

(2013) 06 BOM CK 0162

In the Bombay High Court

Case No : C.A.J. Writ Petition No. 3370 of 2012

Sudarshan Chemical Industries Ltd.

APPELLANT

Vs

Labour Commissioner and Others

RESPONDENT

Date of Decision : 28-06-2013

Acts Referred:

Citation : (2013) 139 FLR 507 : (2013) 5 LLN 464 : (2014) LLR 198

Hon'ble Judges : G.S. Patel, J;A.S. Oka, J

Bench : Division Bench

Advocate : K.M. Naik and Sujeet P. Salkar, for the Appellant; M.S. Bane, A.G.P. and K.S. Bapat instructed by . Ganesh Gole, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Oka and G.S. Patel, JJ.—We have heard the learned Senior Counsel for the petitioner in the morning session. The challenge in this petition under Article 226 of the Constitution of India is to the orders of reference passed by the State Government by which the references have been made to the Industrial Tribunal in exercise of power u/s 12(5) of the Industrial Disputes Act, 1947 for adjudication of the dispute raised by the third respondent.

With a view to appreciate the submissions made by the learned Senior Counsel for the petitioner, it will be necessary to make a brief reference to the facts of the case. Demands were submitted by the third respondent-Union. The demand was that the workmen whose names are mentioned in Exhibit-A annexed to the demand working in the respective departments/units of the petitioner be declared as the direct employees of the petitioner. A demand was also made for grant of consequential monetary benefits. The contention of the third respondent is that in fact the workers have been appointed by the petitioner. The said workers have been engaged in the packing, processing, Material handling and other jobs of such nature. It is contended that with a view to avoid the responsibility of making payment of wages, the petitioner is treating the workers as contract workers. The specific contention is that the contract is false and

bogus.

The learned Senior Counsel for the petitioner invited our attention to the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as "the said Act of 1970"). His submission in short is that the said Act of 1970 is a complete Code in itself. He invited our attention to the definition of "Contractor". He also invited our attention to section 10 of the said Act of 1970 which confers power on the appropriate Government of prohibiting the employment of contract labour. He also invited our attention to various other provisions of the said Act of 1970 including its penal provisions. He also invited our attention to Rule 25 of the Maharashtra Contract Labour (Regulation and Abolition) Rules, 1971. Lastly, he invited our attention to section 30 of the said Act of 1970 and in particular sub-section (2) thereof. He relied upon the decision of the Apex Court in case of Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., He submitted that the said Act of 1970 which deals with the abolition of contract labour is an enactment brought on the statute book subsequent to Industrial Disputes Act, 1947. He invited our attention to paragraph 77 of the decision of the Apex Court in case of Steel Authority of India Limited (supra) and urged that what is held by the Apex Court in the said decision is per incuriam as the effect of the said Act of 1970 has not been considered. He urged that after the said Act of 1970 is enacted dealing with the contract labour, by necessary implication, the jurisdiction of the Industrial Tribunal under the said Act of 1947 is ousted.

2. We have given careful consideration to the submissions. The said Act of 1970 has been enacted with a view to regulate the contract labour in certain establishments and to provide its abolition in certain circumstances. Section 10 of the said Act confers power on the appropriate Government to abolish the contract labour. Section 30 of the said Act of 1970 deals with the effect of laws and agreements inconsistent with the provisions of the said Act of 1970. It will be necessary to make a reference to section 30 which reads thus:

(1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any agreement or contract of service, or in any standing orders applicable to the establishment whether made before or after the commencement of this Act:

Provided that where under any such agreement, contract of service or standing orders the contract labour employed in the establishment are entitled to benefits in respect of any matter which are more favourable to them than those to which they would be entitled under this Act, the contract labour shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that they receive benefits in respect of other matters under this Act.

(2) Nothing contained in this Act shall be construed as precluding any such contract labour from entering into an agreement with the principal employer or

the contractor, as the case may be, for granting them rights or privileges in respect of any matter which are more favourable to them than those to which they would be entitled under this Act.

