came to be held by the senior officers of the company in the executive directors chambers on July 24, 1996. The agenda of the meeting was with regard to increasing the repair work of transformers failed, within and beyond the guarantee period. In that meeting, it was noted that the number of transformers repaired by the contractor is inadequate compared to the number of transformers to be repaired. Taking note of the inability of the contractor to increase the output of repair work, the company decided to modify the system of repair of transformers on unit rate basis so that the management can handle the labour through their officials for supervision and co-ordination work. The minutes of this meeting is very relevant, since it throws some light on the arguments advanced by learned counsel for the parties. Therefore, the same is extracted and it reads as under :

"03. By considering the above aspects, it is decided to modify the contract as under :

3.1 To modify the terms and conditions of the contract on the same basis of cleaning and security contracts with effect from August 1, 1996, initially for a period of one year.

3.2 To supervise the activities of die repair area by the officials of marketing division.

3.3 The management can reduce/increase the strength depending upon, the requirement.

3.4 All other terms and conditions of the existing contract remains unaltered.

3.5 The rates to be payable to various categories of persons are as under :

Sl. Category Persons Min. Empl. Bonus Uniform Ser- Gross No. ory required pay- conbn. form vice PF/ PF/CSI CSI 01. Semi 40 1000 140 84 50 101 1375 skilled 02. Skilled 11 1200 168 100 50 82 1600 03. Highly 1 1400 196 116 50 88 1850 04. Supervisor- 1 2000 280 166 50 104 2600"

2. By virtue of the time limit prescribed under the contract, the same would come to an end - on July 31, 1997. The petitioners apprehending that their services may be terminated by the contractor and thereby render them jobless on an earlier occasion came before this Court in W.P. No. 8239-74 of 1997, primarily seeking for regularisation of their services against the sanctioned post or to any other post of equivalent cadre and further for a direction to the respondent company to grant them the regular pay scales with all allowances and monetary benefits. During the pendency of these petitions, learned counsel for petitioners had filed a memo to withdraw the petitions with liberty to the petitioners to approach the management first for absorption of their services against regular vacancy. Accordingly, this Court had disposed of the writ petitions by its order dated June 10, 1997.

3. The petitioners approached the management of the respondent-company by making a joint representation dated July 15, 1997, requesting them to regularise and absorb their services against the regular posts in the factory and extend them consequential benefits of such absorption by duly protecting their past services in the company. Simultaneously, the petitioners had also approached the

State Government requesting them to abolish contract labour system in the respondent-company under the Contract Labour (Regulation and Abolition) Act, 1970 ("the Act" for short), by invoking powers u/s 10 of the Contract Labour Act and further to direct the management of the company to absorb and regularise their services against the regular posts.

4. The management of the respondent-company by letter dated July 25, 1997, first rejected the request of the petitioners for absorption and regularisation of their services and thereafter, even before the State Government could consider and decide the request of the petitioners union for abolition of contract labour under the Act terminated the contract that was awarded to Sri Ethiraj and Sri Siddaramaiah, the main contractors, thereby preventing the State Government to exercise its powers u/s 10(2) of the Act and also preventing the State Government, to consider whether the job done by the contract labourers is incidental or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment and whether it is perennial in nature and whether it is of substantive duration having regard to the nature of industry, trade, business or manufacture and whether it is done ordinarily through regular workmen in the establishment and whether it is sufficient to employ considerable number of whole-time workmen.

5. In view of the abrupt termination of the contract with the main contractor who had been engaged on contract basis to do repair work of failed transformers, the petitioners who are now rendered jobless are before this Court to declare as void the letter dated July 25, 1997, of the management and further for a direction to the company to absorb and regularise the services of the petitioners against a regular post with all consequential benefits flowing from such regularisation and, lastly, for a direction to the State Government to consider the request of the petitioners-union for abolition of the contract labour system under the Act of 1970.

6. In support of the reliefs sought in these petitions, the petitioners'' learned counsel, Sri Leelakrishnan, urges that the petitioners are working continuously for the last 4 to 5 years doing the work of the respondent-company in its factory premises under the direct supervision and control of the managers of the company, even though they are engaged as contract labourers by the contractor who has been awarded contract by the company. Learned counsel in support of this contention heavily relies upon an office order dated July 25, 1997, wherein the respondent-company has exercised disciplinary control over some of these petitioners. The further case of the petitioners is that the nature of the petitioners job is identical with those performed by regular employees of the respondent-company and the company is paying wages to these petitioners by handling them through their officials. It is also stated that the respondent-company has extended benefits which are normally given to regular employees such as bonus, uniform, provident fund, E.S.I., overtime wages, service allowance on par with regular employees.

