
(2003) 12 MAD CK 0107

In the Madras High Court

Case No : Writ Petition No. 12297 of 1998

Petroleum Workers Union and Others

APPELLANT

Vs

Hindustan Petroleum Corporation Ltd. and Others

RESPONDENT

Date of Decision : 31-12-2003

Acts Referred:

Constitution of India, 1950 — Article 226

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

Industrial Disputes Act, 1947 — Section 12(3)

Citation : (2004) 3 LLJ 100

Hon'ble Judges : K.P. Sivasubramaniam, J

Bench : Single Bench

Advocate : T. Srinivasamurthy, for Row and Reddy for the first Petitioner and K.V. Ananthakrishnan, for Petitioners 2 to 9, for the Appellant; P. Ranganatha Reddy, for King and Partridge for respondents 1 and 2 and G. Jayachandran, Addl. Central Govt. Standing Counsel for 5th respondent, for the Respondent

Final Decision : Dismissed

Judgement

K.P. Sivasubramaniam, J.—The petitioners being the employees of Hindustan Petroleum Corporation Limited, have sought for the issue of a writ of mandamus to direct respondents 1 and 2, to absorb eight workmen as permanent workmen with effect from the date of completion of 480 days within a period of 24 calendar months and to pay all arrears of wages and attendant benefits.

2. The first petitioner is the Regional Secretary of the petitioner/Union. Of the eight workers whose names have been given, the first five persons are employed for House-keeping under the sixth respondent. The seventh person working under the 1st respondent is also doing House-keeping work at Chennai Regional Office. The sixth person joined in the year 1985 as casual-worker and he was asked to do the work on contract basis with effect from 1994. He was discharging the work of toilet cleaning and sweeping. The other person Irudayaraj was working from 1987 in ASF at Meenambakkam Regional Office of Hindustan Petroleum Corporation. He is also working on contract basis. He was

required to clean the toilet, sweeping the building etc. The Corporation is a Government of India undertaking and hence it is a State within the meaning of Article 12 of the Constitution of India. On 9.12.1976, the Government issued a notification prohibiting and abolishing contract labour system in respect of the nature of the work performed by the eight persons concerned in the writ petition. Unfortunately even in the face of prohibition, the respondent continued to extract work by means of contract labourers. Vadivelu was never under any contractor till 1994 and he was designated as a contractor though he was only an employee on contract.

3. The petitioner further submits that the aforesaid eight workmen have been working for several years directly under the control of the Petroleum Corporation and they have completed 480 days of continuous service within a period of 24 calendar months. As far as Vadivelu was concerned, the action of the respondent was totally contrary to the judgment of the Supreme Court in *Workmen of The Food Corporation of India Vs. Food Corporation of India*, . In any event the action of the Corporation amounted to unfair labour practice.

4. It is further submitted that a settlement u/s 12(3) of the Industrial Disputes Act was executed on 5.3.1991 and that in terms of Clause 29, the parties have agreed to take effective steps to minimise the contract labour system. Unfortunately, the Corporation continued the contract labour system even as on today. The petitioners therefore, ought to have been made permanent with effect from the date of initial appointment. In spite of petitioners' representation dated 15.4.1998, the petitioners have not been absorbed. Hence the writ petition.

5. In the counter filed by respondents 1 and 2, it is contended that the first respondent from time to time had awarded necessary contract to the eligible contractors after following necessary requirements for awarding contracts for carrying out certain activities. Respondents 6 and 7 are such contractors for whom necessary jobs were awarded. The scope of the job as per the contract was not awarded for sweeping, cleaning and dusting the premises of the respondents. The scope of the job includes opening of the office premises, up-keeping the movable properties of the Corporation like Crockery etc., serving lunch for both management and non-management employees, shifting and readjusting the furniture and cabins of the respondents. Thus the contract was never awarded for cleaning, sweeping and dusting as contended by the petitioners.

