

**(2004) 12 CAL CK 0030**  
**In the Calcutta High Court**  
**Case No : M.A.T. No. 2243 of 1999**

|                                                           |            |
|-----------------------------------------------------------|------------|
| West Bengal Power Development Corporation Ltd. and Others | APPELLANT  |
| Vs                                                        |            |
| Asis Dey Chowdhury and Others                             | RESPONDENT |

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**Date of Decision :** 14-12-2004

**Acts Referred:**

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

**Citation :** (2005) 107 FLR 70

**Hon'ble Judges :** Alok Kumar Basu, J;A.K. Ganguly, J

**Bench :** Division Bench

**Advocate :** M.B. Sirkar and G.L. Ghosh, for the Appellant;D.P. Mazumdar, for the Respondent

**Final Decision :** Allowed

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## Judgement

A.K. Ganguly, J.—This appeal has been filed by the West Bengal Power Development Corporation Ltd. (hereinafter referred to as the said Corporation) and its officers against a judgment and order, dated 7 April, 1999, passed by a learned Judge of the Writ Court. By the said judgment and order; the learned Judge, after hearing the parties, was pleased to dispose of the writ application filed by several persons, who have been working as deep tube-well pump operators with the said Corporation since 1980.

In the said judgment and order under appeal, the learned Judge disposed of the writ application by giving two directions. By the first direction, the writ-petitioners were given liberty to apply to the appropriate authority under Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as the said Act) for determination of the question whether the nature of work performed by the Petitioners is perennial in nature and also for grant of appropriate reliefs. The learned Judge gave a further direction upon the said Corporation to pay to the writ-petitioners as also the Respondent Nos. 10 and 11 the minimum rate of wages, which are payable to the regular employees, who are engaged as pump operators of the said Corporation with effect from 1 April,

1979.

2. The learned Counsel appearing for the appellant/Corporation submitted that he has no grievance with the first direction, which has been given by the learned Judge of the Writ Court enabling the writ-petitioners to apply to the appropriate authorities under the said Act for determination of the question of perennial nature of work performed by them. But, in so far as the second direction is concerned, according to the learned Counsel, the same cannot be granted in view of the facts and circumstances of this case.

3. The case as made out in the writ petition by the Petitioners/ Respondents is that they are working as pump operators in respect of the deep tube well used by the inhabitants of the Township of Kolaghat. Thermal Power Project since 1980. Subsequently in 1987, the said Corporation was formed and constituted and the Petitioners are working under the said Corporation. As such, the case of the Petitioners is that they are working from the middle of 1980 at Mecheda, District-Midnapore being engaged by different contractors/agencies, who were engaged previously by the West Bengal State Electricity Board and subsequently by the said Corporation and the Petitioners since then are discharging the said duties without any interruption. According to the writ petitioners the said Corporation is the principal-employer. The further case of the petitioners is that the contractors are usually engaged by the said Corporation for a term of 12 months and are changed from time to time but the Petitioners remain constant discharging their duties without any interruption as labour of different contractors. In the process several agencies have been changed but the Petitioners through out worked in the same capacity of pump operators, without any interruption. It was also stated that so far as the Petitioners are concerned, an acquaintance roll is maintained in the name of register of wages. The said register is maintained in the name of the said Corporation, which is the principal-employer. The Petitioners are being a monthly basic pay calculated @  $35.12 \times 26$  and they are getting house rent allowance/ which is 5 per cent of the basic pay. But no casual leave is admissible to them and they are made to work about 24 hours, if any such contingency arises,, and they are made to stay in rented premises in view of the heavy load of working hours and uncertainty of their time of work. The Petitioners have also stated that a regular employee of the said Corporation, doing the same work, is getting a monthly emoluments of Rs. 1800 and the regular employees are getting Sundays and off days and are working for 8 hours a day only. In Para. 10 of the writ petition it has been asserted that they are working actually under the said Corporation and receiving monthly emoluments from the said Corporation. Therefore, the key control on them lies in the hands of the said Corporation. The contract agreement with the contractor will show that the Petitioners are actually working under the supervision of the said Corporation and their status is of casual worker working with the said Corporation since 1987. In the affidavit, which has been filed by the said Corporation, the case made out in the writ petition has hardly been denied. It has been further stated that the Petitioners have been working under different

contractors and their agencies. In so far as the positive case in the writ petition which has been made out in Paras. 7 to 10 thereof, there is no denial of the same in the affidavit-in-opposition filed by the Respondents/Corporation.

4. It is also not in dispute that the said Corporation is an Authority within the meaning of Article 12. In the writ petition there is a claim that the work of the writ petitioners is of perennial in nature;. In fact, the same has also been noted by the learned Judge in the judgment under appeal and the same has not been disputed before us. The fact that the work of the writ petitioners is perennial in nature is also made clear from the fact that they are working since 1980 and by the time the writ petition was decided in 1999, virtually they completed 20 years of service. As of date they have virtually completed about 25 years of service. The learned Judge in the judgment under appeal has accepted the position that the writ petitioners are entitled to have their claim for regularisation considered by the appropriate authority u/s 10 of the said Act.

5. The learned Judge has considered several judgments in the judgment under appeal but by the time the judgment was rendered by the learned judge, the Constitution Bench judgment of the Supreme Court in the case of Steel Authority of India v. National Union Water Front Workers and Ors. 2001 (91) ILR 182 reported was not delivered and as such it could not be considered by the learned Judge.

