

(2003) 09 AP CK 0005

In the Andhra Pradesh High Court

Case No : Writ Petition No. 379 of 2000

Rama Krishna P.S. and Others

APPELLANT

Vs

Member Secretary, Andhra Pradesh Power Generation
Corporation Ltd. and Others

RESPONDENT

Date of Decision : 08-09-2003

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 10, 10(1)
Industrial Disputes Act, 1947 — Section 10, 10(1), 2, 2A(2)

Citation : (2004) 2 ALT 514 : (2004) 102 FLR 183 : (2004) 3 LLJ 370

Hon'ble Judges : V. Eswaraiah, J

Bench : Single Bench

Advocate : A. Chandraiah Naidu, G. Vidyasagar, Vinobha Devi, P. Mehar Srinivasa Rao, Vedula Venkata Ramana Rao, C. Damodar Reddy, G.V. Shivaji, V. Jitender Rao, G. Ravi Mohan, V. Sree Ranga Rao, N.M. Krishnaiah, P. Sree Ramulu Naidu, P.V. Ramana, G.V. Ramana Reddy, N. Harinath Reddy, V.V.L.N. Sarma, D. Vijya Kumar and K. Jagadish, for the Appellant; K. Sesha Rajyam, Standing Counsel, K.N. Jwala for A.P. Genco and G.P. for Labour, for the Respondent

Judgement

V. Eswaraiah, J.—All these matters have been listed for disposal as they are all squarely covered by a judgment of this Court in Writ Petition No. 1246 of 1999 and batch dated August 6, 2003.

2. The said Writ Petition No. 1246 of 1999 and batch was disposed of after elaborately dealing with the issue involved and also by following the judgment rendered by the Apex Court in Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., .

3. When the present batch is posted for disposal as covered by the judgment cited supra the learned counsel appearing for the petitioners in all these writ petitions, brought to my notice that an order was passed by the Industrial Tribunal-cum-Labour Court, Warangal, in I.D.No. -Nil- of 2003 in S.R.No. 4048 of 2003, dated August 20, 2003, to the following effect:

"The petitioners filed claim statement praying this Court to pass an award directing the respondents to absorb the petitioners, declaring that they were on rolls on September 23, 1996 and they are covered by the abolition of 33 categories of employment of contract Labour in A.P.S.E.B., in terms of B.P.Ms. No. 37, dated May 18, 1997, B.P.Ms. No. 260, dated December 19, 1997 and B.P.MS. No. 272, dated December 31, 1997, with all consequential benefits.

Orders are pronounced as to registration of the Industrial dispute on the file of this Tribunal.

(1) This petition is not filed under any provision of law under Industrial Disputes Act.

(2) This petition is not filed to attract Section 2-A of I.D. Act, as the employer has not discharged or dismissed or retrenched or otherwise terminated the services of the petitioners. This petition has arisen out of discharge, dismissal, retrenchment or termination. So Section 2-A of I.D. Act is not attracted.

Hon"ble High Court directed the petition be filed before the Industrial Tribunal for deciding the industrial dispute. As Section 2-A(2) is not applicable, petitioners have to approach this Court by way of reference. It is certainly open for the petitioners to raise a dispute as contemplated u/s 2(k) of I.D. Act and the matter can be brought before the concerned Labour Court through a reference u/s 10(1) of I.D. Act. So, the relief sought for by way of absorption of petitioners cannot be taken directly, except by way of reference. Hence, the petition is rejected."

4. The only question that arises for consideration is whether the Industrial Tribunal-cum-Labour Court is empowered to entertain the industrial dispute on the application filed by the contract labourers in respect of 33 categories of employment mentioned u/s 10 of the Contract Labour (Regulation and Abolition) Act, 1970, and as identified by the A.P.S.E.B. in B.P.Ms.Nos. 36 and 37, dated May 18, 1997, B.P.Ms.No. 260, dated December 19, 1997, and B.P.Ms.No. 272, dated December 31, 1997, etc., orders issued from time to time by A.P.S.E.B., without reference of the dispute by the Government.

