
(1996) 06 GAU CK 0041
In the Gauhati High Court
Case No : Civil Rule No. 1237 of 1991

Rudra Rai

APPELLANT

Vs

State of Arunachal Pradesh

RESPONDENT

Date of Decision : 18-06-1996

Acts Referred:

Citation : (1999) 3 GLJ 596

Hon'ble Judges : J.N.Sarma, J

Bench : Single Bench

Advocate : S.Medhi, P.Upadhyay, N.K.Singh, D.Das, D.C.Mahanta, T.J.Mahanta,
Advocates appearing for Parties

Judgement

1. This application has been filed by one workman but it is on behalf of 180 workers which is at Annexure to the writ application.

2. The admitted position is that as these workers were employed by the contractors ie by the respondent Nos 4 and 5 in Arunachal Pradesh for construction of Hydel Project in the year 198789 and it is alleged that these workers were not paid their wages due to them and it is claimed that an amount of Rs. 5,70,000 are due to these workers but these poor workers have not been paid the same. Hence, this writ application.

3.1 have heard Mr. DC Mahanta, learned Advocate for the petitioner and Mr. KH Choudhury, learned Govt Advocate for the State of Assam and Mr. RP Sarma, learned Govt Advocate for the State of Arunachal Pradesh and Mr. S. Medhi, learned Govt Advocate for the respondent Nos 4.and 5.1 have heard Mr. KH Choudhury, learned Advocate for the State of Assam though the State of Assam is not a party inasmuch as the learned Advocate for the petitioner prays for some relief against the State of Assam. Mr, S. Medhi, learned Advocate for the respondent Nos 4 and 5 claimed that these petitioners are entitled to the benefits under the Inter State Migrant Workmen (Regulation of Employment and Condition, of Service) Act, 1979. Mr. Mahanta specifically relies on section 1,

application of the Act. Section 2 (e) which provides "interState migrant workman", section 4 which provides for registration of certain establishments. Sections 8 and 9 which provide for licensing of contractors and grant of licences.

*Note: Writ Appeal No. 3 74 of 1996 preferred by Mani Kumar Subba (Mani Kumar Subba vs. Rudra Rai) dismissed by Division Bench comprising of Hon"ble Mr. Brijesh Kumar, C. J. and Mr. P. G. Agarwal, J. vide judgment dated 30.6.99.

Section 13 provides for wage rates and other conditions of service of interState migrant workmen: Section 17 provides for responsibility for payment of wages, section 18 liability of principal employer in certain cases, section 19 past liabilities. Section 22 provides provisions regarding industrial disputes in relation to inter State migrant workmen and because of the section 22 clause 1 (a) (d) and (2), the liability "of the State of Assam may arise in this particular case. Mr. Mahanta also relies on the provisions of the Central Rules made thereunder.

4. This matter came up for consideration in AIR 1984 SC177 (Labourers Working on Salal Hydro Project vs. State of Janmu and Kashmir & others) wherein in paragraph 3 the Supreme Court pointed out as follows :

3. The question raised in this writ petition is whether the workmen employed on the project are ensured the rights and benefits provided to them under various labour laws such as Contract Labour (Regulation and Abolition) Act, 1970, the Minimum Wages Act, 1948 and the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979. So far as the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (hereinafter referred to as the InterState Migrant Workmen Act) is concerned, the final report of the Labour Commissioner (J & K) clearly shows that its provisions have not been implemented at all and the workmen are denied many of the benefits and advantages provided under it. This statement in the final report of the Labour Commissioner (J & K) is not denied on behalf of the Union of India in the affidavit inreply made by HS Raju, Deputy Secretary to the Govt of India, Ministry of Labour and Rehabilitation and the only explanation offered is that the Inter State Migrant Workmen Act though passed in 1979 did not come into force until 2nd October 1980 and the relevant notifications appointing various authorities under that Act were issued only in June, 1982 and that was the reason why "no action could be taken by the officers of CIRM earlier". It is also averred in the affidavit inreply that most of the workers from other States have gone to Salal Project for work on their own and are therefore strictly speaking not migrant workmen within the meaning of the definition of that term contained in the InterState Migrant Workmen Act. We do not think that this justification given in the affidavit inreply for not ensuring the benefits and facilities provided under the InterState Migrant Workmen Act to atleast some of the workmen and particularly Oriya workmen can be accepted as valid. It is clear from the Statement of Objects and Reasons that the InterState Migrant Workmen Act as enacted with a view to eliminating abuses to which workmen recruited from one State and taken for work to another State were subjected by the

contractors, Sardars or Khatedars recruiting them. The malpractices indulged in by the contractors, Sardars or Khatedars in regard to workmen recruited by them for work outside their State may be found briefly summarised as follows in the Statement of Objects and Reasons. Though the Sardar promise at the time of recruitment that wages calculated on piece rate basis would be settled every month, the promise is not usually kept. Once the worker comes under the clutches of the contractor, he takes him in a faroff place on payment of Railway fare only. No working hours are fixed for these workers and they have to work on all the days in st week under extremely bad working conditions. The provision of the various labour laws are not being observed in their case and they are subjected to various malpractices.?

