

(2001) 10 OHC CK 0018
In the Orissa High Court
Case No : O.J.C. No. 11999 of 1999

Pramod Kumar Samal and Others

APPELLANT

Vs

National Aluminium Company Limited and Others

RESPONDENT

Date of Decision : 11-10-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227

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

Citation : (2002) 93 CLT 187 : (2001) 91 FLR 958 : (2002) 3 LLJ 657

Hon'ble Judges : P.C. Naik, J

Bench : Single Bench

Advocate : S. Palit, L. Jena, D. Biswal, C.R. Lenka, A. Dey and J.K. Dash, for the Appellant; B.N. Ratho, J.N. Ratho, S.K. Jethy, P.S. Samantra, M.K. Singh Deo, M.K. Panda, K.K. Mohapatra, S.K. Patjoshi, P.K. Panda, J.K. Tripathy, B.P. Tripathy, S.N. Mishra, P.K. Chand, D. Satpathy, A. Mohanty and S. Mishra, for the Respondent

Final Decision : Dismissed

Judgement

P. C. Naik, J.—The petitioners, seventy-two in number, have approached this Court for issuance of an appropriate writ, direction or order directing the opp. parties to declare the petitioner Nos. 1 to 38, 40, 41, 43, 46 to 60 and 62 to 72 as regular Security Guards, petitioner Nos. 39, 42 and 61 as regular Surgents and petitioner Nos. 44 and 45 as regular Cooks in the establishment of NALCO. The further prayer is for a direction to the opp. parties 1, 2, 3, and 5 to pay the petitioners equal remuneration as is being paid to their counter-parts working in the regular establishment of the said Company.

2. The case of the petitioners is that they are engaged as contract labourers and as such are being exploited by the management. It is, their case that in view of the provisions contained in Section 10 of Contract Labour (Regulation and Abolition) Act, 1970 (in short "the Act"), it is necessary to direct the opp. parties for abolition of contract labour system in the establishment. Placing reliance on a decision of this Court in O.J.C. Nos. 3158 and 5291 of 1996 (Bijay Kumar Jena

and 215 others etc. v. Union of India and ors.) disposed of by a common judgment dated 26.8.1999: 88 (1999) CLT 737 wherein a direction was issued to the principal employer to absorb the contract labourers on regular basis even if there was no abolition of contract labour, the petitioners have made a prayer for their regularisation.

3. It is the case of the opp. parties 1 to 3 that the petitioners are not entitled to the relief claimed and the petition is liable to be dismissed on the short ground that the contract system in the establishment is continuing on the basis of permission granted to it by the competent authority under the Act. It is further stated that it is not NALCO; but opp. party No. 5 which is the principal employer, as it is the said opp. party No. 5 and not NALCO establishment which has recruited the petitioners and posted them at the corporate office at Bhubaneswar. It is their further case that against the judgment which has been relied upon by the petitioners, special leave petitions are pending before the Supreme Court of India vide SLP (C) No. 16803 of 1999 and SLP (C) No. 17279 of 1999 and vide its order dated 16.11.1999, the operative portion of the order dated 26.8.1999 passed by this Court in O.J.C. Nos. 3158 and 5291 of 1994 [Bijay Kumar's case (supra)] has been stayed. It is also averred that the earlier decision of the Apex Court in Air India Statutory Corporation etc. v. United Labour Union and others, AIR 1997 SC 646., is the subject-matter of reference before a larger Bench.

4. By a further affidavit, it was also brought on record by the opp. parties 1 to 3 that in view of the directive from the Director of Public Enterprises that Public Sector Undertakings are to call for sponsorship of Security Agencies recommended through Director General of Resettlement, Ministry of Defence, they are required to abide by the directions and to accept the agencies sponsored through Director General of Resettlement and, as such, they are not in a position to engage Security Personnel through private Security Agencies. Reference is also made to a decision of the Court in Investigation & Security Services (India) Pvt. Ltd. v. National Aluminum Company Ltd. (NALCO) (O.J.C. No. 13894 of 1999 disposed of on 2.2.2000) wherein challenge was made by the petitioner therein, incidentally who is opp. party No. 5 in this writ petition, to the action of NALCO in limiting its consideration to only those agencies sponsored by the Director General of Resettlement, was held not to have suffered from any illegality. It is, therefore, apparent from the record that after opp. party No. 5 failed in its attempt to continue as the contractor, the present petitioners, who were recruited by it (opp. party No. 5) to work as Security Guards etc. in the establishment of NALCO, have approached this Court for abolition of the contract labour and for their regularisation under the NALCO.

5. As to the case of the opp. parties 1 to 3, contract labour is continuing in the establishment with due permissions of the competent authority to which there is no rebuttal. It is also an admitted position that by virtue of a notification u/s 10 of the Act, employment of labour in the establishment is question has not been prohibited. In this view of the matter, the question of this Court issuing any

direction prohibiting employment of contract labour in the establishment in question does not arise.

6. As regards the question of regularisation, the main plank of the petitioners' argument is a decision of this Court in O.J.C. No. 3158 and 5291 of 1994 [Bijay Kumar's case (supra)] wherein relying on a decision of the Apex Court in Air India Statutory Corporation etc. (supra), this Court had directed the principal employer of an establishment to absorb the contract labour on regular basis even if there is no abolition of contract labour as provided in the Act, However, the Apex Court in Steel Authority of India Ltd. and Ors. etc. etc. v. National Union Water Front Workers and Ors. etc, etc. 2001 (5) Supreme 602 in sub-paragraphs (3) & (4) of paragraph 122 has amongst others, held as follows :

(3) Neither Section 10 of the CLR Act nor any other permission in the Act, whether expressly or by necessary implication provides for automatic absorption of contract labour on issuing a notification by appropriate Government under Sub-section (i) of Section 10 prohibiting employment of contract labour in any processes, operation or other work in any establishment. Consequently the principal employer cannot be required to order absorption of the contract labour working in the concerned establishment.

(4) We over rule the judgment of this court in Air India's case (supra) prospectively and declare that any direction issued by any industrial adjudicator/ any court including High Court, for absorption of contract labour following the judgment in Air India's case (supra), shall hold good and that the same shall not be set aside, altered or modified on the basis of this judgment in cases where such a direction has been given effect to and it has become final.

7. In view of the above, the decision of this Court in O.J.C. Nos. 3158 and 5291 of 1994 [Bijay Kumar's case (supra)] cannot be of any assistance to the present petitioners and, as such, the relief claimed by them in this writ petition cannot be granted.

8. The writ petition stands dismissed. There shall, however, be no order as to costs.

9. Petition dismissed