5. The petitioners in the respective writ petitions claim to have been engaged as contract labour by the Andhra Pradesh Genco. The Government of Andhra Pradesh in exercise of its powers u/s 10(1) of the Contract Labour (Regulation and Abolition) Act, 1970 (Central Act 37/70) prohibited as many as 33 categories of employment that are being undertaken through the contract labour, through its order in G.O.Ms.No. 41, dated September 23, 1996, which also states that the orders for absorption of workers, if any, will be issued by Energy Department. Pursuant to the said G.O.Ms.No. 41, dated September 23, 1996, the Andhra Pradesh State Electricity Board issued B.P.Ms.Nos. 36 and 37, dated May 18, 1997, providing for appointment on regular basis of the contract labour engaged in 33 categories referred to in G.O.Ms.No. 41, dated September 23, 1996.

6. The claim of the petitioners is that most of them are working in different

categories of the aforesaid 33 prohibited categories mentioned in G.O.Ms. No. 41, dated September 23, 1996, and the Andhra Pradesh State Electricity Board issued orders in B.P. (P&G-Per) Ms. No. 37, dated May 18, 1997, pursuant to the orders of the Government in G.O.Ms.No. 41, dated September 23, 1996, for absorption of the contract labour working against those categories in various power stations of the Board, subject to certain conditions. All these petitioners have not been selected by the concerned authorities. Therefore, there is dispute with regard to the absorption of the petitioners in regular employment.

7. Similar question arose with regard to the absorption of the contract labour in the judgment in *Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc.*, (supra), wherein the Supreme Court in Paras. 116(3), (4) (5) and (6), held that the contract labour are not entitled for automatic absorption by mere issuance of notification by appropriate Government under Sub-section (1) of Section 10, prohibiting employment of contract labour, in any process, 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. Their Lordships of the Supreme Court overruled the earlier judgment in *Air India Statutory Corporation, etc. Vs. United Labour Union and others* [overruled], prospectively and declared that any direction issued by any industrial adjudicator/any Court including High Court for absorption of contract labour following the judgment cited supra, shall hold good and that the same shall not be set aside, altered or modified on the basis of the judgment in cases where such a direction has been given effect to and it has become final. On issuance of prohibition notification u/s 10(1) of the C.L.R.A. 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 adjudicator 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 of 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 concerned establishment subject to the conditions as may be specified by it for that purpose in the light of Para. 6 hereunder:

"6. If the contract is found to be genuine and prohibition u/s 10(1) (sic) of the CLRA Act in respect of the concerned establishment has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and wherein 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 are 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."

8. Their Lordships used the expression "industrial adjudicator" by design as determination of the questions aforementioned requires inquiry into disputed questions of facts, which cannot conveniently be made by High Courts in exercise of jurisdiction under Article 226 of the Constitution of India. Therefore, in such cases the appropriate authority to go into those issue will be Industrial Tribunals/ Court whose determination will be amenable to judicial review.

9. A Division Bench of this Court in Writ Appeal Nos. 115 and 157 of 2001, by judgment, dated October 8, 2001, following, the judgment of the Supreme Court cited supra, held that the right of the contract labour to be regularised arises out of a notification issued u/s 10 of the Act. In the event of there existing a dispute as to whether the cases of the petitioners fall within the purview thereof or not must be determined by a Tribunal where evidence, both oral and documentary, can be led. Where there exists a disputed question as to whether the concerned workman comes within the purview of the notification or whether the contention of the said contract labour is that the principal employer in effect and substance is his employer an industrial dispute should be raised. An industrial dispute is to be raised where a finding has to be arrived at on the basis of the material which may be brought on record to show that there exists a relationship of employer and employee between the principal-employer and the contractor although a contractor has been appointed by way of camouflage or a smoke and screen. In such a situation, it may be permissible for the Labour Court to pierce the veil and find out as to who is the actual employer.

10. In all the instant cases, the dispute arises as to whether the job of the petitioner falls within the prohibition category or not. Such disputed questions of fact cannot be adjudicated in writ Proceedings but a dispute raised has to be determined by the Tribunal.

