

(2004) 01 CAL CK 0005

In the Calcutta High Court

Case No : Writ Petition No. 8288 (W) of 2001

North Calcutta Co-operative Labour Contract and
Construction Society Ltd. and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-01-2004

Acts Referred:

Constitution of India, 1950 — Article 32

Contract Labour (Regulation and Abolition) Act, 1970 — Section 10(1)

Citation : (2005) 1 CALLT 608

Hon'ble Judges : Arun Kumar Mitra, J

Bench : Single Bench

Advocate : Ajit Kumar Panja and B.M. Goswami, for the Appellant; L.K. Chatterjee and Uttam Mqjumdar, for the Respondent

Judgement

A. K. Mitra, J.—This writ petition has got a chequered history. The petitioner No. 1 is a labour contract and .construction co-operative society. The member of the petitioner's Society are of contractor's labour and they are engaged in different kinds of Job in different places under Sealdah Division Eastern Railway and under the overall administrative control and management of Senior DME(Power). The respondent No. 6 herein since 1970 to 1981.

2. Initially, a tender was called from the railway administration Sealdah from the contractors for supply of labour for different kinds of job under the said Sealdah Division and after the acceptance of the Tender the LOCO-Foreman of Chiptur Yard directed the contractor to submit the list of labourers and it was submitted and the list has been made annexure "A" to the writ petition. The claimants herein are said labourers as mentioned in annexure "A" to the writ petition. According to the petitioner the labourers were given "token" as an identity in the name of contractor by the Loco-foreman Chitpur Yard. More than nineteen years the petitioners' labourers have been worked since 1970.

3. Since the services of the petitioner's labourers (hereinafter terms as "said

labourers") were not regularised they moved a writ petition being W.P. No. 14793 (W) of 1988 praying for absorption under Sealdah Division as Group "D" employees considering their length of service as contractor's labourers. The said writ petition came up for hearing before Hon"ble Justice Altamas Kabir and on 10.09.1998 His Lordship disposed of the writ petition with the following order:-

"Having considered the submission made on behalf of the respective parties and the two decisions of the Hon"ble Supreme Court referred to and relied upon by Mr. Panja, I dispose of this writ application with a direction upon the petitioner No. 1 to submit a list of candidates who claimed to be eligible for absorption in keeping with the guidelines in the two cases before the Hon"ble Supreme Court within two weeks from date. If such a list is submitted the Railway authorities shall take steps to scrutiny the said list for the purpose of ascertaining the eligibility of the persons concerned to be considered for absorption in the vacancies, said to have been declared in Group "D" posts under the respondents and upon such scrutiny, the respondents shall consider and dispose of the claims of the said candidates if covered by the guidelines as formulated by the Hon"ble Supreme Court and in the two above mentioned cases within three months from the date of submission of the list of candidates as indicated hereinabove". The said judgment and Order passed by the Hon"ble Justice Altamas Kabir had been made annexure "B" to the writ petition."

4. Apepal was preferred by the respondent authorities and the said appeal being MAT No. 518 of 1999 was dismissed by Hon"ble Justice A. K. Ganguly and Hon"ble Justice Pratap Kumar Ray on 19.12.2000.

5. According to the petitioners as per the direction of the Hon"ble Justice Kabir, the petitioner No. 1 submitted a list of contractor's labourers along with the particulars in detail for the purpose of proving their eligibility.

6. As per the direction passed by the Hon"ble Justice Kabir the respondent authorities appointed a screening committee for scrutinising the list of said labourers which was submitted by the petitioner No. 1 and after scrutiny of the same the said screening committee rejected the claims of said labourers on the ground that the same was not tallying with the list kept with the Railway administration. Copy of the said report of the screening committee along with the rejection Order dated 4.01.2001 which was communicated to the petitioner has been annexured as annexure "D" to the writ petition.

7. According to the petitioner screening committee did not at all scrutiny the list of said labourers as submitted by the petitioner No. 1 along with their all members to prove their identity as contractor's labourers and without considering the same the said screening committee rejected the claim of the said contractors' labourers on the plea of non-production of the records of workers as alleged by the petitioner. The screening committee while rejecting the claim of the petitioner did not consider the judgment delivered by Hon"ble Justice Kabir. It would appear from the rejection Order that the screening committee did not

also consider the Hon''ble Apex Court judgment relied on or referred to in the judgment of Hon''ble Justice Kabir. The petitioners herein challenged the said rejection order/report dated 4.1.2001 of this screening committee.

