
(2003) 08 AP CK 0056

In the Andhra Pradesh High Court

Case No : Writ Petition No. 31871 of 1997

M.V. Chalapathirao and Others

APPELLANT

Vs

Managing Director, Bharat Heavy Plates and Vessels Limited
and Another

RESPONDENT

Date of Decision : 14-08-2003

Acts Referred:

Industrial Disputes Act, 1947 — Section 12(3)

Citation : (2003) 5 ALD 712 : (2003) 6 ALT 213 : (2004) 1 LLJ 9

Hon'ble Judges : G. Yethirajulu, J; Bilal Nazki, J

Bench : Division Bench

Advocate : A. Srinivasa Sarma, for the Appellant; P. Nageswara Sree, for the Respondent

Final Decision : Dismissed

Judgement

G. Yethirajulu, J

1. This writ petition is filed by a set of persons working in the Material Management Stores of Bharat Heavy Plates and Vessels Ltd., Visakhapatnam under Article 226 of the Constitution of India praying to issue an order, direction or a writ in the nature of mandamus directing the first respondent to regularize their services, pay them salaries under the scales of pay attached to those posts and to further direct the first respondent to regularize their services from the date from which the juniors' services were regularized and to pay the arrears of salary.

2. The 22nd petitioner in the affidavit filed in support of the petition pleaded that the petitioners are working in the first respondent organization since 1985 in the Material Handling Stores continuously without any break or interruption. They were taken into service by the first respondent in the year 1985 and since then they worked under several contractors, and presently under the second respondent They are discharging duties of perennial nature continuously for the

handling work at the Material Handling Department. The first respondent continued them in job irrespective of change of number of contractors. The first respondent entered into an agreement with the contract workers who participated in the strike in 1989 to attend to the work in the Material Handling Stores on contract basis and to discontinue the present temporary workers. The first respondent is deducting amounts towards Provident Fund. Since 1985 they are doing identical work of regular employees, therefore, they are entitled to the pay equal to the regular employees on the principle of equal pay for equal work. The first respondent is making hectic efforts to replace the petitioners under the guise of new contract system in order to avoid regularization of the services of the petitioners. The petitioners came to know that the first respondent was making preparations to terminate them from employment. If that is so, there is no scope for the petitioners to get employment in future, since they are more than 30 years old with sufficient qualifications and experience, therefore, it is essential to issue a direction to the first respondent to continue them in service irrespective of the change of contractors until their services are regularized. Hence the writ petition for the reliefs mentioned above.

3. The first respondent filed a counter-affidavit with the following averments in brief:

4. The first respondent is a company registered under the Companies Act, 1956 and is engaged in the manufacture and sale of various heavy engineering equipments in open market in competition. The petitioners have no right to invoke the writ jurisdiction of this Court and the writ petition is not maintainable under law. The petitioners are contract labour engaged by contractors who were entrusted with the contract work of the first respondent. If there is any grievance for the petitioners about their employment, they can agitate only against the contractor. The petitioners have an alternative remedy to agitate before the Labour Court or Trial Court to adjudicate the dispute. The petitioners are at liberty to seek relief under the provisions of Contract Labour (Regulation and Abolition) Act, 1970 ("the Act" for brevity) and the rules made therein. There is no privity of contract between the petitioners and the first respondent. The material handling work performed by the petitioners is purely unskilled and it involved loading, unloading of the material that are brought into the first respondent company and stock them in the godowns belonging to the first respondent. The work being done by the petitioners is intermittent in nature and is not the continuous one, therefore, the first respondent is justified in getting the work done through contract labour. The petitioners have no lien or right to seek the employment from the first respondent. The petitioners are not workmen of the first respondent and there is no master and servant relationship between them. The first respondent has separate procedure for recruitment to the permanent posts. The petitioners cannot demand to by-pass such procedure and try to get the employment through backdoor method. The strength of the employees of the first respondent are far excess than the actual requirement.

5. The respondent further averred that the contract labour union previously filed W.P. Nos. 18967 of 1987 and 10333 of 1989 claiming that their services should be regularized by the first respondent on permanent basis on the principle of equal pay for equal work. This High Court disposed of those writ petitions on 29-4-1994 directing the labour union to make a representation to the Central Government within one month from the date of the order and in the event of presentation of such representation the Central Government to dispose of the same within a period of four months. In pursuance of the said order, the Commissioner of Labour entrusted the matter to the Deputy Commissioner of Labour, Visakhapatnam for conciliation and in the conciliation meetings between the representatives of the first respondent and the union members of the contract labour there was an agreement u/s 12(3) of the Industrial Disputes Act on 26-5-1997 that the contract labour should form into a Co-operative Society under the Co-operative Societies Act and bid for works as and when there is a tender floated by the first respondent and the society will be given preference over contractors in giving the works if the other things are satisfied.