11. Following the judgment of the Apex Court cited supra, my learned brother L. NARASIMHA REDDY, J., disposed of Writ Petition Nos. 26625 of 1999 and batch, by order, dated June 27, 2002, permitting the petitioners therein to raise industrial dispute as regards their entitlement to get appointed under the various orders issued by the Government and A.P.S.E.B., as referred to above. On such a dispute being raised before the competent Labour Court, the concerned Labour Court shall endeavour to dispose of the same as early as possible.

12. My learned brother E. DHARMA RAO, J., also disposed of similar matters following the judgment of the Supreme Court cited supra in Writ Petition No. 14561 of 2002, by order, dated August 12, 2002, leaving it open for the petitioner to agitate his rights before appropriate forum, i. e., Industrial Tribunal or Labour Court as the case may be.

13. My learned brother BILAL NAZKI, J., also disposed of Writ petition No. 68965

of 1991, following the judgment cited supra permitting the petitioners therein to approach the Labour Court authorities.

14. Pursuant to the judgment of the Apex Court cited supra, the Andhra Pradesh Power Generation Corporation, Ltd., issued orders in G.O.No. 697 of 2002, dated February 3, 2003, superseding the orders issued in B. P. (P. G. Per) Ms. Nos. 37, dated May 18, 1997, B.P. Ms. No. 260 dated December 19, 1997 and B.P. Ms. No. 272 dated December 31, 1997. Therefore, there is no other way for the contract labour except to agitate their rights as enumerated in the aforesaid judgment of the Apex Court cited supra, before the Labour Court or Industrial Tribunal as the case may be.

15. "Industrial dispute" as defined in Section 2(k) of the Industrial Disputes Act, means any dispute or difference between employers and employees or between the employers and the workmen or between the workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person. Having regard to the above definition, I am of the opinion that there exists a clear dispute between the petitioners and the respondents.

16. u/s 2-A of the Industrial Disputes Act, where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

17. The State amendment to Section 2-A of the Act and Sub-section (2) as inserted reads as follows:

"(2) Notwithstanding anything in Section 10, any such workman as specified in Sub-section (1) may, make an application in the prescribed manner direct to the Labour Court for adjudication of the dispute referred to therein; and on receipt of such application, the Labour Court shall have jurisdiction to adjudicate upon any matter in the dispute, as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act; and accordingly all the provisions shall apply in relation to such dispute as they apply in relation to any other industrial dispute."

18. Therefore, wherever there is any discharge, dismissal, retrenchment or termination of the services of an individual workman, a dispute arising or connected out of such discharge, dismissal, retrenchment or termination, can be raised directly before the Industrial Tribunal. u/s 10 of the Act, the Government is empowered to refer any dispute to the Labour Court or to the Industrial Tribunal as the case may be, for an enquiry.

19. The Legislature, the Executive and the Judiciary are the three organs of the State. The Act empowers the appropriate Government to refer a dispute to the

Tribunal. But, it cannot be said that Courts are not empowered to refer a dispute for adjudication of the Industrial Tribunal as the act of the Court is also the act of the State.

20. Further Section 2-A(2) has been inserted by the State of Andhra Pradesh, stating that notwithstanding anything contained in Section 10 of the Act, any workman may make an application directly to the Labour Court for adjudication of the dispute. Therefore, there is yet another reason where the Industrial Tribunal or the Labour Court cannot refuse to entertain the industrial dispute raised by the petitioner as laid down by the Supreme Court in the judgment cited supra, which is binding on the Labour Courts or the Tribunals as the case may be.

21. Hence, the Labour Court/Industrial Tribunal as the case may be is bound to entertain the dispute raised by the petitioners pursuant to the orders of this Court, treating it as a reference made u/s 10(1) of the Act.

22. Therefore, the present batch of writ petitions are disposed of permitting the petitioners to raise an appropriate dispute and to ventilate their grievance either individually or through their unions, as the case may be, as regards their entitlement to get regular appointment under various orders issued by the Government and the Board. On such dispute being raised by the petitioners before the competent Labour Court/Industrial Tribunal, the Labour Court/Industrial Tribunal shall endeavour to dispose of the same as expeditiously as possible, at any rate not later than six months (6) from the date of raising of such dispute. No costs.