
(2014) 01 JH CK 0049
In the Jharkhand High Court
Case No : L.P.A. 308 of 2011

Usha Martin Limited (Usha Ismal Division)	APPELLANT
Vs	
Dashrath Upadhyay	RESPONDENT

Date of Decision : 10-01-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Contract Labour (Regulation and Abolition) Act, 1970 — Section 10 10(1) 10(1)(c)
10(2) 12

Citation : (2014) 1 AJR 676 : (2014) 141 FLR 850 : (2014) 2 JLJR 267 : (2014) 1 LLJ 506 : (2014) LLR 362

Hon'ble Judges : R. Banumathi, C.J.; Amitav K. Gupta, J

Bench : Division Bench

Advocate : Satish Bakshi, for the Appellant; M.M. Pal, Amicus Curiae and Mr. Dashrath Upadhyay (Party-in-Person), for the Respondent

Final Decision : Allowed

Judgement

Amitav K. Gupta, J.—This appeal is directed against the order/judgment dated 12.08.2011 passed by learned Single Judge dismissing the writ petition, C.W.J.C. No. 1408/1999(R) of the appellant challenging the award dated 04.06.1998 passed by learned Presiding Officer, Labour Court, Ranchi in Reference Case No. 34 of 1994 whereby the appellant was directed to reinstate the workman, Dashrath Upadhyay with full back wages. 1. The Reference made by the Government of Bihar, vide Notification No. 4/D2-6033/94 issued u/s 10(1)(c) was:

Whether termination of services of workman Dashrath Upadhyay by the management of M/s. Usha Martin Industries Ltd. Ishmal Division, Tatisilwai, Ranchi is justified? If not what relief the workman is entitled to?

2. Learned counsel for the appellant has assailed the impugned judgment and order passed by the learned Single Judge in C.W.J.C. No. 1408 of 1999(R) and submitted that the learned Single Judge should have considered the legal

position as decided in the case of Dena Nath and others Vs. National Fertilisers Ltd. and others, which was affirmed by the constitutional bench of the Apex Court in the case of Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., which was also relied upon and confirmed in the case of N.T.P.C. and Others Vs. Badri Singh Thakur and Others, Hence, the impugned judgment is bad in law as without assigning any valid or legal reason the learned Single judge has dismissed the writ petition particularly when the finding of fact that the concerned workman was an employee of the contractor and not of the appellant-Company had not been controverted. It was contended that the learned Single judge erred in law by not appreciating the fact that the only question of law, whether by virtue of theory of deemed employment as propounded by Madras High Court in the case of The Workmen of Best and Crompton Industries Ltd. Vs. The Management of Best and Crompton Engineering Ltd., Madras-55, has been over ruled in Dena Nath case (Supra) by the Hon''ble Apex Court and the said deeming theory had not been over ruled in the case of Air India Statutory Corporation, etc. Vs. United Labour Union and others [overruled], and the said Air India case has been over ruled by the constitution Bench in the Steel Authority of India case (Supra).

3. Learned counsel has also submitted that the learned Single judge committed a material error of law by holding that the workman will be deemed as a workman of Usha Martin Ltd. as held by the Labour Court, Ranchi does not call for interference. It is further submitted that the learned Single Judge also committed an error of law by going into the question of abolition of contract labour as the said question has not arisen before the parties on the existing facts. It is averred that the learned Single Judge seems to have proceeded on the presumption that whatever terms of reference is made by the State Government would be binding and this has resulted in a decision which is completely erroneous in law.

4. On the other hand, it has been submitted on behalf of the respondent that the award of the Presiding Officer of Labour Court is based on the finding of facts and the jurisdiction of the High Court under Article 226 of the Constitution of India is limited and the interference under Article 226 of the Constitution of India can be made only when there is error of law and not on error of facts because error of facts though serious cannot be interfered by the High Court while documenting the deeming fiction of law. The Labour court weighed the materials on record and it is settled principle of law that if the employer intends to take advantage of the provisions of Contract, Labour(Regulation & Abolition) Act, 1970 (in short "CLRA Act") the mandatory provisions of Sections 12 and 7 of the Act must be complied with and if the establishment is not registered under the provisions of Section 7 and the contractor does not have a valid licence u/s 12 of the Act then not only will they be liable for prosecution under Sections 23 and 25 of the Act but the workman employed through unlicensed contractor in an unregistered establishment is liable to be treated as the workman of the principal employer as per the law laid down by the Apex Court in the case of Air India Statutory Corporation, etc. Vs. United Labour Union and others [overruled], and in the case

of Secretary, H.S.E.B Vs. Suresh and Others etc. etc., It is further submitted that the Labour Court has discussed the evidence on record and rightly held that the respondent No. 2 is an employee of the management and the management of Usha Ishmal Division was not registered under the provision of Section 7 of C.L.R.A. Act and M/s. Agarwal Traders did not have a valid licence u/S. 12 of the Act, hence, this Court should not interfere with such findings. It has also been contended that M/s. Agrawal Traders, the contractor was required to supply the contract labour for miscellaneous job relating to house-keeping and other such job of periodical nature whereas the respondent No. 2 was engaged as machinist in Usha Ishmal Division and the learned Single Judge has rightly upheld the award of the presiding officer of Labour Court. Hence, the present appeal is not maintainable.

