

(2001) 03 AP CK 0031

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 25930, 26098 and 26099 of 1999

Sk. Ali and others

APPELLANT

Vs

Managing Director, Bharat Heavy Plates and Vessels Ltd., and
another

RESPONDENT

Date of Decision : 08-03-2001

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Contract Labour (Regulation and Abolition) Act, 1970 — Section 10, 21

Citation : (2001) 2 ALD 674 : (2001) 4 ALT 615 : (2001) 2 LLJ 96

Hon'ble Judges : Satya Brata Sinha, C.J.;V.V.S. Rao, J

Bench : Division Bench

Advocate : Mr. A. Srinivasa Sarma, for the Appellant; Mr. P. Nageswara Sree, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, CJ

1. These writ petitions being inter-related were taken up for hearing together and are being disposed of by this common judgment.
2. The question which arises for consideration in these matters is the applicability of the provisions of Contract labour (Regulation and Abolition) Act, 1970 ("the Act" for brevity) in the fact situation of the present cases.
3. The petitioners in all these petitions are working as contract labourers in Bharat Heavy Plates and Vessels Ltd., (BHPVL) Visakhapatnam having been engaged by their respective contractors.

The petitioners in WP No.25930 of 1999 four in number are working in Civil Department. Petitioners 1 to 3 are said to be working for more than 20 years while petitioner No.4 is working for more than two years. In WP No.26098 of 1999, all the petitioners are working since 1980 in the Electrical Department while the petitioners in WP No.26098 of 1999 are working in Horticulture

Department. According to the petitioners, all of them are working continuously and the work is perennial in nature. It is alleged that some of them were kept out of employment on the ground that they had demanded regularisation of services. It is further stated that in order to avoid the demand of regularisation, the company is intending to replace them with a new set of contract labourers.

4. The main contention of the learned Counsel for the petitioners is that since they have satisfied the provisions of Section 10 of the Act, they are entitled for regularisation of their services and the benefits provided under the Rules framed under the Act. In support of his contention, the learned Counsel relied on the decisions of the Supreme Court in *Air India Statutory Corporation, etc. Vs. United Labour Union and others* [overruled], *International Airports v. Airport Authority of India* 1997 (4) SLR 24, *R.K. Panda v. Steel Authority of India* 1995 (6) SLR 665 and *Secretary, H.S.E.B Vs. Suresh and Others etc. etc.*, and submits that in view of the said decisions of the Apex Court, the petitioners should be treated as employees of *Bharat Heavy Plates and Vessels Ltd.*, and not the employees of the concerned contractors.

5. The Act was enacted not only to prohibit employment of contract labour but also to regulate the same. Section 10 of the Act reads thus:

"10. Prohibition of employment of contract labour :--(1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board, or as the case may be, a State Board, prohibit by notification in the Official Gazette employment of contract labour in any process, operation or other work in any establishment.

(2) Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as--

(a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment;

(b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;

(c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;

(d) whether it is sufficient to employ considerable number of wholtime workmen.

Explanation :--If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final".

6. The matter is no longer *res Integra* having regard to the various decisions of

the Apex Court as also this Court that in the event of the contractors been appointed by a company in terms of the provisions of the Act, question of regularisation of the services of the contract labourers by the principal employer would not arise. In such a case, in the event, a representation is made before the appropriate Government for abolition of contract labour, a notification must be issued by the appropriate Government in terms of sub-section (1) of Section 10 of the Act. A bare perusal of the aforementioned provisions clearly show that it is only the appropriate Government which can issue such notification and it is not for the Court to do so.

7. In *Gammon India Ltd. and Others Vs. Union of India (UOI) and Others*, it has clearly been held by the Apex Court that after coming into force of the said Act, it is only the appropriate Government which can issue a notification and even the Industrial Courts are precluded from passing any award in this regard. A Court exercising the power of judicial review or even a High Court or the Supreme Court cannot direct the appropriate Government to issue such a notification. Thus, in our considered opinion, there cannot be any doubt whatsoever that the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India neither can direct the Central Government to issue such a notification nor can direct abolition of the contract labour. It must also be borne in mind that if the Court takes recourse to such exercise, the same would amount to termination of the contract of the contractor by the principal employer without giving him an opportunity of being heard. Such termination of contract being not consequential to a statutory provision would be illegal. It is for the principal employer to see that as to whether some job which is not prohibited should be done through the contractors or not.