7. Learned counsel also submits that the petitioners through their union had already approached the State Government to invoke the provisions of Section 10 of the Act to abolish contract labour system, taking into consideration the nature of the work done by these petitioners in the respondent-company being continuous and perennial and not temporary or casual, and the company has provided continuous work to these petitioners for nearly five years and that there is substantial potential in the company to continue their services and also submits that the petitioners have great hope that the State Government may abolish the contract labour system in the respondent-company and a direct relationship of employer and employee may be created between the principal employer and the employee by removing the contractor and once that happens that in view of the law laid down by the Supreme Court in Air India Statutory Corporation, etc. Vs. United Labour Union and others [overruled], , the abolition of contract labour system ensures a right to the workmen for regularisation of their services as regular workmen of respondent-company and if in the meanwhile, the respondent-company were to terminate the services of the petitioners by terminating the so called contract of Sri Ethiraj, the valuable rights, of the petitioners would be taken away, rendering all the petitioners jobless and thereby driving the workmen to considerable hardship and suffering and, therefore, submits that the company; is not justified in attempting to terminate, the services of the petitioners on the expiry of July 31, 1997, when their claim for abolition of contract labour system and consequent absorption in the services of the respondent-company is pending before the State Government u/s 10 of the Act.

8. That apart, learned counsel would submit that the company in its every annual report is stating that the company intends to setup a separate repair bay to take up the repair of transformers which have failed, during and beyond guarantee period and the company has received adequate orders for supply of transformers from KEB and, therefore, there is no dearth of work and the company, in fact, requires the assistance of workmen and since the repair work is continuous and not confined to a particular period, learned counsel submits that the petitioners are entitled for the reliefs sought for in the writ petitions.

9. Per contra, Sri K. Lakshminarayana Rao, learned counsel for the respondents contends that there is no relationship of employer and employee between the company and the petitioners, and they were employed as contract labourers by the contractor and they were working under the contractor and that the company''s contract with Sri Ethiraj, would come to an end on July 31, 1997, and the company has taken a policy decision not to engage contract labour for during and after the guarantee period and the company has sufficient labour to carry out the repair work and further the petitioners are engaged by the contractor and as such, there is no privity of contract, and master and servant relationship between the petitioners and the respondent-company and, therefore, the petitioners have no legal right to claim regularisation of their services in the respondent-company. Learned counsel also asserts that the observations and

directions issued by the Supreme Court in Air India Statutory Corporation''s case, (supra), would not govern the facts of this case and, therefore, would not assist them in any manner whatsoever, since in the instant case, the State Government exercising its powers u/s 10(2) of the Act has not abolished the contract labour system that was prevailing in the respondent-company. By saying so, learned counsel resists the relief sought for by the petitioners.

10. Having noticed the rival contentions of learned counsel for the parties to the lis and before I proceed to decide the issues raised in these petitions, let me first notice the observations and directions issued by the Supreme Court in Air India Statutory Corporation''s case (supra). The fact in that case was, that the Corporation had engaged the members of the united labour union as contract labourers for sweeping, dusting, cleaning, etc. The Corporation had obtained a certificate of registration from the Regional Labour Commissioner under the Act. On the basis of the recommendation made by the Central Advisory Board, Central Government, has issued a notification u/s 10(1) of the Act, prohibiting employment of contract labour on and from December 9, 1976, and in that notification, it was made clear that this prohibition would not apply to outside cleaning and other maintenance operations of multistoried buildings, where such cleaning or maintenance cannot be carried out except with specialised experience. In spite of this notification, the Corporation did not abolish the contract labour system and failed to enforce the notification of the Central Government dated December 9, 1976. The members of the United Labour Union filed a petition before the Court for a direction to the Corporation to enforce the notification abolishing the contract labour system in the aforesaid services and father for a direction to absorb all the employees doing different work in the services of the Corporation with effect from the respective dates of their joining as contract labour in the Corporation with all consequential monetary and service benefits.

11. The petitions came to be allowed and directions as sought for, came to be issued against the corporation. Appeals filed against the judgment were also dismissed and thus, the matter went before the Supreme Court.