6. In pursuance of the said agreement, the contract workers formed into a society under the name and style "BHPV Contract Labour Society". In 1997 when the first respondent floated tenders for material handling, the labour society and seven other contractors responded to the tender. The apprehension of the petitioners that their services will be terminated by the contractor if the contract work is bagged by the society has no basis since the society continue to engage them, if they become members of the society. The petitioners are not entitled for any relief. The writ petition is therefore liable to be dismissed with costs.

7. The point for consideration is whether the writ petitioners are entitled for a direction in the form of a writ of mandamus to regularize their services with consequential benefits?

Point:

8. The petitioners are admittedly working as labourers under contractors at the Material Handling Stores. They contend that they are working under various contractors continuously from 1985. Despite the change of contractors from time to time, they are allowed to continue as labour under the contractors, therefore, they are entitled for regular service. The respondent company contended that there is no nexus with the writ petitioners and there is no master and servant relationship between them, therefore, the petitioners cannot be treated as the workmen under the employment of the first respondent. According to the petitioners, the first respondent is making preparations to terminate them from employment and in such a case there is no scope for them to get employment in future.

9. The respondent contended that the work being done by the petitioners is intermittent in nature and is not a continuous one, therefore, the first respondent is getting the work done through contract labour. The petitioners have no lien or

right to seek employment from the first respondent and if the petitioners have any grievance they have to agitate against the contractor, but not the first respondent.

10. It is an undisputed fact that the contract labour union filed two writ petitions praying to regularize the services of its members. Those writ petitions were disposed of by this Court on 29-4-1994 directing the labour union to make a representation to the Central Government within one month from the date of the order and the Central Government to dispose of the same within a period of four months. In pursuance of that, the representatives of the first respondent and the members of the contract labour entered into an agreement on 26-5-1997 and subsequently a Co-operative Society was formed under the Co-operative Societies Act to bid for the work as and when the first respondent floats the tenders with an understanding that preference will be given to the Co-operative Society of contract labour. The material papers disclose that there was a Memorandum of Settlement u/s 12(3) of the Industrial Disputes Act, 1947 between the representatives of the first respondent and the contract labour. The first respondent has separate rules and regulations for alteration of service contracts in the said company. The first respondent at the time of calling for the tenders is also circulating a copy of the rules and regulations to make the contractors to fulfill the terms and conditions mentioned therein. The petitioners did not file any documents to prove whether there was any nexus between them and the first respondent. In the light of the above facts and circumstances we wish to refer to certain decisions of the Supreme Court cited by both parties.

11. In *Workmen of The Food Corporation of India Vs. Food Corporation of India*, , the Supreme Court held that workmen employed by contractor cannot be the workmen of third party who engages contractor for completion of certain work.

12. In *Gujarat Electricity Board, Thermal Power Station, Ukai Vs. Hind Mazdoor Sabha and Others*, , the Supreme Court held that the workmen who were working on contract basis shall have to establish that the contract labour system was only a sham and camouflage to deny their legitimate rights to get absorption as regular workmen.

13. In *R.K. Panda and Others Vs. Steel Authority of India and Others*, , the Supreme Court in a writ petition filed by the labour union seeking direction to the employer to implement the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 and the agreement between the union and the employer, held that the writ petition cannot be maintained by the labour union and it is at liberty to pursue the remedy under the Industrial Disputes Act.

14. A writ petition covered by the above decision has been filed on behalf of the petitioners alleging that they had been employed by the respondent-Steel Authority of India through various contractors at its Rourkela Plant, but they are doing jobs which are perennial in nature and identical to the jobs which are being done by the regular employees of the respondent, as such they are entitled to

the same pay which is being paid to the regular employees of the respondent and are entitled to be treated as regular employees of the respondent. It is alleged that the respondent in order to frustrate the claims of the petitioners and other labourers similarly situated to be treated as the regular employees of the respondent, designated them as contract labourers. It has been asserted that the petitioners had been working for the respondent for the last 10 to 20 years under different contractors. The contractors used to be changed, but, while awarding the contract one of the terms incorporated in the agreement used to be the incoming contractors shall employ the workers of the outgoing contractors, subject to the requirement of the job.

15. In the above factual background, the Supreme Court observed that with the industrial growth, the relation between the employer and the employees has taken a new turn. At one time the establishment being the employer all persons working therein were the employees of such employer. But slowly the employers, including the Central and State Governments, started entrusting many of the jobs to the contractors. Contractors in their turn employed workers, who had no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manner, including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith. The Supreme Court further observed that of late a trend amongst the contract labourers is discernible that after having worked for some years, they make a claim that they should be absorbed by the principal employer and be treated as the employees of the principal employer especially when the principal employer is the Central Government or the State Government or any authority which can be held to be State within the meaning of Article 12 of the Constitution, although no right flows from the provisions of the Act for the contract labourers to be absorbed or to become the employees of the principal employer.