Once it is held that a contractor has I legally been appointed, the Court, cannot, indirectly ask the principal employer to terminate the said contract by issuing a direction to the effect that his labourers should be regularised.

8. Further more, when a contractor is appointed in terms of the provisions of the said Act, there doesn't exist any relationship of "employer" and "employee" between the contract labourers and the principal employer. In such a situation, the question of issuing any directions for regularisation of such contract labourers by this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, would not arise.

9. It would, however, be another thing to say that the principal employer has certain statutory obligations to perform in terms of the provisions of the said Act and in particular the provisions of Section 21 thereof. The petitioners herein do not allege violation of the provisions of said Act at the hands of the contractor.

10. If, however, a contention is raised that the appointment of the contractor by the principal employer is merely a cloak or facade or by way of smoke and screen, the Industrial Court, in a given situation, may, having regard to the materials placed on record, come to the conclusion that the contract labourers

are, in truth and substance, the workmen of the principal employer, and, thus, there exists a relationship of "employer" and "employee" between them.

11. In *Air India Statutory Corporation v. United Labour Union and others* (supra) and in *International Airports v. Airport Authority of India* (supra), the Apex Court held that only by the issuance of a notification u/s 10 of the said Act, the contract labourers would become the workmen of the principal employer.

We may, however, note that the correctness of the decision in the above cases has been doubted in *Bharat Petroleum Corpn. Ltd. Vs. Mumbai Shramik Sangha and Others*, and *F.C.I., Bombay and Others Vs. Transport and Dock Workers Union and Others*, and the matter is now pending consideration before a larger of the Apex Court.

12. In a given situation, while dealing with the obligation on the part of the employer to run a statutory establishment, in exceptional cases, the writ Court may take recourse to the doctrine of "piercing the veil" and come to the conclusion that the concerned employees although apparently are employees of a contractor, but, really are the employees of the principal employer. In *Indian Petrochemicals Corpn. Ltd. and Another Vs. Shramik Sena and Others*, it was observed:

"At this stage, it is necessary to note another argument of Mr. Andhyaujina that in view of the fact there is no abolition of contract labour in the canteen of the appellant's establishment, it is open to the management to manage its canteen through a contractor. Hence, he contends that by virtue of the contract entered into by the management with the contractor, the respondent-workman cannot be treated as the employees of the management. This argument would have had some substance if in reality the management had engaged a contractor who was wholly independent of the management, but we have come to the conclusion on facts that the contractor in the present case is engaged only for the purpose of record and for all purposes the workman in this case are in the fact the workmen of the management."

13. In *Haryana Electricity Board's* case, the Industrial Court had arrived at a finding of fact to the effect that the contract was merely smoke and screen and having regard to such finding, the Apex Court, keeping in view its earlier decisions in *Air India Statutory Corporation*, held that the services of the workmen should be regularised. Such facts do not exist in the instant case.

14. It is not necessary for us to delve deep into the matter having regard to the fact a Division Bench of this Court recently in *K. Buchi Reddy and others v. Central Administrative Tribunal, Hyderabad*, (WP No.19202 of 2000, dated 22-1-2001) has rejected similar contentions, since reported in *K. Butchi Reddy and Others Vs. Central Administration Tribunal, Hyd. and others*,

15. However, keeping in view the facts and circumstances of the present case, it is not necessary for this Court to go into such larger question as it now stands

admitted that the petitioners are contract labourers. In the writ petitions, neither the contractor nor the principal employer had been impleaded as party respondents. Only the Managing Director of the company has been impleaded. It is not known whether the employer is "State" within the meaning of Article 12 of the Constitution of India as the requisite foundational facts therefore have not been pleaded. But, even assuming that the company would be a "State", the Managing Director, cannot certainly be termed as state and thus on that ground too, the writ petitions are not maintainable.

16. For the reasons aforementioned, the writ petitions must be held to be not maintainable which are dismissed accordingly. Having regard to the facts and circumstances of the case, there shall be no order as to costs.