It was felt that since interState migrant workmen are generally illiterate and unorganised and are by reason of their extreme poverty easy victims of these abuses and malpractices, it was necessary to have a comprehensive legislation with a view to securing effective protection to interState migrant workmen against their exploitation and hence the Inter State Migrant Workmen Act was enacted. This Act received the assent of the President on 11th June, 1979 but it was brought into force only on 2nd October, 1980 by a notification issued under section 1, subsection (3). The Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Rules, 1980 (hereinafter referred to as the Central InterState Migrant Workmen Rules) were also made by the Central Govt and brought into force with effect from 2nd October, 1980. But unfortunately, though the InterState Migrant Workmen Act and the Central InterState Migrant Workmen Rules come into force from 2nd October, 1980, the bureaucratic apparatus for implementing the provisions contained in the Act and the Rules was not set up by the Central Govt for a period of more than 20 months and it was only in the month of June, 1982 that the Central c Govt appointed various authorities such as Registering Officers, Licensing Officers and Inspectors. Even so we fail to see why the obligations of contractors set but in section 12 and wages welfare and other facilities provided in section 13 to 16 of the Inter State Migrant Workmen Act could not be made available to InterState Migrant Workmen Act could not be made available to interState migrant workmen employed in the project work and the Central Govt as the appropriate Govt could not enforce d the same from and after 2nd Oct, 1980. When the Act and the Rules came into force with effect from 2nd October, 1980, the provisions contained in section 12 and 13 to 16 became clearly applicable to the establishments pertaining to the project work and there was no justification for the Central Govt to delay any longer the implementation of these provision in so far as inter State migrant workmen were concerned. The Central Govt in any event ought to have enforced the provisions relating to registration of principal employers and licensing of contractors as also the provisions set out in section 12 and sections 13 to 16 from June, 1982 when the various authorities contemplated under the Act were appointed by the Central Govt. We do not think the Central Govt can escape its obligation to enforce the provisions of the

InterState Migrant Workmen Act on the plea that there are no interState migrant workmen employed in the project work. The final report of the Labour Commissioner (J & K) clearly shows that Oriya workmen employed on the project site were recruited by Khatedars from their villages in Orissa and brought to the project site for work and they would clearly be interState migrant workmen within the definition of that term in clause (e) of section 2 of the InterState Migrant Workmen Act. We would therefore direct the Central Govt to take immediate steps for enforcement of the provisions of the InterState Migrant Workmen Act in regard g to inter State migrant workmen employed in the project work. The Central Govt will at once proceed to identify inter State migrant workmen from amongst the workmen employed in the project work and adopt necessary measures for ensuring to them the benefits and advantages provided under the Inter State Migrant Workmen Act. We would Hke the Central Govt to file an affidavit within one month from today setting out what steps have been taken for securing implementation of the provisions of the InterState Migrant Workmen Act at project site, whether the Executive Engineers of the Central Govt or the National Hydro Electric Power Corporation have been registered as principal employers under section 4 and the contractors, subcontractors or "piece wagers" Khatedars and Sardars have been licensed under section 8; whether the contractors and subcontractors or piece wagers are carrying out the obligations imposed upon them under section 12 and whether wages and allowances stipulated in section 13,14 and 15 and other facilities provided in section 16 are being made available to the interstate migrant workmen employed in the project work.?

5. The Supreme Court pointed out that though this law was in the statute book, the Central Govt as well as the State Govt did not take adequate steps to implement the law and as a result of which this poor workers have suffered. Therefore, the Supreme Court pointed out the rights of the workers in paragraph 7 of the judgment (supra).

6. In this writ application, the prayer is that the amount due to the petitioners ie 180 may be paid. In order to establish regarding the entitlement of the petitioners, the State of Arunachal Pradesh as well State of Assam shall have to make an enquiry and Labour Commissioner shall also make an enquiry regarding the claim of these persons by jointly or severally by visiting the office of the contractor as well as the construction site and also examining the documents available at the construction site. The respondent Nos 4 and 5 shall be liable to produce all the documents regarding the employment of these workers as and when demanded and requested by the Labour Commissioner. The enquiry shall be completed within a period of four months and on such enquiry, if it is found that the claim as made by the petitioners are correct, the authority shall make necessary arrangement to make payment to these petitioners. The whole process shall be completed within a period of 8 (eight) months from today.

7. A copy of this order shall be given to Mr. KH Choudhury, learned Govt

Advocate, State of Assam in order to so that he may send it to the Labour Commissioner and another copy shall be given to Mr. RP Sarma, Govt Advocate for the State of Arunachal Pradesh.

8. This disposes of the writ application.