Essentially sub-section (1) deals with the effect of laws and agreements which are inconsistent with the provisions of the said Act of 1970. Sub-section (2) is by way of a clarification. It clarifies that the said Act of 1970 does not prohibit execution of Agreement by contract labour for granting them rights or privileges in respect of any matter which are more favourable to them than those to which they would be entitled under the said Act of 1970.

3. Coming back to the demands raised by the third respondent, the basic contention is that the workers of a particular category are the direct employees of the petitioner though the petitioner is showing them as the employees of a contractor. The contention of the third respondent is that the claim of the petitioner that there is a contract entered into between the petitioner and the contractors and that the workers are the employees of the contractor is false. It is the case of the third respondent-Union that the contract is bogus and camouflage. Thus, in substance, the contention of the third respondent in the demand is that the contract does not exist. At this stage, it will be necessary to make a reference to paragraph 103 of the decision of the Apex Court in case of Steel Authority of India Limited (*supra*) which reads thus:

103. An analysis of the cases, discussed above, shows that they fall in three classes: (i) where contract labourer is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the Industrial Adjudicator or Court ordered abolition of contract labour or because the appropriate Government issued notification u/s 10(1) of the CLRA Act, no automatic absorption of the contract labourer working in the establishment was ordered; (ii) where the contract was found to be sham and nominal rather a camouflage in which case the contract labourer working in the establishment of the principal employer was held in fact and in reality, the employees of the principal employer himself. Indeed, such cases do not relate to abolition of contract labour but present instances wherein the Court pierced the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited; (iii) where in discharge of a statutory obligation of maintaining canteen in an establishment the principal employer availed the services of a contractor and the Courts have held that the contract labour would indeed be the employees of the principal employer.

(Emphasis added)

4. The Apex Court further observed that if the contract is found to be sham or camouflage, the contract labourers working in the establishment of the principal employer in fact and in reality are the employees of the principal employer himself. The Apex Court specifically held that a case where the contract is found to be sham or camouflage does not relate to abolition of contract labour. Thus, in

substance, the Apex Court held that when the contract is found to be sham or camouflage, the question of abolition of contract labour does not arise inasmuch as in reality, contract does not exist. In such a case, the employees who are allegedly shown as employees of the contractor are in fact the direct employees of the principal employer.

5. The Apex Court has summarized its conclusions in paragraph 121 of the said decision. Clause (5) thereof reads thus:

121(5) On issuance of prohibition notification u/s 10(1) of the CLRA Act prohibiting employment of contract labourer or otherwise, man industrial dispute brought before it by any contract labourer 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 labourer 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 labourer will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labourer in the concerned establishment subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.

(Emphasis added)

6. Thus, the Apex Court specifically held that on issuance of a prohibition notification under the said Act of 1970 when an industrial dispute is brought before the Industrial Tribunal, the industrial adjudicator will have to consider the question whether the contract is genuine or camouflage. The Apex Court reiterated that if such contract is found not to be genuine but a mere camouflage, the so-called contract labourer will have to be treated as an employee of the principal employer. Thus, the Apex Court has upheld the jurisdiction of the Industrial Tribunal to decide the issue whether a contract is genuine or camouflage.

7. In the present case, the contention of the third respondent is that the so-called contract set up by the petitioner is mere ruse or camouflage. As held by the Apex Court in case of Steel Authority of India Limited (supra), industrial adjudicator will have to decide the issue. As pointed out earlier, if such contract is ruse or camouflage, the question of abolition of such contract does not arise at all. Moreover, no machinery is created under the said Act of 1970 for adjudication of the issue whether the contract is genuine or a mere camouflage. Therefore, the argument that in view of the provisions of the said Act of 1970, the jurisdiction of the Industrial Tribunal is ousted will have to be rejected. Even, the argument that the decision of the Apex Court in the case of Steel Authority of India is per incuriam will have to be rejected. There is no merit in the petition and we reject the petition. However, we make it clear that we have made no

adjudication on merits of the industrial disputes and all contentions of the parties in that behalf are kept open.