6. It is further contended that the first five of the eight persons are working under the sixth respondent, and they are being paid only by him and not by the first or second respondents. The contractors are paid lumpsum amount to do the various jobs. The contractors are not advised as to how many persons shall be engaged for carrying out their work. There is no employer and employee relationship or any privity of contract between the five of the eight persons as they were not hired or controlled by the respondents. The sixth and eighth respondents are not employees of the Corporation. They are contractors as per

the contract agreement. The 7th person out of eight listed persons, is working directly under the 7th respondent for whom the contract has been awarded for carrying out certain types of job at the office of the Senior Regional Manager. They are not involved in cleaning, sweeping or dusting which is prohibited by a notification of the Government of India dated 9.12.1996. The sixth person Vadivelu himself is a contractor and he is not an employee as alleged. It is also incorrect to state that the Corporation had continued the contract labour system even though permanent work was available. There is no denial of the terms of settlement u/s 12(3) of the Act. It is further stated that there was no employer-employee relationship between respondents and the eight listed persons. The respondents should have either raised a claim before the competent Labour Court or take steps u/s 10-A of the Contract Labour (Regulation and Abolition) Act, 1970.

7. During the pendency of the writ petition, W.P.M.P.No.63298 of 2002 was filed by nine persons, seeking to be impleaded as petitioners 2 to 8 in the writ petition. The said individuals contended that after the writ petition was originally filed by the Union on their behalf, pending writ petition, certain developments have taken place. Respondents had taken action against the General Secretary of the Union and transferred him and thereby prevented him from continuing the writ petition. The said Govindarajan was also no longer General Secretary of the Union and the present General Secretary is not interested in pursuing and prosecuting the writ petition. Hence, in the interest of justice, the said individuals have to be impleaded as parties. Subsequently, by order dated 3.3.2003, the said nine individuals were impleaded as petitioners in substitution of original writ petitioner.

8. The impleaded parties have filed their reply affidavit in response to the counter filed by respondents 1 and 2. They have contended that while the writ petition was pending, the Supreme Court had delivered the judgment reported in Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., . It is further contended that the judgment of the Supreme Court in SAIL case, did not take away their rights. It was only held that the notification was invalid and automatic absorption and permanency cannot be claimed on the basis of the said notification. It was further held that the parties were entitled to prove their direct relationship with the employer and can claim permanent status. The judgment of the Supreme Court will have no application to the facts of the present writ petition. In the writ petition, the petitioners have prayed for being made permanent with effect from the completion of 480 days within a period of 24 calendar months and for consequential benefits. They are entitled to be considered as direct employees of respondents 1 and 2. When the statutory procedure has not been followed in respect of Contract Labour Abolition Act, then the intermediatory has no role to play and the contract ceases and therefore, the petitioners are entitled for permanency.

9. Mr. K.V. Ananthakrishnan, appearing for the petitioners after stating the facts

as pleaded by them, raised the following contentions:

(i) The petitioners were not working under any contractor and hence cannot be treated as contract labourers after abolition of the contract labour system.

(ii) They were regularly employed and had put in more than 480 days of continuous work for two years and hence were entitled to be regularised in service. They have not taken up any other job and have been working with the respondents for more than 10 years. They were engaged in works which were perennial in nature and not seasonal.

(iii) The contractor was not a licensed contractor and hence engagement through the contractor was only a camouflage and illegality. It was open to the High Court to consider the actual facts notwithstanding the engagement through the contractor vide judgment of the Supreme Court in Secretary, H.S.E.B Vs. Suresh and Others etc. etc., .

(iv) All the workers had the benefit of Employees Provident Fund Scheme which will disclose that their employment was regular and direct with the employer and therefore, cannot be treated as employees under the contractor. The contribution for the Employees Provident Fund was made by the respondents/Corporation.

(v) Reference is made to a subsequent event of the enquiry before and the order of the Deputy Chief Labour Commissioner, Bangalore in the petition filed by the Union under Rule 25(2)(v)(a) of the Contract Labour (Regulation & Abolition) Central Rules, 1971, praying for equal wages for equal work for the employees. Reliance is placed on some of the observations made thereunder which will be dealt with below.