5. It is apparent from the perusal of the impugned judgment that the learned Single Judge, on the basis of the contention of the petitioner and respondent-workman held that the question to be adjudicated as to whether Section 7(2) of the CLRA Act was wrongly construed and also by application of the aforesaid Act, order of reinstatement is legal and valid. After hearing the parties, the learned Single Judge upheld the finding of the Presiding Officer of Labour Court holding that the workman has been able to substantiate that he was appointed as the workman under Usha Ishmal Division and he was working as a contract labour. That there is no registration certificate as required u/s 7(2) of the CLRA Act or any licence u/s 12 of the Act with regard to Usha Ishmal Division for the management and, therefore, concluded that the respondent-workman was working as a contract labour in the factory of the management.

6. Thus, the learned Single Judge held that the conclusion arrived at by the Labour court that the workman will be deemed as workman of Usha Ishmal Division does not call for any interference. Besides the C.L.R.A. Act, 1970 is a social welfare legislation to further the interest of the community of workmen (as opposed to) particular interest of individual entrepreneur. It seeks to achieve public purpose i.e. regulate conditions of contract labour and to abolish, if it is found to be of a perennial nature. Thereafter, going into the question of abolition of contract labour, learned Single Judge held "....the workman has worked for a considerable length of period. The abolition of contract labour ensures the right to the workman to be treated as such by the establishment in which they were working as a contract labour through the contractor and the effect of the said Act is to establish a direct relationship of an employer and employee between the principal employer and workman irrespective of the fact that he was initially employed as a contract labour...."

7. In the considered opinion of this Court the learned Single Judge has traveled in the domain of abolition of contract labour whereas no such controversy or question was raised in the matter and this Court is of the opinion that such a decision of the learned Single Judge was beyond the scope and jurisdiction as the issue was never there for adjudication. It is also necessary to state that the

decision in the case of Air India Statutory Corporation (Supra) was in relation to the notification u/s 10 for abolition of contract labour system in the said establishment and in the present case, there is no notification issued u/s 10 of the Act for the abolition of contract labour under the said establishment. In this context it is necessary to state that the Constitution Bench of the Apex Court in the case of Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., while discussing in detail the development and the enactment of C.L.R.A. Act has held in paragraph No. (105)-"that a beneficial legislation needs to be construed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication or substituting remedy of benefits for that provided by the legislature. The C.L.R.A. Act regulates the conditions of service of the contract labour and authorises in Section 10(1) of the Act the prohibition of contract labour system by the appropriate government on consideration of factors enumerated in Section 10(2) of the Act among other relevant factors. But, the presence of some or all those factors, provides no ground for absorption of contract labour on issuing notification u/s 10(1) of the Act. Admittedly, when the concept of automatic absorption of contract labour as a consequence of issuing notification u/s 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act, the consequence of violation of Sections 7 & 12 of the C.L.R.A. Act is expressly provided in Sections 23 and 25 of the C.L.R.A. Act. It is not for the High Courts or the Hon'ble Supreme Court to look into some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 of the Act or sequel to absorption of contract labour in the establishment of the principal employer or a lesser or a higher punishment."

Thus, it is evident that the ratio in the case of Air India Statutory Corporation (supra) has been overruled. In the present case it is pertinent to note that there was no prohibition notification u/s 10(1) of the C.L.R.A. Act in respect of the establishment issued by the appropriate government neither has the Labour Court given any finding that prohibition notification u/s. 10(1) of the C.L.R.A. Act in respect of the establishment concerned has been issued by the appropriate government prohibiting employment of contract labour in any process, operation or other work of the establishment.

8. In view of the law laid down and the facts at hand this Court finds that the learned Single Judge has erred in law by stating that the abolition of contract labour under the C.L.R.A. Act relates to a direct relationship between the contract labour and management irrespective of the fact whether he was initially employed as a contract labour because this was not the question, involved in the matter.