16. In Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., , a question arose before the Supreme Court as to whether the automatic absorption of contract labour working in the establishment of the principal employer as regular employees follows on issuance of a valid notification u/s 10(1) of the Contract Labour (Regulation and Abolition) Act, 1970, prohibiting the contract labour under the establishment concerned. By taking into consideration the arguments of the parties, the Supreme Court framed the following issues - (1) Whether the concept of automatic absorption of contract labour in the establishment of the principal employer on issuance of the abolition notification is implied in Section 10 of the Act and (2) whether on a contractor engaging contract labour in connection with the work entrusted to him by principal employer the relationship of master and servant between him and the contract labour emerges. The Supreme Court while answering the above issues observed as follows:

By definition the term "contract labour" is a species of workman. Where a workman is hired in or in connection with the work of an establishment by the principal employer through a contractor, he merely acts as an agent so there will be master-and-servant relationship between the principal employer and the workman. But where a workman is hired in or in connection with the work of an establishment by a contractor, either because he has undertaken to produce a given result for the establishment or because he supplies workmen for any work of the establishment, a question might arise whether the contractor is a mere camouflage, if the answer is in the affirmative, the workman will be in fact an employee of the principal employer; but if the answer is in the negative, the workman will be a contract labour. (Para 71)

17. The Supreme Court at paragraphs 89 and 125 of the judgment further observed as follows:

Therefore, it is not possible to perceive in Section 10 any implicit requirement of automatic absorption of contract labour by the principal employer in the establishment concerned on issuance of notification by the appropriate Government u/s 10(1) prohibiting employment of contract labour in a given establishment. Consequently the principal employer cannot be required to order absorption of the contract labour working in the establishment concerned.

18. The Supreme Court on an exhaustive consideration of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970, held that neither they contemplate creation of direct relationship of master-and-servant between the principal employer and the contract labour nor can such relationship be employed from the provisions of the Act on issuing notification u/s 10(1) of the Act, a fortiori muchless can such a relationship be found to exist from the Rules and the forms made thereunder. The Supreme Court further held as follows:

On issuance of prohibition notification u/s 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the Industrial Tribunal/Court will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned subject to the conditions as may be specified by it for that purpose in the light of the following para herein. (Paras 125(5) and 126)

If the contract is found to be genuine and prohibition notification u/s 10(1) of the CLRA Act in respect of the establishment concerned has been issued by the

appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications. [Para 125 (6)]

19. The Supreme Court further observed that the following consequences follow on issuing of a notification u/s 10(1) of the CLRA Act:

(1) contract labour working in the establishment concerned at the time of issue of notification will cease to function;

(2) the contract of principal employer with the contractor in regard to the contract labour comes to an end;

(3) no contract labour can be employed by the principal employer in any process, operation or other work in the establishment to which the notification relates at any time thereafter;

(4) the contract labour is not rendered unemployed but continues in the employment of the contractor as the notification does not sever the relationship of master and servant between the contractor and the contract labour;

(5) the contractor can utilize the services of the contract labour in any other establishment in respect of which no notification u/s 10(1) has been issued where all the benefits under the CLRA Act which were being enjoyed by it, will be available.

(6) if a contractor intends to retrench his contract labour, he can do so only in conformity with the provisions of the ID Act. (Para 68)

20. In *Municipal Corporation of Greater Bombay Vs. K.V. Shramik Sangh and Others*, the Supreme Court against the order of the Bombay High Court that the contract labour employed in Solid Waste Management Department of Bombay Municipal Corporation should not fall within the purview of the Contract Labour (Regulation and Abolition) Act, 1970, but should be absorbed as direct employees of the Corporation, held that the order of the High Court is unsustainable and the remedy for contract labour can be had only in terms of the observations in paragraph No. 125 of the *National Union Waterfront Workers* (supra).

21. The facts covered by the case in *K.V. Shramik Sangh* (supra) are as follows:

22. The contract labour union was a trade union. It claimed to represent 2000 workmen doing the work of lifting, transporting and dumping of debris, garbage etc., at various dumping grounds of Mumbai Municipal Corporation as contract

labour. The union filed writ petition before the High Court for directing the State, the Municipal Corporation and others to abolish contract labour system in the Solid Waste Management Department and for regularization of services of all the workmen concerned and to absorb them as regular and permanent workmen. The union emphasized that the work carried out by the contract labour was perennial in nature and was being done through contract labour system complying with the provisions of the Act. The workmen concerned were in law and fact the employees of the Corporation. The Municipal Corporation contended that the writ petition involved questions of fact and was not maintainable under Article 226 of the Constitution of India. The Corporation further contended that at the request of the owners of the trade premises the Corporation accepted separate tenders from contractors and entrusted the work to them. The Supreme Court while allowing the appeal preferred by the Municipal Corporation held that the remedy, if any, available to the contract labour can be had only in terms of para 125 of *National Union Waterfront Workers* (supra).

