

(1999) 01 CAL CK 0006

In the Calcutta High Court

Case No : Writ Petition No. 12329 (W) of 1998

Sheikh Jahangir Ali and Others

APPELLANT

Vs

Calcutta Port Trust and Others

RESPONDENT

Date of Decision : 27-01-1999

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 10, 10(1)

Citation : 1 CWN 315 : (1999) 2 LLJ 381

Hon'ble Judges : Altamas Kabir, J

Bench : Single Bench

Advocate : Bikash Ranjan Bhattacharya and Santi Das, for the Appellant; Tapas Banerjee, Arijit Banerjee, S.K. Roy Chowdhury and S.B. Patra Bhatta for Respondent No. 1 and Pradeep Ghosh and Debashis Das, for the Respondent

Judgement

Altamas Kabir, J.—The writ petitioners claim to have been appointed by the respondent No. 6, M/s. Chanda Vulcanisers Pvt., Ltd., over different periods of time, as Vulcanisers for maintenance and repair of conveyer belts at the coal berth of the Haldia Dock Complex, Calcutta Port Trust. According to the petitioners, they have been performing such duties for about the last 12 to 15 years without break.

2. Appearing in support of the writ petition, Mr. Bikash Ranjan Bhattacharya firstly urged that the duties being performed by the petitioners were of a continuous and perennial nature which entailed employment of regular employees, but to avoid employing the petitioners on a regular basis, the Calcutta Port Trust employed the petitioners through the respondent No. 6.

3. Mr. Bhattacharya submitted that, in fact, having regard to the nature of the work which the petitioners were required to perform, they had to work in three shifts, which clearly indicate that the said work was of a continuous and perennial nature and without the work being performed by the petitioners the work in the port would come to a standstill. Mr. Bhattacharya submitted that although the writ petitioners were engaged to perform their duties through a

contractor, the Calcutta Port Trust is their principal employer and though they have been working continuously they have been deprived of the benefit of a regular scale of pay and other service benefits which were being given to other regular employees of the establishment.

4. Mr. Bhattacharya urged that because of the long and continuous service rendered by the petitioners and in view of the various judicial pronouncements in this regard, the petitioners had acquired a semblance of a right to have their services regularised.

5. Mr. Bhattacharya submitted that pursuant to a bipartite settlement the Calcutta Port Trust had absorbed in the regular establishment some other employees, who had also been employed by a contractor M/s. C.B. Constructions in the Haldia Dock Complex for maintenance of the gardens and conservancy work. Mr. Bhattacharya submitted that being similarly placed the petitioners had also made several representations to the respondents for regularisation of their services, but the same had not been favourably considered by the respondents.

6. Mr. Bhattacharya urged that the double standards being sought to be adopted in respect of those whose services had been regularised and the petitioners amounted to violation of Articles 14 and 16 and even Article 21 of the Constitution.

7. In support of his submissions, Mr. Bhattacharya firstly referred to the decision of the Hon'ble Supreme Court in the case of Catering Cleaners of Southern Railway Vs. Union of India (UOI) and Another, wherein the practice of employing labour through contractors for performing work of permanent nature was deprecated and was referred to as an archaic system. Inasmuch as, the work of cleaning catering establishments and pantry cars was held to be necessary and incidental to the industry or business of the Southern Railway, which satisfied the requirements of the provisions of Section 10(2) of the Contract Labour (Regulation and Abolition) Act, 1970, and it was also felt that sufficient number of whole time workmen were required to do such work, the Hon'ble Supreme Court directed the appropriate Government to consult the Central Board or the State Board, as the case might be, for arriving at a decision to abolish the contract labour system under which the cleaners in the catering establishments and pantry cars were employed in the Southern Railway and to regularise their services. The administration of the Southern Railways was restrained from employing contract labour until the decision of the Central Government u/s 10. A further direction was given to the effect that the work of cleaning catering establishments and pantry cars would have to be done departmentally by employing these workmen, who were previously employed by the contractor, on the same wages and conditions of work as were applicable to those engaged in similar work by the Western Railway. It was also stipulated that if the Central Government did not finally decide the question within six months from the date of the order, the Southern Railway Administration would within three months thereafter absorb the workmen into their service and regularise their services.

8. Mr. Bhattacharya then referred to another decision of the Hon''ble Supreme Court in the case of National Federation of Railways Porters, Vendors and Bearers Vs. Union of India and others, which dealt with the absorption of Railway Parcel Porters working on contract labour. In the said case, which was a writ petition filed under Article 32 of the Constitution, a report was asked for from the Labour Commissioner and from the report it appeared that the writ petitioners had been working as contract labour Railway Parcel Porters continuously for a number of years and that the work of parcel handling is permanent and perennial in nature and it could keep all the petitioners continuously engaged. It was also established that in certain railway stations the parcel handling work was done by Railway Parcel Porters regularly and permanently employed by the Railways and that contract labour for parcel handling was done by labour supplied to Railways through societies or private contractors.

