
(2000) 05 DEL CK 0046

In the Delhi High Court

Case No : CWP. No. 4312 of 1998

M/s. Hindustan Engineering and Gen. Mazdoor Union (Regd)
and Others

APPELLANT

Vs

U.O.I. and Others

RESPONDENT

Date of Decision : 26-05-2000

Acts Referred:

Citation : (2000) 5 AD 349 : (2001) 1 LLJ 27

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Mr. S.K. Bhaduri, for the Appellant; Mr. Dharmesh Mishra, for the Respondent

Judgement

A.K. Sikri, J.—Petitioner No.1 is the registered union and petitioners 2 to 23 claim to be its members. Petitioners 2 to 23 are contract workers engaged by respondent No.3, contractor. Their principle employer is respondent No.2 namely International Centre for Genetic Engineering and Bio-technology. In this petition, petitioners are seeking, interalia, relief to the effect that they be absorbed and regularised by respondent No.2 from the date of their employment as mentioned in Annexure-A to the writ petition. The main contention of the petitioners is that these petitioners are doing the job of sweeping, cleaning etc. in the establishment of respondent No.2 and are engaged on contract basis for this job although it is prohibited by notification dated 9.12.1976 issued by Central Government. Relying upon the judgment of Supreme Court in the case of Air India Statutory Corporation, etc. Vs. United Labour Union and others [overruled], , it is contended that they entitled to be absorbed as regular employees of Respondent No. 2

2. A preliminary objection is taken by respondent No.2 to the maintainability of the writ petition on the ground that respondent No.2 is not an "establishment" defined u/s 2(e) of the Contract Labour (Regulation & Abolition) Act (Hereinafter referred to as Act) and Central Government is not its "appropriate Government".

It is also submitted that respondent No.2 is not a "State" or "instrumentality" or "an agency of the State" within the meaning of Article 12 of the Constitution of India, and Therefore, the present writ petition is not maintainable.

3. Before advertng to this controversy, it would be appropriate to state the legal position in this respect.

4. u/s 10(2) of the Act, "appropriate Government" is empowered to issue notification prohibiting employment of contract labour in any activity. Central Government issued notification dated 9.12.1976 under the aforesaid provision prohibiting employment of contract labour on and from 1.3.1977 for sweeping, cleaning, dusting and watching of buildings owned or occupied by establishment in respect of which the appropriate Government under the Act is the Central Government. This notification reads as under:

"In exercise of the power conferred by sub-section (1) of section 10 of the Contract Labour (Regulation & Abolition) Act, 1970 (37 of 1970), the Central Government after consultation with the Central Advisory Contract Labour Board, hereby prohibits employment of contract labour on and from the 1st March, 1977, for sweeping, cleaning, dusting and watching of buildings owned or occupied by establishments in respect of which the appropriate Government under the said Act is Central Government.

Provided that this notification shall not apply to the outside cleaning and other maintenance operations of multi storeyed buildings where such cleaning or maintenance operations cannot be carried out except with specialised experience."

5. Section 2(a) defines "appropriate Government" and section 2(e) defines "establishment". These sections may be reproduced at this stage:

"2(a) : "appropriate Government" means,-

(i) in relation to an establishment in respect of which the appropriate Government under the Industrial Disputes Act, 1947 (14 of 1947), is the Central Government;

(ii) in relation to any other establishment, the Government of the State in which that other establishment is situated.

2(e) "establishment" means-

(i) any office or department of the Government or a local authority, or

(ii) any place where any industry, trade, business, manufacture or occupation is carried on;"

6. In order to apply the notification dated 9.12.1976 to respondent No.2, it has first to be ascertained as to whether the respondent No.2 is an "establishment" in respect of which the "appropriate Government" under the Act is Central Government. Let us examine the structure and constitution of respondent No.2

for this purpose. The respondent No.2 is a United Nations body and is a conglomerate of 61 number of countries which are engaged in the research of Genetic Engineering and Bio-technology. It was decided in the plenipotentiary meeting of the member countries convened in Madrid from 7th to 13th September 1983 and in Vienna from 3rd to 4th October, 1984 wherein it was decided to establish the International Centre for Genetic Engineering and Bio-engineering to have its seat at New Delhi, India and also in Trieste, Italy. The said decision was taken after an invitation from the Government of India to provide the said centre. Accordingly an agreement was entered into between the International Centre for Genetic Engineering and Bio-technology and the Government of India concerning the seat of the Centre at New Delhi. Respondents have filed the copy of agreement dated 24.2.1996 entered into between the respondent No.2 and the Government of India. Its Preamble reads as under:

"WHEREAS as the Ministerial-level Plenipotentiary Meetings on the Establishment of the International Centre for Genetic Engineering and Biotechnology, convened in Madrid from 7 to 13 September, 1983 and in Vienna from 3 to 4 April 1984, decided to establish the International Centre for Genetic Engineering and Biotechnology (hereinafter referred to as the "Centre") having its seat at New Delhi, India, and at Trieste, Italy;

WHEREAS the Government of India (hereinafter the "Government") has declared its readiness to provide the Centre with premises, furnishings and materials;

WHEREAS the Centre and the Government have declared their willingness to conclude an agreement to regulate questions arising as a result thereof."

7. It is clear from the aforesaid that respondent No. 2 has been established pursuant to the meetings of participating nations convened in Madrid and Vienna in September 1983 and April 1984 respectively and as it was decided in these meetings that respondent No.2 will have a seat at New Delhi and at Trieste, Italy. Government of India, one of the participating nations, entered into the aforesaid agreement to provide the centre with premises, furnishings and materials. However Government shall retain title to all these properties provided to respondent No. 2 (Section 3 of the agreement) and on termination of the operations of respondent No.2 in the territory of India respondent No. 2 has to restore to Indian Government in good conditions all these buildings, equipments etc. placed at the disposal of respondent No.2 (Section 5 of the agreement). In so far as incurring of expenses is concerned, same is to be borne by respondent No.2 which are in turn contributed by participating nations.

8. In fact as per Section 9 of the aforesaid agreement, the Indian Government is supposed to apply to Centre, the statutes of respondent No.2 and is to give privileges and immunities of the specialised agencies of United Nations. Accordingly the statutes of the ICgeb were prepared in consonance with the United Nations policies and the preamble of the statutes reads as under:

"PREAMBLE

THE STATE, PARTIES TO THE PRESENT STATUTES

Recognizing the need for development and applying peaceful uses of genetic engineering and biotechnology for the benefit of mankind.

Urging that the potential of genetic engineering and biotechnology should be utilized to contribute to solving the pressing problems of development, particularly in the developing countries.

Being aware of the need for international co-operation in this field, particularly in research, development and training.

Emphasizing the urgency of strengthening the scientific and technological capabilities of developing countries in this field.

Recognizing the important role that an International Centre would play in the application of genetic engineering and biotechnology for development, Bearing in mind that the High-level Meeting held on 13-17 December 1982 in Belgrade, Yugoslavia, recommended that an International Centre for Genetic Engineering and Biotechnology of high excellence be established soonest possible, and

Recognizing the initiative taken by the Secretariat of UNIDO for the promotion and the preparation of the establishment of such a Centre, HAVE AGREED as follows:

Article - I

Establishment and Seat of the Centre:

1. An International Centre for Genetic Engineering and Biotechnology (hereinafter referred to as "the Centre") is hereby established as an international organisation comprising a centre and a network of affiliated national, sub-regional and regional centres.
2. The Centre shall have its seat at New Delhi.

The said statutes were ratified by the Government of India.

9. That a Notification dated 12.04.1988 by the Ministry of External Affairs was published in the Gazette of India :EXTRA ORDINARY on 20.04.1988. Vide the said notification in pursuance of Article 13 of the above said Statutes, it was considered necessary to accord to the International Centre for Genetic Engineering and Biotechnology, its representatives, officials and experts privileges and Immunities in India similar to those contained in the schedule to the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947). Therefore in exercise of the powers conferred by Section 3 of the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947) the Central Government declared that the provisions set out in the schedule to the said Act shall apply mutatis mutandis to the ICGB subject to the modification stated therein.