12. Before the Supreme Court, several issues came to be canvassed and one was with regard to what would be the consequence that would ensue on abolition of the contract labour system by issuing a notification u/s 10(1) of die Act by the appropriate Government. The Court after an indepth analysis of the provisions of the Act, and after taking into consideration the plight of workmen working under contract labour system, and taking into consideration the right to live honourably was pleased to direct the Corporation to absorb the services of the contract labour and was further pleased to, affirm the orders made by the Court from which the lis emanated. The Court was pleased to observe as under :

"When they were engaged as contract labourers and were continuously working in the establishments of the appellant to make their right to social and economic justice meaningful and effective, they are required to be continuously engaged as contract labour so long as the work is available in the establishment. When work is of perennial nature and on abolition of contract labour system, they are entitled, per force, to be absorbed on regular basis transposing their erstwhile contractual status into that of an employer-employee relationship so as to continue to eke out their livelihood by working under the employer and be entitled to receive salary prescribed to that post. Thereby, they became entitled to be absorbed without any hiatus with effect from the date of abolition. If any action is needed to be taken thereafter against the employee, it should be only in accordance with either the statutory rules or the Industrial Disputes Act, if applicable. In either event, the right to absorption assures to the workmen the right to livelihood as economic empowerment, right to social justice and right to dignity of person which are the concomitants of social democracy ......

The object and purpose of the Act are two-fold. As long as the work in an industry is not perennial, the Act regulates the conditions of the workmen employed through the contractor registered under the Act.

On abolition of the contract labour, the principal employer is left with no right but duty to enforce the notification and absorb the workmen working in the establishment on contract basis transposing them as its regular employees with all consequential rights and duties attached to a post on which the workman working directly under the appellant was entitled or liable ....

Consequently, the workmen, namely, the members of the respondent union must be declared to be the employees with effect from the respective dates on which they were discharging their duties in the respective services of the appellant''s establishments either as sweeper, duster, cleaner, watchman, etc."

13. In the aforesaid judgment, the Court also noticed the observations made by a co-ordinate Bench in R. K. Panda''s case (1997 III LLJ 1202), and was pleased to observe as under atpp. 1147-1148 :

"In a writ petition filed under Article 32 of the Constitution of India, the petitioners, in R. K. Panda v. Steel Authority of India (supra), contended that they had been working in the Rourkela Plant of the Steel Authority of India for a period ranging between 10 and 20 years as contract labour. The employment was of perennial nature. The non-regularization defeated their right to a job. The change of contractors under the terms of the agreement will not have any effect on their continuing as a contract labour of the predecessor contractors. The respondent contended that due to modernisation of the industry, the contract labour are likely to be retrenched. They were prepared to allow the contract labour to retire on voluntary basis or to be absorbed for local employment. A Bench of three Judges of this Court had held that the contract labour were continuing in the employment of the respondent for the last 10 years, in spite of change of contractors, and hence they were directed to be absorbed as regular employees. On such absorption, their inter se seniority be determined, department or job wise, on the basis of continuous employment; regular wages will be payable only for the period sub-sequent to absorption and for the period prior thereto. Such of those contract labour in respect of whom the rates of wages have not been fixed, the minimum rate of wages would be payable to such workmen of the wages of the regular employees. The establishment was further directed to pay the wages. If the staff is found in excess of the requirement, the directions for regularisation would not stand in their way to retrench the workmen in accordance with law. If there arises any dispute as regards the identification of the contract labour to be absorbed, the Chief Labour Commissioner, Central Government, on evidence, would go into that question. The retrenched employees shall also be entitled to the benefit of the decision. The 10 years period mentioned by the Court would count to calculate retrenchment benefits. This ratio is an authority for several propositions. In spite of there being no report by the Advisory Board u/s 10(2) and no prohibition u/s 10(1), the Act was enforced and this Court directed to absorb them within the guidelines laid down in the judgment. This ratio also is an authority for the proposition that the jurisdiction of the Court under Article 32 is in pari materia with Article 226 which is much wider than Article 32 ''for any other purpose'' under which suitable directions are required to be given based on factual bark-ground. Therein the need to examine the correctness of Dena Nath and others Vs. National Fertilisers Ltd. and others, , did not arise nor is it a case of abolition of contract labour. So, its reference appears to be as a statement of laying the law in Dena Nath''s case."

14. It is pertinent to observe here, that in R. K. Panda''s case (supra), the petitioners were working as contract labourers in the steel plant which had engaged the services of a contractor for supply of labourers and for completion of work. They were working for periods ranging from 10 years to 20 years. The employment was of perennial nature. In spite of there being no report from the Advisory Board u/s 10(2) of the Act, and in spite of there being no prohibition u/s 10(1) of the Act by an appropriate Government, the Court was pleased to enforce the Act and was further pleased to direct the employer to absorb the services of contract labourers within the guide-lines laid down in the judgment and, lastly, the Court was pleased, to observe that the ratio decidendi in R. K. Panda''s case, (supra), is an authority for the proposition that this Court exercising its jurisdiction under Article 226 of the Constitution and can give suitable directions based on factual background, in each case, in spite of there being no report u/s 10(2) of the Act and in spite of there being no prohibition u/s 10(t) of the Act.