23. In *Bharat Heavy Electrical Ltd. v. U.P. and Ors.*, AIR 2003 SCW 3469, the gardeners engaged through the contractor were looking after the lawns inside the factory premises, campus and residential colony of the company. Their attendance was being recorded by another employee of the company. The Supreme Court while refusing to interfere with the concurrent finding of the Labour Court and the High Court that the gardeners were under the direct control and supervision of the company and were employees of the company held that the work of the gardener was not integral part of the industry of the company, therefore, it does not make them nonetheless employees of the company when they were employed with company to work in its premises and ultimately held that the determination of services of gardeners in violation of Section 6(n) makes the company liable to pay compensation to those gardeners and re-employ them. The Supreme Court gave the above judgment by taking into consideration the circumstances like non-filing of attendance register by the company.

24. The BHPV Contract Labour Union made a representation to the Commissioner of Labour, Andhra Pradesh, Hyderabad in 1997 demanding equal pay for equal work for the contract workers claiming that they worked and performed semi-skilled and skilled jobs in the first respondent-firm. They further stated that nearly 400 workmen were engaged in different trades and jobs on daily wages and they were doing the jobs similar to that of permanent workers during the period of their engagement. The management of the first respondent-firm contradicted the claim of the contract labour union stating that the jobs of unskilled nature were sub-contracted to the contractors on job-work order basis and the qualifications and training profile of permanent workers were far superior to the qualifications and training and experience possessed by the labour engaged by the contractors to carry out the contracted jobs and that the management ensured as principal employer payment of statutory wages by the contractors to their workmen. In the year 1989 the labour engaged by the

contractors went on strike and the management made alternative arrangements and they were making all efforts to get permanent employment to its members with attendant benefits. They simultaneously filed writs in the High Court for equal wages to the contract labour engaged during the year 1983-89 on par with regular workmen. While disposing of the case, the High Court ordered that the aggrieved petitioners who made an application to the State Government u/s 10 of the Act seeking relief within the ambit of the said statutory provision that the State Government shall entertain the said representation and consider the same with regard to the pleas raised by the aggrieved petitioner through a representation within one month from the date of the order and the State Government to dispose of the said representation within four (4) months of the presentation of the representation.

25. Following the application made by the union, the Commissioner of Labour, A.P., Hyderabad had lengthy discussions with both parties to sort out the issue within the ambit of the High Court's pronouncement and made a reference to the Deputy Commissioner of Labour, Visakhapatnam to send a detailed report in the matter regarding the claim made by the union for re-engagement of contract labour, to spell out the decision of the authority under the Act and Rules and to inform whether or not the payments are to be made to them on par with regular employees. The Deputy Commissioner of Labour made a detailed enquiry and sent a detailed report to the Commissioner of Labour. After perusal of the report, the Commissioner suggested that the Deputy Commissioner of Labour, Visakhapatnam shall convene joint meetings between the parties and explore the possibility of amicable settlement.

26. In a series of meetings, both parties shared their views and came to an agreement with the following terms and conditions-

(1) the union will have to register a labour contract society under the Societies Act to bid for works with contract labour engagements in the following sections and areas of BHPV i.e., Material handling, Upkeep Maintenance, Sand Blasting, Grinding and Painting, Civil Maintenance, Electrical Maintenance etc.,

(2) the society as contractor has to secure its members the minimum notified wages and all other legal benefits and administrative commission;

(3) the society has to enlist itself as a contractor with BHPV and bid for works as they come up from time to time. Other things being equal, the society will be given preference

27. With the above terms and conditions the dispute was amicably resolved and the agreement u/s 12(3) of the Industrial Disputes Act, 1947 was signed by both parties on 26-5-1997.

28. In the light of the above legal position and in the light of the terms and conditions of the agreement entered by both parties u/s 12(3) of the Industrial Disputes Act, 1947 dated 26-5-1997 and in pursuance of the formation of a

Cooperative Society of the contract labours and in view of the management undertaking to give preference to the said Co-operative Society in entrusting the contract works, we hold that the petitioners are not entitled for a writ of mandamus directing the first respondent to regularize their services on par with regular employees with consequential benefits. The writ petition is accordingly dismissed. Each party to bear its own costs.