9. Referring to the report of the Labour Commissioner and one of its earlier decisions in the case of R.K. Panda v. Steel Authority of India (1997 III LLJ 1202) (SC) wherein directions had been given for absorption of the labourers who had initially been engaged through contractors, the Hon''ble Supreme Court in almost similar circumstances, inter alia, directed that the unit of the Railway Administration having control over the railway stations where the petitioners were engaged in the work of Railways Parcel Porters on contract labour, were to be absorbed permanently as regular Railway Parcel Porters of those stations, the number to be so appointed being limited to the quantum of the work which might become available to them on a perennial basis. Certain other consequential directions were also given.

10. Mr. Bhattacharya lastly referred to the decision of the Hon''ble Supreme Court in the case of Air India Statutory Corporation, etc. Vs. United Labour Union and others [overruled], wherein amongst various other questions the question of abolition of contract labour and absorption of workmen in the regular establishment came up for consideration. On a consideration of the various provisions of the Contract Labour (Regulation and Abolition) Act, 1970, it was observed that the abolition of the contract labour system ensures a right to the workmen for their regularisation as employees in the establishments in which they were hitherto working as contract labour through the contractor and that, in fact, a direct relationship of employer and employee was created between the principal employer and the workmen. It was observed further that while the Act did not provide for total abolition of the contract labour system, it regulated the contract labour system to prevent exploitation of the contract labour. While taking such a view, the Hon''ble Supreme Court referred to one of its earlier decisions in the case of Dena Nath and others Vs. National Fertilisers Ltd. and others, wherein a contrary view had been taken and it was held that the High Court in exercise of its powers under Article 226 of the Constitution had no power to direct absorption of the contract labour as direct employees. Disagreeing with the said view, the Hon''ble Supreme Court observed that the Division Bench had taken too narrow a view on technical considerations without

considering the object which the Act sought to achieve. It was particularly observed that the operation of the Act is structured on an inbuilt procedure leaving no escape route and that abolition of the contract labour system ensures right to the workmen for their regularisation in the establishment in which they were hitherto working as contract labour through the contractor.

11. Mr. Bhattacharya urged that having regard to the above and the clear exposition of the law relating to absorption of labour employed by contractors, a similar direction should issue to the respondents in this case also to absorb the petitioners in the regular establishment of the Haldia Dock Complex, Calcutta Port Trust.

12. Appearing for the Calcutta Port Trust and its authorities, Dr. Tapas Banerjee firstly submitted that the work performed by the petitioners were neither continuous nor perennial in nature and that the petitioners actually worked for about 14/15 days in a month. It was contended that the services of the petitioners were required only when the conveyer belts snapped or were damaged in the course of operation and no routine maintenance was normally required to be undertaken.

13. Dr. Banerjee also urged that a mechanism had been created u/s 10 of the Contract Labour (Regulation and Abolition) Act, 1970 for identifying contract labour in a particular establishment and for its subsequent abolition, but in the present case no notification u/s 10 of the said Act had been issued in respect of vulcanising jobs undertaken by contractors in the Calcutta Port Trust.

14. It was also urged that the decision in the case of Air India Statutory Corporation (*supra*) did not apply to the facts of this case in the absence of a notification u/s 10(1) of the above Act. It was submitted that while on June 5, 1991, the Central Government had issued a notification prohibiting the employment of contract labour in certain areas of the Calcutta Port Trust, vulcanisation work had not been included in the said notification as such work did not require regular preventive maintenance as well as provisional overhauling and repairing, but was confined to repair work as and when required on account of snapping of conveyer belts or damage caused thereto during operation.

15. Reliance was placed on *Dena Nath's* case (*supra*) wherein it had been held by the Hon'ble Supreme Court that on issuance of notification u/s 10(1) of the above Act the contract labour employed did not become direct employees of the principal employer and that the High Court under Article 226 of the Constitution could not issue any Mandamus for deeming the contract labour as having become the employees of the principal employer.

16. Reference was also made to two other decisions of the Hon'ble Supreme Court in the case of (1) *R.K. Panda and Ors. v. Steel Authority of India and Ors.* (*supra*) and (2) *United Mines Mazdoor Union and Others Vs. Steel Authority of India Ltd. and Others*, wherein it was *inter alia*, observed that a claim for regularisation on the ground of long service involved questions of fact which

could normally be determined by the Tribunal on evidence and not by the High Court or Supreme Court under writ jurisdiction or even under Article 136 of the Constitution.

17. It was urged that, in any event, in the absence of a notification u/s 10(1) of the Contract Labour (Regulation and Abolition) Act, 1970 the writ petitioners' claim for regularisation was misconceived and could not be entertained.