10. As per the Protocol Division, Ministry of External Affairs all the officers/officials of the respondent No.2 have been granted a diplomatic status and hence have the immunity against any kind of legal process or prosecution. The said status has also been granted in pursuance of the United Nations (Privileges and Immunities) Act, 1947 and other Acts/conventions granting diplomatic immunity to the various international bodies as per the schedule annexed to the said Act. The financial status of the Centre is stated in Article 10 of the statutes which is as under:-

1. The financing of the Centre shall in general consist of:

- (a) Initial contributions for launching the centre;
- (b) Annual contributions by the Members preferably in convertible currency;
- (c) General and special voluntary contributions including gifts, bequests, subventions and funds in trust from Members, non-member states, the United Nations, its specialised agencies, the International Atomic Energy Agency, the United Nations Development Programme, inter-governmental organisations, foundations, institutions and private persons subject to the approval of the Board;
- (d) Any other sources, subject to the approval of the Board.

11. As per Article 13 of the statutes, respondent No.2 enjoys immunity from every form of legal process except in so far as in any particular case it has expressly waived its immunity.

12. On the basis of aforesaid provisions, learned counsel for respondent No.2 argued that Indian Government has no control, much less deep and pervasive control over respondent No.2 which is in fact a UN body and conglomerate of 61 member countries and by no stretch of imagination, it can be called as "State" or instrumentality and/or agency of State within the meaning of Article 12 of the Constitution of India.

13. However, learned counsel for the petitioners submitted that the writ petition against respondent No.2 is maintainable as per the provision in the aforesaid documents itself. In support of this contention, learned counsel for the petitioners advanced the following arguments:

14. Para 9 of Article 13 of the Statutes which contains the provisions imposing obligation upon respondent No.2 that it shall secure observance of National Laws. Thus, according to him, respondent No.2 was bound to secure observance of Indian Laws which included Contract Labour (Regulation & Abolition) Act. He also referred to Section 2 of Diplomatic Relation (Vienna Convention) Act 1972 as per which provisions set out in the scheduled to the Act of Vienna Convention on diplomatic relation, adopted by United Nation's Conference on diplomatic intercourse and Immunities and shall have force of law in India. He further submitted that Article 33 of the Schedule of the Act provides that social security provisions applicable to employees in State shall be observed by the diplomatic

agents in relation to Indian national employed by them. His further submission was that the diplomatic immunity provided to the Institute and foreigners employed therein was for limited privileges and immunities namely for the fulfillment of the objection and institutional functions enumerated in Articles 2 & 3 of the Statutes and also for exemption from Direct Tax laws to officers in relation to their official functions. The relief sought in the writ petition was neither barred by those privileges and immunities nor be affected, in any manner by those privileges and immunities. The writ petition and relief sought therein related to protection of rights of the petitioners arising out of Social Security Laws including fundamental right to life i.e., right to earn livelihood. It was also submitted that juridical status conferred upon the centre and enabling provisions in its favor to award contracts, to acquire and dispose of movable and immovable property and initiates legal proceedings vide section 10 of agreement and article 13 of the Statutes rather makes the centre subject to Indian Law and legal process in relation to these matter. In the writ petition contract awarded to respondent No. 3 is the subject matter of the controversy. Sections 84 to 87-B CPC deal with suit to be instituted as against Foreign State, Foreign Rulers, ambassadors and envoys etc. and the only restriction imposed by Code was seeking of consent of Central Government. Meaning thereby suit can be instituted as against Foreign States and Foreign Rulers, Ambassadors etc., on fulfillment of the condition of consent of the Central Government. Hence they are not immune from legal process. They are subject to jurisdiction of Civil Court in relation to suits falling within jurisdiction of Civil Courts. Condition of seeking consent of Central Government is not applicable to proceeding other than civil proceedings instituted under CPC and such proceedings can be instituted without any restrictions. In support of this contention Reference may be made to following judgments:-

Maharana Bhagwat Singhji Vs. State of Rajasthan and Others,

Madan Lal Jhunhunwalla Vs. H.H. the Nawab Sayed Reza Ali Khan Bahadur Mustaid Jung,

Nawab Usmanalikhan Vs. Sagarmal,

15. It was also submitted that since the proceedings in writ jurisdiction distinct from proceedings pertaining suit and same can be instituted without any prior consent of Central Government.