6. The learned Counsel appearing for the appellants/Corporation has urged that no application has been made by the writ petitioners u/s 10 of the said Act and as such there is no question of abolition of contract labour system under which the writ petitioners are working. The learned Counsel further argued that assuming there is an abolition of contract labour but even it contract labour is abolished that does not amount to an automatic absorption of the writ petitioners in the service of the said Corporation. The learned Counsel also urged that there is no privity of contract between the writ petitioners and the said Corporation and as such, the writ petitioners cannot demand any absorption, payment or employment by the said Corporation. "The learned Counsel also pointed out that the writ petitioners are not casual workers of the said Corporation as such, the ratio of the Division Bench judgment of Shyamal Kumar"s case cannot be applied.

7. In Shyamal Kumar Chatterjee and Ors. v. Food Corporation of India and Ors. 1994 (2) CLJ107 (vide supra), a Division Bench of this Court was, inter alia, pleased to give certain directions in the case of casual workers of the Food Corporation of India. The facts in Shyamal Kumar case (vide supra) are mat the writ petitioners were working as casual workers in the godown of FCI employed by contractors. It also appears that the FCI engaged casual labourers directly and not through contractors. The dispute was that the casual workers working in the godown of FCI and who were appointed directly, were getting a different scales of pay and those who were appointed through contractors and performing the same work were getting a different scales of pay. On those facts the learned Judges of the Division Bench held that such disparity offends Article 14.

8. The facts in the present case are, however, slightly different. Therefore, the doctrine of "equal pay for equal work" cannot be strictly speaking, applied in the facts of the present case, though the facts remains that the writ petitioners are doing the same work as is done by the regular employees of the said Corporation, the job of pump operator but until Petitioners are absorbed in the employment of the said Corporation, the status of the writ petitioners and the regular employees who are doing the job of pump operators in the said Corporation cannot be equated.

9. But in the facts of this case one thing is clear that the writ petitioners are working as pump operators in the Corporation since 1980. The wage bills which have been annexed to the writ petition show that in the register of wages, maintained by the said Corporation, they are being paid and in the said register of wages the name of the principal-employer is of the said Corporation. In the Constitution Bench judgment of the Supreme Court in the case of Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., , it has been seated that the contract labour as defined under the said Act means certain, species of workman. In the said judgment it has been further clarified (Para 71) where a workman is hired in or engaged in connection with the work of the establishment by the principal-employer through a contractor, in such a case the workman merely acts as an agent and there will be a master and servant relationship between the principal-employer and the workman. But where the workman is hired in or engaged in connection with the work of the establishment by the contractor either-

(a) because he has taken to produce a given result, or

(b) the contractor supplies the workman for any work of the establishment, then a question may arise, whether the contract is a mere camouflage.

If the answer is in the affirmative the workman will be in fact, an employee of the principal-employer, But if the answer is in the negative, the workman will be a contract labour (Pages 43-44 of the report).

10. Going by the said clarification, it can be said that here the workers who were engaged namely, the writ petitioners, they were engaged in connection with the work of the establishment perennially through a contractor and there is a master and servant relationship between the said Corporation and the workers, who are the writ petitioners here. It is not a case where the workman is hired for producing any given result or doing any particular work for a particular occasion. Here the engagement of a contractor is a mere camouflage.

11. It is also appears that the nature of work is perennial, In the judgment in Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., (vide supra) the decision of a two Judge Bench of the Supreme Court in the case ofGujarat Electricity Board Thermal Power Station, Gujarat Electricity Board, Thermal Power Station, Ukai Vs. Hind Mazdoor Sabha and Others, was also considered. In Para. 33 of that judgment, the learned

Judges held that if there is no genuine contract and the so-called contract is a sham or a camouflage to hide the reality the provisions of Section 10 of the said Act are not applicable. In such a case the Court or the adjudicator will have the jurisdiction to entertain the dispute of the workers and grant them the necessary relief.

12. In the instant case, it is clear that the engagement of the contract labour is a camouflage inasmuch as the nature of work is perennial. The contractors are changing from time to time but the workers remain the same. They do not change. In other words, the same workers, are compulsorily engaged by different contractors for doing the same job of pump operators which is being done by the regular pump operators of the said Corporation. So, in this undisputed facts of this case, it can be said that the engagement of contract labour is a mere camouflage and the same has been done only to hide the real state of affairs. It is also not in dispute that the nature of work done by the writ petitioners is perennial in nature.

13. In that view of the matter the prayers made in the writ petition can be granted by this Court especially when the Respondent/Corporation is a State within the meaning of Article 12. It is well known that a State, within the meaning of Article 12, has to act as a model employer and cannot indulge in the exploitation of labour.

14. Considering these facts and the circumstances of this case, this Court directs that the appellant, The West Bengal Power Development Corporation Ltd., Kolaghat Thermal Power Project, must absorb the writ petitioners and added Respondent Nos. 10 and 11 to the writ petition as regular employees of the said Corporation with effect from 1st April, 1999, the date on which the judgment was delivered by the learned Judge of the Writ Court. The writ petitioners and the Respondent Nos. 10 and 11 will be absorbed in the minimum rate of wages which is applicable to the regular employees, i.e., pump operators of the said Corporation with effect from 1 April, 1999 and the consequential financial benefit which is payable to the writ petitioners as a result of such absorption should be made available to them within a period of 4 months from the date of service of a certified copy of the judgment upon them this appeal is, thus, dismissed and the writ petition is allowed to the extent indicated above.

There will be no order as to costs.

A.K. Basu, J.

I agree.

Later - Prayer for stay of the judgment and order passed today made by the learned Counsel for the appellant is considered and rejected.

Xerox certificate copy of the judgment delivered today, if applied for, be supplied expeditiously on compliance of necessary formalities.