18. Appearing for the contractor, Mr. Debashis Das submitted that the nature of the work involved could give rise only to intermittent and not perennial employment. Moreover, the contract entered into between the Calcutta Port Trust and the respondent No. 6 expired in the month of November, 1996, and had not been renewed.

19. While adopting the other arguments advanced on behalf of the Calcutta Port Trust and its authorities, Mr. Das also submitted that since the respondent No. 6 had trained the writ petitioners over the years to perform the duties of vulcaniser, they could not be made direct employees under the Calcutta Port Trust as their Principal Employer continued to be the respondent No. 6 and not the Calcutta Port Trust and its authorities.

20. It was urged that the writ application was wholly misconceived and was liable to be dismissed with costs.

21. The issue involved in this application has been under the consideration of the Courts ever since the Contract Labour (Regulation and Abolition) Act was enacted in 1970. Different views were expressed at different points of time regarding abolition of the practice of employing labour through contractors and the absorption of such labour in the regular establishment when the jobs they were required to perform were of a continuous and perennial nature.

22. The two cases cited by Mr. Bhattacharya, involving the Catering Cleaners of the Southern Railway and Railway Parcel Porters, indicate the view of the Hon'ble Supreme Court on this issue before its decision in Dena Nath 's case (supra) in 1991.

23. In the first of the said two cases, while directing the appropriate Government to take a decision to abolish the contract labour system and to regularise the services of the contract labour within six months, a further direction was given to absorb the workmen in the regular establishment, if no decision was taken within the stipulated period of six months. In the latter case, directions were given to the Union of India to permanently absorb some of the workmen as per the quantum of work available On the basis of a report filed by the Assistant Labour Commissioner pursuant to the orders of the Courts.

24. A slightly different note was struck by the Hon'ble Supreme Court in Dena Nath's case, (supra) and it was held that on abolition of contract labour altogether there was no provision that such labour should be directly absorbed by the principal employer.

25. Although, the respondents relied on the said view expressed in Dena Nath's case, the said decision does not help the respondents as the same was overruled in the Air India Statutory Corporation case (supra) wherein it was held that abolition of the contract labour system ensures a right to the workmen for regularisation as employees in the establishment where they had been working as contract labour through the contractor.

26. In the said case it was also observed that in exercise of its powers under Article 226 of the Constitution, the High Court could come to a finding whether the workmen were engaged in violation of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 or were continued as contract labour, despite prohibition of the contract labour u/s 10(1) thereof. It was observed further that, although, there is no express provision in the Act for absorption of the employees whose contract labour system stood abolished by publication of the notification u/s 10(1) of the Act, in a proper case, the Court is required to direct the appropriate authority to act in accordance with law and submit a report to the Court and proper relief should be granted. On the basis thereof,

27. Considering the provisions of Section 10 of the above Act and the various decisions cited on behalf of the parties, the ratio which emerges is that consequent upon abolition of contract labour in a particular establishment by publication of a notification u/s 10(1) of the said Act, the workmen concerned acquire a right to be absorbed in the regular establishment, and such right could be enforced in the writ jurisdiction of the Hon'ble Supreme Court and the High Courts.

28. In the present case, no such notification has been published as far as "vulcanisers" employed as contract labour under the Calcutta Port Trust are concerned and until such a notification is published, the petitioners in my view, cannot straightaway claim absorption in the regular establishment.

29. In that view of the matter, I dispose of this application with leave to the writ petitioners to make an application to the appropriate Government within a fortnight from date u/s 10(1) of the Contract Labour (Regulation and Abolition) Act, 1970 for prohibition by notification in the Official Gazette, employment of the petitioners as contract labour in the Haldia Dock Complex, Calcutta Port Trust, and if such an application is made, the same is to be disposed of by the appropriate Government within three months from the date of such application being made. The Calcutta Port Trust shall, thereafter, take further steps in the matter on the decision that may be arrived at by the appropriate Government, within a month thereafter.

30. There will be an order of status quo as regards the petitioners' services for a fortnight from date, and if an application is made u/s 10(1) of the above Act pursuant to the leave granted, the said order of status quo will continue till two weeks after the decision of the appropriate Government is conveyed to the writ petitioners. If no such application is made within the time stipulated, the order of

status quo will stand vacated.

31. If the application is not disposed of within three months from the date of such application being made, the Calcutta Port Trust shall in keeping with the decision of the Hon''ble Supreme Court in the Catering Cleaners'' case (supra) absorb the writ petitioners in its regular establishment under the Haldia Dock Complex within three months thereafter.

There will be no order as to costs.

If an urgent xerox certified copy of this judgment is applied for, the same is to be supplied to the applicant expeditiously, subject to compliance with all the required formalities.