(vi) In the judgment of the Supreme court in the case of Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., (hereinafter called the SAIL case) though the Supreme Court held that the workers under the contract labour system have no right to claim regularisation, the Supreme Court had made it clear that it was open to the Court to consider the actual nature of engagement of the workers and to find out whether the contractor's role was a mere camouflage to deny the lawful rights of the workers or whether the contractual engagement was genuine. Therefore, it was open to this Court to consider the facts of this case and grant the relief to which they are entitled to.

10. Learned counsel for the respondents/Corporation however, contends that the original affidavit as filed by the Union would clearly disclose that it proceeds only on the basis that employees are contract labourers. Respondents 6 and 7 are the contractors and that is the basis on which the relief was claimed by the Union for regularisation. Therefore, it was not open to the individual workers to substitute themselves in the writ petition in the place of the Union and plead contradictory facts. The conduct of the individual workers is nothing but abuse of process of Court. Individual workers have pleaded facts contrary to the contentions of the

Union only in view of the law laid down by the Supreme Court in SAIL case holding that the contract labourers have no right to ask for regularisation. The said attempt is only to avoid dismissal of the writ petition in view of the said judgment. It is further contended that there was no privity of contract between the workers and the Corporation. Apart from the judgment in SAIL case, reliance is also placed on the judgment of the Supreme Court in Nitinkumar Nathalal Joshi and Others Vs. Oil and Natural Gas Corporation Ltd. and Others, in support of the contention that claim for absorption cannot be automatically granted without considering the mutual submissions and allegations and as they involve questions of fact, such contentions cannot be raised in a writ petition. The parties have to approach the Industrial Tribunal/Labour Court for appropriate relief after seeking a reference. As regards non-registration of the contractor, it is contended that as number of workers were less than 20, there was no obligation on the part of the employer to register the contractor.

11. In reply, Mr. Anathakrishnan contends that only eight employees have been engaged in the work of cleaning the toilet, sweeping and house-keeping in the Regional Office. Now they are being paid only consolidated wages. Learned counsel further contends that it was pertinent to note that the nature of the work was perennial and regular and the said posts have to be filled up in case the petitioners are not regularised. Hence the claim of the petitioners deserves to be considered. Learned counsel also further contended that even in the event of the writ petition being dismissed and directions are to be given to the petitioners to approach the Labour Court for permanency, till then their services may be protected in view of the fact that they are engaged and working for several years.

12. I have considered the submissions of both sides. Having regard to the pleadings and contentions as raised by both parties as above, the main issue which requires decision is as to whether the petitioners/employees are employees under the contractor or whether the employment was individual and directly with the management. The pleading as filed by the Union earlier, is clear to the effect that they are doing the work on contract basis and only through a contractor. It is further categorically stated that the first five persons are employed for house keeping under the sixth respondent Gurusamy. The other individuals were also working on contract basis. Having pleaded so through the Union, it is not open to the individual workers to contend otherwise. The attempt by the individual workers pleading now contrary to the case of the Union cannot be permitted and is nothing but an attempt to overcome the consequences of the decision of the Supreme Court in SAIL case. It is not the case of the individual workers that the Union had filed the writ petition without their knowledge or had pleaded wrongly. Entertaining contradictory pleadings would result in abuse of legal and judicial process.

13. Therefore, the pleading of the Union has to be accepted and hence the status of the workers has to be held as contract labourers. The alternate pleading that the contract was a camouflage, cannot also be entertained having regard to the

pleading of the Union as above mentioned. In the affidavit filed by the Secretary of the Union originally, no such contention has been raised. The main contention put forward is that as the contract labour system has been abolished, the engagement of the petitioners under the contractors was illegal and that their services have to be regularised. The issue as to whether the agreement between the contractor and the management was a camouflage and that in fact the engagement was purely individual, is a question of fact which has to be raised before and adjudicated by the proper forum. The question of lifting the veil to find out the truth would arise in a case where the nature of engagement is glaringly improper and there is strong, admitted or positive evidence on the face of the record showing that the employment was purely individual and not contractual. Having regard to the disputed contentions in this case, it is not possible for this Court to entertain the disputed question of facts. Several contentious issues are raised inclusive of the nature of the work and whether engagement was a camouflage, whether the contractor was a registered contractor or whether such registration was necessary etc. The most crucial factor is the stand taken by the Union itself in the affidavit. The conflicting contentions put forward by the workers in their individual capacity has to be considered on their merits and evidence to be let in by both parties before the appropriate forum.