8. According to the petitioners the rejection Order is illegal, mala fide, arbitrary and has been made in violation of the Order passed, by Hon''ble Justice Kabir. When the petitioners moved the writ petition before Hon''ble Justice Kabir, in the writ petition they annexed two Judgments delivered by the Hon''ble Apex Court which were referred to by Hon''ble Justice Kabir In the judgment. The first judgment of the Hon''ble Apex Court which has been relied upon is a Judgment delivered in writ petition Nos. 507 of 1992, 115 of 1992, 82 of 1992 & 1836 of 1992 and all these writ petitions were moved under Article 32 of the Constitution of India under Cause Title "National Federation of Railway Porters v. Union of India and Ors. The Hon''ble Apex Court allowed all the above writ petitions and observed that the writ petitioners who are denied jobs as the railway parcel-porters as contractors" labourers should be absorbed permanently as regular railway parcel/porters of those stations. The members to be so appointed being limited to the quantum of work which may become available to them of perennial in nature. The Hon''ble Apex Court in that judgment also observed that the units of Railway Administration may absorb in all permanent posts only such of those railway a porters petitioners working in the concerned railway stations as contract labours who have not completed the superannuation age of 58 years. The Hon''ble Apex Court further observed that when the petitioners in the writ petitions or any of them are appointed as railway parcel/porters on permanent basis, they shall be entitled to get salaries from the date of their absorption in the minimum scale of pay or wages and other service benefits which the regularly appointed railway parcel/porters are already getting.

9. Another judgment which was annexed to the earlier writ petition and referred to by Hon''ble Justice Kabir is the Apex Court judgment delivered in civil appeal No. 1358 of 1986 (Biswanath Saha and Ors. v. Union of India and Ors.). In this judgment the Hon''ble Apex Court directed the railway authorities to absorb the labourers employed by the contractors as and when any vacancy arises and the turn of such labourers come,

10. According to the petitioners, these two judgments have not been considered when this screening committee considered their claims and/or rejected their claims. The learned counsel for the petitioner Mr. Panjan submits that the respondent authorities cannot go beyond the scope and purview of the Order passed by Hon''ble Justice Kabir and they cannot decide the matter in their own way. The learned counsel submitted that the said labourers have been performing their jobs for a long period and the jobs are perennial in nature. The railway authorities required the jobs to be done by somebody which the petitioners" labourers are performing, but the Railway authorities in a mala fide manner rejected the claims of these labourers. According to Mr. Panja, the petitioners submitted the names of labourers, the period of their working, their

identity cards, their address and it is not known what more document is required or was required by the screening committee constituted by the Railway authorities to identify the petitioner or to consider their claims. Mr. Panja submitted that the plea of identification or the plea of non-submission of documents for verifications of the claims is a vague plea not to consider the claims of the petitioner. In pursuance of the direction passed by the Hon''ble justice Kabir the list of candidates/ labourers were given duly along with the other details and the rejection Order does not specify where lies the contradiction or for want of which document the Railway authorities could not consider.

11. Mr. Panja submitted that the impugned Order rejecting the claim of the petitioner and/or report of the screening committee on the face of the documents itself establish non-application of mind. Hon''ble Justice Kabir by judgment and Order dated 10.09.1998 clearly directed the petitioner No. 1 to submit a list of candidates who claim to be eligible for absorption in keeping with the guide-lines in the two cases before the Hon''ble Supreme Court within three months from the date of submission of the list of candidates. The screening committee which was formed in terms of Hon''ble Justice Kabir's Order dated 10.09.1998 submitted it's report on 05.11.1999 that is after a year or more. The screening committee observed that the challenge in the said petition relates to appointment of Gangman as Group "D" which is under the engineering department, whereas the petitioners admittedly all do work of coal washery. Nextly the screening committee admitted that in any case, the contractor's labours were also eligible for consideration provided they are having required age, educational qualification etc. and were sponsored by the concerned employment exchange within the jurisdiction of Sealdah Division.

12. The screening committee thereafter acting as appellate body of the Hon''ble High Court's Order decided that these two judgments of the Hon''ble Apex Court are not applicable to the petitioners. Lastly, the screening committee rejected the prayer on the ground that list which have been submitted by the writ petitioners are voluminous. The screening committee also took a ground that the lists containing, name, education, age, address are not sufficient enough for the purpose of screening and accordingly they are requested to submit some documentary evidence specified in a letter dated 25.06.1996. The screening committee lastly took a ground that the list attached with the writ petition is not tallying with that of the list kept with the railway administrator. The screening committee therefore did not find any justification to recommend their names for engagement of Group "D" labours.