9. The Labour Court having relied on the decisions in the case of The Workmen of Best and Crompton Industries Ltd. Vs. The Management of Best and Crompton

Engineering Ltd., Madras-55, and in the case of Air India Statutory Corporation, etc. Vs. United Labour Union and others [overruled], has given a finding that since there was no registration u/s 7 of the Act and the contractor did not have a valid licence u/s 12 of the Act for the establishment of Usha Ishmal Division the said registration and licence was for the management of Usha Martin Ltd. though the agreement was between Usha Ishmal and M/s. Agrawal Traders. However, Usha Ishmal Division did not have the required registration certificate which is a separate industrial establishment and accordingly the respondent No. 2 was a contract Labour in the Usha Ishmal Division.

10. The learned Single Judge has accordingly upheld the same finding it is true that though this court under Article 226 of the Constitution of India has limited jurisdiction in interfering with the finding of the fact on material and record on the basis of which the Labour Court came to the conclusion that the workman was an employee of the management. In this connection it is relevant to state that it has been settled in the case of General Manager (OSD), Bengal Nagpur Cotton Mills, Rajnandgaon Vs. Bharat Lal and Another, wherein the Apex Court, in paragraph-8 held "the appellant relied upon the decision of this court in N.T.P.C. and Others Vs. Badri Singh Thakur and Others, where the Court held that the provisions of the C.L.R.A. Act would override the provision of MPIL Act and in Municipal Corporation of Greater Bombay Vs. K.V. Shramik Sangh and Others, where the court observed that merely because the principal employer and contractor have not complied with the provisions of C.L.R.A. Act in regard to registration, the system of carrying out work through contract labour could not be termed as sham."

In the aforesaid case, the Apex Court held that for determining whether the contract labour was a sham, a camouflage or the contractor was a name-lender, then the recognized test for determining the same is firstly whether the principal employer pays the salary? and secondly, whether the principal employer controls and supervises the work of the employee?. The principle of sham and camouflage and piercing the veil theory has also been the touch stone for holding a contract labour to be the employee of the management as has been held in the case of Hussainbhai, Calicut Vs. The Alath Factory Thezhilali Union, Kozhikode and Others, and in the case of Secretary, H.S.E.B Vs. Suresh and Others etc. etc.,

11. In the Haryana State Electricity Board case (Supra) the Apex Court has also emphasised the lifting of the veil for determining the exact relationship between the contract labour and the management. In Hussainbhai case (Supra) the fact was that the workmen were engaged to make rope from within the factory and the main business of the said factory was with respect to the manufacture of ropes and accordingly, the court, on the basis of lifting of veil theory, held that the intermediate contractor was a facade or camouflage and the real employer was the management. The said principle has been followed in the case of SAIL Vs. National Waterfront Workers (Supra) but in the present case there is no finding that the contractor was a name-lender or the workman was engaged in a

job which was integral to the production of goods of the establishment or was of a perennial nature.

12. The labour court has not given any finding as to whether the principal employer was paying the salary to the respondent and whether the principal employer was controlling and supervising the work of the employee and we are constrained for the interest of justice to take into the fact that the labour court has in paragraph-12 found that the respondent admitted that no appointment letter was issued to him neither any description of salary nor the post on which he had to work, neither any pay-slip was issued to him nor any deduction in provident fund was made and respondent No. 2 admitted that he received his salary by signing on a register and that belonged to M/s. Agarwal Traders of M/s. Usha Ishmal Division and also gave the opinion that the names of the persons in the register varied and the maximum number of persons was 40.

13. Thus, in view of the evidence on record it is apparent that there was no finding regarding the payment of salary or the control and supervision by the management and no material was brought forward to show that the contract labour was a sham or camouflage or the contractor was merely a name lender or a facade and the work was of a perennial nature or the workman was engaged in the production of goods integral to the business of the management.

14. It would not be out of place to note that the respondent No. 2, workman has clearly stated that no appointment letter was issued to him nor the post on which he was employed or worked or neither any termination letter was served on him and it has been held by the Hon"ble Apex Court in B.T. Krishnamurthy Vs. Sri Basaveswara Education Society and Others, that in absence of appointment letter termination simpliciter is not illegal and is not violative of the principle of natural justice.

15. In the backdrop of the discussions made above and the settled law that violation of the provisions of C.L.R.A. Act does not give rise to automatic absorption of the workman in the establishment and the violation of Sections 7 and 12 of the CLRA Act will be visited by prosecution and penal consequences as provided under Sections 23 to 25 of the C.L.R.A. Act, resultantly this Court holds that the learned single Judge and learned labour court have not appreciated the provisions of law and the impugned award passed by the Labour Court and the judgment of the learned single Judge cannot be sustained in view of the settled principle of law as held in the cases discussed above. As per the emerging broad features, we hereby set aside the award dated 04.06.1998 passed by the learned Labour Court and the judgment dated 12.08.2011 passed by the learned Single Judge. Accordingly, the appeal is hereby allowed. Before parting, we express our appreciation to Smt. M.M. Pal for rendering her valuable assistance to this court on behalf of the respondent, workman as amicus curiae.