15. Having seen the observations made by the Supreme Court in Air India Statutory Corporation''s case (supra), let me now deal with the fact situation in the instant case. At this stage, I should definitely notice that the issue raised in these petitions do not require an elaborate discussion and a lengthy reasoning, in view of the dicta of the Supreme Court in Air India Statutory Corporation''s case (supra), and R. K. Panda''s case (supra). In the present case, the petitioners have asserted that they are working in the respondent-company under a

contractor for the last four to five years doing the job of repair of failed transformers it is also their case that their nature of work and responsibility is identical with those performed by regular employees of the factory. The work of these petitioners is practically controlled by the officials of the respondent-company. Even on some occasions, the management exercised disciplinary control over these petitioners. Further, the management has extended all the benefits that are normally extended to the regular employees. The repair of transformers by these petitioners is incidental and wholly necessary for the manufacture and the sales of the transformers that is being carried on in the industry. The repair of transformers seems to be of substantive duration for the reason as a manufacturer and trader, the establishment is obliged to repair the failed transformers during and after the guarantee period. The company is getting this repair of the transformers done by engaging the contractor from the last five years and it does not have its own repair bay in its factory premises or outside and the repair work is done by these contract labourers and not by regular workmen. The primary customer of the company is the Karnataka Electricity Board which purchases nearly 9,000 to 10,000 transformers from the respondent-company with a guarantee period of 18 months. It is stated in the additional affidavit by the petitioners that out of the above quantity of supplies made, nearly 15 per cent. of the transformers came back for repairs during the warranty period and even after the expiry of the warranty period. It is also stated that as many as 9000 transformers. are still lying in the KEB''s store yards at Rajajinagar and Anand Rao Circle, Bangalore, to be repaired by the respondent-company and nearly 750 transformers are lying in the factory premises to be repaired and returned to KEB. This assertion of the petitioners is feebly denied by respondent-company. I have no hesitation to accept the assertion of the petitioners for the simple reason, that the Chairman of the company in its annual report for the year 1995-1996 has stated that "KEB continued to patronise KAVIKA by placing adequate orders, which ensured full load of work to the company. As on March 31, 1996, the company had Rs. 1,452 lakhs worth of orders on hand and received additional orders from the KEB for supply of 2,620 numbers of transformers worth Rs - 815 lakhs till the end of August 1996. The company has also participated in tenders floated by the KEB and expects to book further orders for execution during the current year."

The Chairman also reports that "the company is taking adequate steps to strengthen existing production base in order to achieve overall increase in productivity. The company is also examining avenues for diversification. The company has proposed to set up a separate bay to take up the repair of transformers which have failed, during and beyond guarantee period."

That apart from the additional affidavit filed by the petitioners, which is not even denied by the respondents, it can safely be said that although more orders are received from KEB for supply of transformers, the company has not set up its own repair unit to repair the failed transformers during and after guarantee.

16. That apart from the additional affidavit filed by the petitioners which is not even denied by be said that although more orders are received from KEB for supply of transformers, the company has not set up its own repair unit to repair the failed transformers during and after guarantee period by employing workmen who are already working in the establishment, the company requires sufficient number of workmen on a whole time basis to complete the pending repair work and this process is continuous and not confined to a particular period. Thus, even in the absence of a notification as required u/s 10(2) of the Act, the issuance of which was successfully prevented by the management of the respondent-company, the facts of the instant case indicate that the repair work in the factory is perennial in nature and require whole time workmen for carrying out that work in the establishment and feeble assertion of the respondent-Company that the services of the petitioners and others have to be terminated on the expiry of July 31, 1997, for want of work cannot be accepted and it is nothing but travesty of truth.

17. Since the workmen were performing the duties of the post which is of perennial nature and since the service of the workmen is essential to the respondent-company to carry out its manufacturing and distributing activity of transformers and since the company has abolished the contract labour system the principal employer is responsible for taking the services of the workmen hitherto regulated by the contractor. Keeping in view the factual background that exists in the instant case and the law laid down by the Supreme Court, in my view, the petitions deserve to be allowed.

18. Accordingly, the writ petitions are allowed. Rule made absolute. A direction is issued to the respondent-Company to regularise the services of the petitioners as employees of the Corporation with effect from the date of abolition of the contract labour system by the respondent-company and also to grant all consequential benefits. In the facts and circumstances of the case, parties are directed to bear their own costs.