13. Mr. Panja submitted that the screening committee was not given power to authority by the Order of Hon''ble Justice Kabir to qualify the judgment of the Hon''ble Apex Court. Mr. Panja further submitted that the screening committee did not at all mention as to what are the documents required more to identify the labourers for their absorption. In this regard report is absolutely vague inasmuch as names, age, address qualifications, year of working experience all were given,

and these documents were before the screening committee but it is not known for want of which document the screening committee could not tally the lists submitted with the records of the railway. Mr. Panja submitted that in fact the screening committee did not apply its mind at all and rejected the claim of the labourers in a biased manner.

14. Appearing on behalf of the responding authority Mr. L. K. Chatterjee, learned advocate submitted that after the judgment delivered by the Hon'ble Apex Court reported in *Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc.*, there is no scope for absorption of contractors labour as such. Mr. Chatterjee submitted that firstly abolition of contractor's labour must be there then a scheme is to be formulated by the appropriate Government and then comes the question of consideration of the claims of the contractor's labourers.

15. Mr. Chatterjee submits that in view of this judgment there is no scope for consideration of the claim of the petitioners and since the judgment reported in *Air India Statutory Corporation, etc. Vs. United Labour Union and others [overruled]*, has been overruled by this judgment, presently there is no scope for absorption of the petitioner's labourers.

16. Heard the submissions made by the learned counsel for the respective parties considered their submissions and averments made in the writ petition as well as the affidavit-in-opposition and affidavit-in-reply.

17. This is a case where the absorption of the contractor's labourers are dependant on the Order passed by Hon'ble Justice Kabir. Already there is an Order subsisting and railway authorities were to consider the claim of the petitioner's labourers in terms of the Order passed by Hon'ble Justice Kabir and the respondent authorities cannot deviate from the said order. The screening committee constituted by the Central Government for the purpose of consideration in terms of the Order passed by Hon'ble Justice Kabir did not come to any conclusion and did not come to any reasoned decision. Once they said that these contractor's labourers are entitled to absorption but lastly they observed that particulars are not available and the particulars are not tallying with the particulars given by the petitioner's labourers. The finding of the screening committee constituted by the railway authorities ex-facie appears to be bad and the said impugned Order is the consequence of non-application of mind. The screening committee did not come to conclusion how they will be absorbed or how the scheme is to be prepared and simply rejected their claim. The screening committee even made clarification of the Order of the Hon'ble Apex Court acting without jurisdiction. The screening committee did not disclose as to what are the particulars more they required or what are the particulars which have been given by the petitioners which are allegedly insufficient and without showing any such reason only by saying that the particulars have not been given and the particulars are not tallying, the screening committee rejected the claim of the petitioners' contractor's labourers.

18. Mr. Chatterjee relied on the decision of Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., but the case of the petitioners' contractor's labourers are not to be considered in terms of these judgments but to be considered in terms of the judgment and Order and statutory circulars which were valid at that material point of time. In this context reference may be made to the judgments reported in 1998(9) SCC 323 (B. L. Gupta and Anr. v. MCD). In this judgment the Hon'ble Apex Court observed in the contest of claim for regularisation that when the statutory Rule have been framed in 1978 vacancy had to be filled up only according to the said Rule. The Rules of 1995 have been held to be prospective by the High Court and in the opinion of the Hon'ble Apex Court that was the correct conclusion. In these judgments the Hon'ble Apex Court placed reliance on the judgments reported in N.T. Bevin Katti, etc., Vs. Karnataka public Service Commission and others, , Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others, , 1988{Supp) SCC page 740 (P. Ganeshwar Rao v. State of A. P.) and A.A. Calton Vs. Director of Education and Another, .

19. Reliance may also be placed on the decision of the Hon'ble Apex Court reported in State of Rajasthan Vs. R. Dayal and Others, . In this judgment the Hon'ble Apex Court held "The post which felt vacant before the amendment of the rules would be governed by the original rules and not by amended rules. As a necessary corollary the vacancies that arose subsequent to the amendment of the rules are required to be filled up in accordance with law existing as on the date when the vacancies arose. Even a carried forward vacancy is required to be considered in accordance with law existing unless suitable relaxation is made by the Government." Therefore, in view of the aforementioned judgments of the Hon'ble Apex Court the railway authorities are to consider the claim of the petitioners in terms of the judgment and Order passed by Hon'ble Justice Kabir and in terms of the judgments and orders or the rules prevalent at that point of time. Mr. Chatterjee cannot take advantage of the judgment delivered in the case of (Steel Authority of India Ltd.) (supra) inasmuch as this judgment is not retrospective and this has been delivered in 2001 whereas the case of the petitioners were to be considered as per the Rule prevalent in 1998.

20. That apart paragraph 125(6) of the judgment in the case of Steel Authority of India Ltd. (supra) does not speak also that the contractor's labourers who are working should be thrown out of job. Said sub-paragraph 6 of paragraph 125 is quoted hereinbelow :-

"(6) 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."

