
(1999) 05 DEL CK 0119

In the Delhi High Court

Case No : CW No's. 4226, 4300 and 4954 of 1995 and 261, 262, 562, 827, 1454 and 1549 of 1996

Rakesh Kumar and Others

APPELLANT

Vs

Air India Limited and Others

RESPONDENT

Date of Decision : 24-05-1999

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 2

Citation : (1999) 50 DRJ 355

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Rudra Kahlon, for the Appellant; Lalit Bhasin, Ratna Diwedi, Bhavna Kohli and V.P. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

K. Ramamoorthy, J.—All the petitioners in the above writ petitions, relying upon the notification issued by the Government of India on the 9.12.1976, claim the following reliefs:-

"It is, Therefore, most respectfully prayed that this Hon"ble Court may be pleased to:-

a) issue a writ of mandamus and/or any other appropriate writ, order or direction in the nature of a writ of mandamus directing the respondent Nos.1 and 2 to regularise the services of the petitioners from their date of joining;

b) issue a writ of mandamus and any other appropriate writ, order or direction in the nature of a writ of mandamus directing the respondent Nos.1 and 2 to pay all consequential benefits and differences in wages as applicable to a permanent employee of respondent Nos.1 and 2 from their date of joining;

c) issue a writ of prohibition and/or any other writ, order or direction prohibiting the respondents from terminating the services of the petitioners."

2. It is admitted by the petitioners that they are employed by Hotel Corporation of India, the fourth respondent which is running a unit, Chefair, the third respondent. On the premise that they are asked to work in the building owned by Air India, of which the fourth respondent is a subsidiary company, as per the notification dated 9.12.1976, they are entitled to absorption in the service of Air India.

3. The Air India, the first respondent has resisted the writ petitions and in the affidavit filed on behalf of the first respondent it is stated:

"Without prejudice to the above, it is further submitted that the "Flight Kitchen" is run by respondent No.3 & 4 and the answering respondents have no control over it. It is submitted that the "Flight Kitchens" are run by respondent No.3, Chefair Flight Catering, which is a unit of Hotel Corporation of India which itself is statutory Corporation having a distinct and separate legal entity having its own rules and regulations and service conditions distinct from the answering company. The fact that under the Companies Act, 1956, the relationship between respondent No.4 i.e. Hotel Corporation of India and Air India is that of a subsidiary and holding company, has no bearing on the appointment or employment of the petitioner. It is submitted that all the employees of respondent No.3 & 4 report and work under administrative control of Hotel Corporation of India and not that of Air India Limited. Therefore, the question of their absorption in the services of the answering respondent does not arise at all.

Without prejudice to the above, it is submitted that the notification dated 9th December, 1976 issued by the Central Government u/s 10 of the Contract Labour (Regulations & Abolitions) Act, 1970 is not applicable to establishments of Air India. The said notification issued by the Central Government was applicable only to those establishments for whom the Central Government was the "appropriate Government" under the Act at that point of time. It is submitted that it is only w.e.f.28.1.1986 that the appropriate Government in respect of Air India establishments became the Central Government in view of the amendment in the definition of the term "appropriate Government" under the Contract Labour Act. It is submitted that in any case the petitioner is not an employee of the answering respondent but as per his own statement in his petition was employed on a casual basis by respondent No.3. Since, in the instant case, the Central Government was not the appropriate Government when the said notification was issued the Central Government had not, in fact, applied its mind to all the relevant factors qua Air India which was required to be considered before issuing the said notification. Thus the notification will not apply to the answering respondents."

3. It is also stated in the affidavit that the petitioners have never been employed by Air India and the petitioners have been casual workers in the fourth respondent organisation.

4. The learned counsel for the petitioners, Mr. Rudra Kahlon, submitted that the

point raised by the petitioners is covered by decision of the Supreme Court in *Air India Statutory Corporation, etc. Vs. United Labour Union and others* [overruled], . Mr. Rudra Kahlon, the learned counsel for the petitioners, took me through the decision of the Supreme Court. The point that was mooted by the Supreme Court was, whether Air India would come within the ambit of the notification being a Government organisation and the workers involved in the case were working in the building owned by Air India. On behalf of the Air India, it was submitted that the Government of India had no jurisdiction to issue the notification dated 9.12.1976. The Supreme Court held that the notification was valid and the Air India was bound to comply with the provisions of the notification.

5. In the instant case, the petitioners put forward their case on the basis of passes issued by the third respondent Chefair, by which the petitioners could have access to the building owned by the Air India and thus they have become the employees of Air India and the third and fourth respondents are only contractors of Air India, Therefore, the notification dated 9.12.1976 would apply.

6. The petitioners had ignored the fact that before they claim the reliefs, they must establish that the fourth respondent owns the third respondent unit, is a contractor of Air India. The fourth respondent is an independent organisation catering to the needs of so many airlines and the fourth respondent is not owner of the building where the airport is housed. The petitioners have not at all been able to establish, by producing any material, that the fourth respondent is a contractor of the first respondent Air India. The petitioners, as submitted by Mr. Rudra Kahlon, the learned counsel for the petitioners, have not able to produce any documents to show the contract between the fourth respondent and the first respondent. The petitioners have come forward with a claim which is not tenable in law. I do not see any substance in the case of the petitioners. Accordingly, the writ petitions are dismissed.

7. There shall be no order as to costs.