14. The further contention that the respondent/Corporation was paying contribution to the Employees Provident Fund and that the employees were entitled to the Provident Fund, cannot also help the workers in any manner. The liability to pay the Employees Provident Fund is mandatory irrespective of the nature of the employment. u/s 2(f) of the Employees Provident Fund Act, 1952 which defines the expression "employee" includes any employee by or through a contractor in connection with the work of the establishment. Therefore, the liability to pay the Provident Fund would arise even in respect of an employee under a contractor. u/s 8A, the amount of contribution paid or payable by the employer may be recovered by the employer from the contractor either by deduction of any amount payable under the contract or as a debt payable by the contractor. From the above provisions, it is clear that the liability to pay the Provident Fund is mainly on the principal employer and thereafter it is open to the employer to recover from the contractor. Therefore, the fact that the petitioners are covered by the Provident Fund Scheme, is not relevant for deciding the status of the petitioners.

15. Reference to the decision of the Deputy Chief Labour Commissioner, Bangalore, dated 23.3.2000, which is subsequent to the filing of the writ petition is also of no help either to the petitioners or the respondents. That relates to a petition filed by the Union for equal pay for equal work. The petition was rejected by the authority holding that as none of the contractors had employed more than 20 workers, the C.L.R.A. Act, 1917 was not applicable and that the authority cannot go into the merits of the case for deciding whether the contract workers are doing the same and similar job so as to be entitled to equal pay and that the

workers have to approach the appropriate authority. Therefore, reference to the said order cannot provide any positive solution to the issues raised in this writ petition.

16. In the background of the above facts and on a perusal of the judgment of the Supreme Court in SAIL case, and the judgment reported in Nitinkumar Nathalal Joshi and Others Vs. Oil and Natural Gas Corporation Ltd. and Others, , referred to above, I am inclined to hold that as there are several disputed facts relating to the nature and background of their employment, the petitioners have to approach the appropriate authority under the provisions of the Industrial Disputes Act. At the same time, the requirement to go before the Conciliation Officer would not be necessary and would be a futile exercise considering the extreme contentions raised by both parties and hence a direction has to be issued to the Government to refer the dispute to the Industrial Tribunal/Labour Court.

17. A further request has been made by learned counsel for the employees praying for the retention of the employees in Service till the dispute is resolved by the Labour Court. I feel that the request is reasonable considering the admitted position that the petitioners are in fact employed and continued to work as on date. It would be reasonable to fix an early time frame for the disposal of the reference by the Industrial Tribunal/Labour Court. Till then, the petitioners be retained in service without prejudice to the contentions of both parties.

18. In the result, the writ petition is disposed of with the following observations:-

(i) The third respondent/Union Government is directed to frame and refer the disputes between the workers and respondents 1 and 2 u/s 10 of the Industrial Disputes Act to the appropriate forum namely, Industrial Tribunal or the Labour Court at Chennai, within a period of four weeks from the date of receipt of a copy of this order.

(ii) The appropriate authority Industrial Tribunal/Labour Court shall proceed thereon to adjudicate the reference in accordance with law and pass an award within a period of four months from the date of receipt of the order of reference. The said authority is also directed to consider the mutual contentions independently without being influenced by any of the observations made in this order. The appropriate authority has to find out the real nature of the engagement of the petitioners/employees and the relief to which they are entitled to in accordance with law.

(iii) Respondents 1 and 2 are directed to retain the petitioners/employees in service on the same terms and conditions as on date, without prejudice to the contentions of both sides.

(iv) There shall be no order as to costs.