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21. In view of the above proposition also the petitioners are entitled to be considered favourably.

22. The judgment delivered by Hon"ble Justice Kabir read with the judgment referred to in His Lordship's judgment and statutory regulation prevalent in 1998 should be made applicable in the instant case. Now at this stage the respondent cannot take the plea that the claims of petitioners contractor's labourers should be considered in the light of Steel Authority of India Limited case. That apart the direction passed by Justice Kabir were not at all followed by the screening committee constituted by the appropriate Government.

22. The Hon"ble Apex Court in a recent judgment in the case of Railway Parcel and Goods Porters in the writ petitions (Civil No. 433 of 1998) (A. T. Railway Parcel and Goods Porters Union v. Union of India and Ors.) along with other several special writ petitions passed the following orders.

1. The Assistant Labour Commissioner, Lucknow is directed to again scrutinise all the records already placed by the petitioners and also the records to be placed by the respective contractors and the railway administration and discuss and deliberate with all parties and ultimately arrive at a conclusion in regard to the genuineness and authenticity of each and every claimant for regularisation. This exercise shall be done within six months from the date of receipt of this judgment.

2. Subject to the outcome of the fresh enquiry and the report to be submitted by the Assistant Labour Commissioner, the Railway Administration should absorb them permanently and regularise their services. The persons to be so appointed being limited to the quantum of work which may become available to them on a perennial basis. The employees so appointed on permanent basis shall be entitled to get from the dates of their absorption, the minimum scale of pay or wages and other service benefits which the regularly appointed railway parcel porters are already getting.

3. The Units of Railway Administration may absorb on permanent basis only such of those Railway Parcel Porters (petitioners in this batch) working in the respective railway stations concerned on contract labour who have not completed the age of superannuation.

4. The Units of Railway Administration are not required to absorb on permanent basis such of the contract labour Railway Parcel Porters who are not found medically fit/unsuitable for such employment.

5. The absorption of the eligible petitioners in the writ petitions on a "regular and permanent basis by the Railway Administration as Railway Parcel Porters does not disable the Railway Administration from utilizing their services for any other manual work of the Railway depending upon its needs.

6. In the matter of absorption of Railway Parcel Porters on contract labour as permanent and regular Railway Parcel Porters, the persons who have worked for longer periods as contract labour shall be preferred to those who have put in shorter period or work.

7. The report to be submitted by the Assistant Labour Commissioner should be made the basis in deciding the period of contract labour work done by them in the railway stations. The report shall be finalised and submitted after discussions and deliberations with the railway administration and the contractors and all the representatives of the writ petitioners or writ petitioners themselves.

8. While absorbing them as regular employees their inter se seniority shall be determined department/job-wise on the basis of their continues employment.

9. After absorption, the contract labourers will be governed exclusively by the terms and conditions prescribed by the railway administration for its own employees irrespective of any existing contract or agreement between the respondent and the contractors. No claim shall be made by the contractors against the railway administration for premature termination of their contracts in respect of the contract labourers.

10. The railway administration shall be at liberty to retrench the workmen so absorbed in accordance with law. This Order shall not be pleaded as a bar to such retrenchment.

11. This judgment does not relate to the persons who have already been absorbed.

23. It would be therefore ex facie clear that the Hon''ble Apex Court never wanted or desired or observed anywhere that the claims of the contractor's labourers should be rejected out-right, as would appear from the observation of the Hon''ble Apex Court in Steel Authority of India Ltd. case (supra) also the Hon''ble Apex Court in paragraph 125(6) of this decision did not desire rejection of the claim of the contractor's labourers out-right.

24. In view of the discussion made above, in my view, the impugned report

made by the screening committee and impugned Order passed by the respondent authority and communicated through letter dated 04.01.2001 being Annexure "D" to the writ petition are based on no reason arbitrary and have been passed in closed mind and, therefore, the impugned Order of rejection of the claim of the petitioners as well as the report of the screening committee are hereby set aside. The respondent authorities are directed to consider the claim of the petitioners' contractor's labourers afresh in the light of the judgment of delivered by the Hon'ble Justice Kabir and in the light of the observations made hereinabove. Such consideration is to be made by the respondent authorities within a period of four weeks from the date of communication of the order. If the respondent authorities required any further documents or details, the authority will ask for the same from the petitioners and the petitioners will supply the said documents to the respondent authorities within one week from the date of receipt of such communication. The writ petition is thus disposed of.

There will be no Order as to costs.

Urgent xerox certified copy, if applied for, will be supplied to the parties expeditiously, subject to compliance of all the required formalities.