16. Even in case of applicability of Section 86 CPC in the matter of grant of consent for institution of suit as against Embassy of a Foreign State Supreme Court in the case of Harbhajan Singh Dhalla Vs. Union of India (UOI), held that dispute between Indian Citizen/National and such Embassy is to be resolved in accordance with law of this country (refer to para No.8-page 11 of the judgment/report) and that the Foreign State is liable to be sued in India (refer to para No.19 - para 14 of the judgment/report) in view of the nature of the dispute. Their lordship held that relationship between two countries would be better

served and the image of foreign state be better established if citizen grievance are judicially investigated. This would also be in consonance with human rights (para 14 - para 19 of the report). Further Supreme Court in the aforesaid case was pleased to observe that the interpretation of the provisions of CPC (provisions of section 86 imposing requirement of consent of Central Government) must be in consonance with the basis principles of the Indian Constitution. It was submitted that the writ petition seeks forestalling of violation of fundamental rights of the petitioners keeping in view that the respondent Nos. 2 & 3 are guilty of violation of Sections 7, 9 and 12 of the Contract Labour (Regulation & Abolition) Act. Respondent No.2 is not registered under Contract Labour (Regulation & Abolition) Act. Respondent No.3 was not licensed contractor. The violations of Contract Labour (Regulation & Abolition) Act are dealt in Secretary, H.S.E.B Vs. Suresh and Others etc. etc., - which judgment is considered by Bombay High Court in O.O.C.J. Writ Petition No.1027 of 1997 decided on 13.8.99 in Kachare Vahatuk Shramik Sangh Vs. Bombay Municipal Corporation (2000 LLR4) and also by Division Bench of Patna High Court in the case of Employers in Relation to Management of Sudamath Colliery of M/s. Bharat Cooking Coal Ltd. Vs. the Presiding Officer, Central Government, Industrial Tribunal (2000 LLR 100). The Supreme Court and both the High Courts are pleased to hold that contract system can be said to be genuine only if it is carried on in compliance with the provisions of 1970 Act. Anything contrary thereto lead to presumption that the purported contract system was merely a device and a sham and introduction of a middleman for the purpose of defeating the rights of workers (2000 LLR page 17 para 37 of the report). The Punjab and Haryana High Court in 1988 Lab.I Cases 730 para No.14 page 733 - Gujrat High Court 61 FLR 253259 to 261 - Madras High Court The Workmen of Best and Crompton Industries Ltd. Vs. The Management of Best and Crompton Engineering Ltd., Madras-55, and Kerala High Court 1986(2) SLR 454 have held that contract labour will be direct employee of the principal employer if there is non-compliance with any of the provisions of Sections 7, 9 and 12 of the Contract Labour (Regulation & Abolition) Act, 1970.

17. I have considered the submissions of both the parties. According to my considered view, the respondent No.2 is not authority within the meaning of Article 12 of the Constitution of India in view of the aforesaid structure and constitution of respondent No.2 and Therefore the writ petition is not maintainable against it.

18. There is no force in the arguments advanced by the petitioners. One has to bear in mind that respondent No.2 is a United Nations Organisation. It is a conglomerate of 61 members countries. By no stretch of imagination an organisation of United Nations which is an international body be treated as "instrumentality" and or an "agency" of the Government. As per the agreement entered between the respondent No.2 and the Govt. of India, respondent No.2 has its seat to New Delhi. As per Section 10 of the said agreement the respondent No.2 enjoys "immunity from every form of legal process", unless

expressly waived. Immunity has not been waived by respondent No.2. As per Section 9 of the said agreement the Government of India agreed to extend and apply to respondent No.2 the Convention on Privileges and Immunities of the Specialised Agencies of the United Nations. The statute of respondent No.2 has also been recognised. Article 13 of the Statute also provides for immunity from every form of legal process unless expressly waived. To co-operate with the host state in administration of justice is within the discretion of respondent No.2 as per Article 13 of its statute. That vide gazette notification the Government of India has made applicable the United Nations (Privileges and Immunities) Act, 1947 to respondent No.2. The above stated Act was legislated by Government of India to give effect to the Convention of the Privileges and Immunities of the United Nations. Section 3 of the United Nations (Privileges and Immunities) Act, 1947 as applicable provides that respondent No.2 shall also enjoy privileges and immunities as set out in the schedule i.e. in the Convention of Privileges and Immunities. The Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13th February 1946. The said Article 2 provides for "immunity from every form of legal process". The said convention has been made part of the aforesaid act as its schedule. In these circumstances, the judgment of the Supreme Court in the case of Col. H.H. Raja Sir Harindar Singh Vs. Commissioner of Income Tax, Punjab, Haryana, Jammu and Kashmir and Himachal Pradesh, cited by the counsel for respondent No. 2 becomes relevant. This is what Supreme Court observed in the aforesaid case.

"In International Law the head of State represents the state as such and not an individual representing his own rights. In that capacity he enjoys certain extra territorial privileges in other states which are friendly and in peace, known as the receiving state with the State he represents.....There are yet other immunities in relation to applicability of the Municipal Laws, the Immunity from which are either recognised by the common law and which courts will not enforce as in England or as are dealt with by those laws themselves by affording the necessary exemption. There are yet other which may be regulated by treaties or International covenants".

19. One may also refer to the judgment of Allahabad High Court in the case of Ashwani Kumar Srivastava Vs. Institution of Engineers (India), Calcutta and Another, wherein Institute of Engineers, which was a body incorporated under the "Royal Charter" 1935 was held not to be a state amenable to writ jurisdiction. This court also in the case of School run by American Embassy held the same not to be state under Article 12 of the Constitution. Vikramaditya Jain Vs. Union of India and Others, .

20. The immunity granted is all comprehensive and applicability of any national laws are subject to the waiver of the immunity by respondent No.2. As respondent No.2 has not waived the said immunity, the clause relating to observance of national laws will be of no help to the petitioners. If the contention

of the petitioner is accepted, the effect of that would be to make the provision relating to immunity as redundant. Once this is the position in law, other arguments advanced by the petitioners which are founded on the premise that respondent No. 2 is under an obligation to obey the laws of this country, also lose their force. The judgment of Supreme Court in the case of Harbhajan Singh Dhalla Vs. Union of India (UOI), also has no application. A perusal of the judgment would show that the Supreme Court was interpreting the provisions of Sections 86 & 87 of the CPC and it enumerated the principles/guidelines which should be kept in mind while granting or refusing to grant sanction to sue foreign States. This judgment obviously has no application on the facts of the present case where we are concerned the maintainability of the writ petition and have to examine whether body like respondent No. 2 is instrumentality and or agency of the State.

21. The Respondent No. 2 by no standards be called as "establishment" within the meaning of Section 2(e) of the Act nor it can be said that Central Government is the "appropriate Government" in respect of Respondent No. 2 under the Act. Therefore notification dated 9.12.1976 would not apply to respondent No.2.

22. In fact the whole premise in the writ petition is unfounded as can be seen from para 2 of the writ petition which reads as under:

"Para 2: That the management and control of the respondent No.2, infact raises with the respondent No.1 as the respondent No.1 through Ministry of Science and Technology not only provides funds for running of the respondent No.2 but also governs, controls and supervise the functions of respondent No.2 by making appointments of the Controlling, Administrative and Managerial Officers. The respondent No.2 has been set up and located by the respondent No.1 in the premises where another establishment namely National Institute of Immunology which is run and controlled by the Ministry of Science and Technology of respondent No.1, is situated and the said Ministry of respondent No.1 controls the functions of both the establishments. The respondent No.1 is the appropriate Government in respect of Respondent No.2.

23. The averments in the aforesaid para are contrary to the factual position as already noticed above. Once it is held that the provisions of Act are not applicable to respondent No.2 and it even enjoys diplomatic immunity, the allegation that respondent No.2 is violating the provisions of 7 or 12 of the Act are of no consequence at all.

24. Resultantly all these submissions made by the petitioner on the presumption that provisions of this act are applicable and all the judgments cited by the petitioner on that basis are of no avail of the petitioner.

In view of the aforesaid discussion, I am of the considered view that this writ petition is not maintainable against respondent No.2 and is accordingly dismissed. Rule stands discharged.

No order as to costs.