

(1993) 02 AHC CK 0029
In the Allahabad High Court
Case No : C.M.W.P. No. 29990 of 1991

Zila Contractors Workers Union

APPELLANT

Vs

G.M., Annapara Tapiya Pariyojna and Others

RESPONDENT

Date of Decision : 16-02-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1993) AWC 885 : (1993) 2 LLJ 464 : (1993) 2 UPLBEC 829

Hon'ble Judges : S.R. Misra, J

Bench : Single Bench

Advocate : Rakesh Tiwari, for the Appellant; Tarun Agarwal, S.C., for the Respondent

Final Decision : Dismissed

Judgement

S.R. Misra, J.—As common questions of fact and law are involved in these writ petitions, they are being disposed of by this common judgment.

2. In all these writ petitions, Zila Contractors Workers Union Sonbhadra are the petitioners and a prayer for a writ of mandamus has been made for commanding the respondents not to discontinue or deny duty to the workers, shown in Annexure 1 to the writ petitions, on the change of Contractors. Writ Petition No. 29990 of 1991 is being treated as the leading case.

3. Counter and rejoinder affidavits have been filed and with the consent of the learned counsel for the parties, the writ petitions are being finally disposed of at the admission stage in accordance with the High Court Rules.

4. The brief facts are that the petitioner is an Union of workers registered under the Trade Unions Act 1926 (however, these are the facts of Writ Petition No. 29990/1991, but, as already stated, the facts are common in all the petitions). Annexure 1 contains names of 140 workers, who are members of the Union and have been working with the respondent No. 1 in Merry Go Round and Track Hopper Workshops and Maintenance Department. They do the work of

maintenance of engines, railway lines and coal wagons etc., U.P. State Electricity Board is a corporation of Govt. of U.P. established for generation and supply of electricity. Respondent No. 1 generates electricity and the capacity of its Annapara unit is 630 M.W. per day. Diesel engines, wagons and railway line for bringing coal from colliery, are maintained and repaired by the petitioners in the workshop.

5. The Parliament enacted the Contract Labour (Regulation & Abolition) Act, 1970 to regulate the employment of contract labour in certain establishments. It also provides for matters connected with abolition of employment. It applies to every establishment in which 20 or more workers are employed on any day of the preceding 12 months as contract labour.

6. Section 1(5) of the aforesaid Act is relevant which provides that the Act shall not apply to establishments in which work only of intermittent nature or casual nature is performed. The explanation to Section 1(5) provides that work performed by an establishment shall not be deemed to be of an intermittent nature if it was performed for more than 120 days in the preceding 12 months or if it is of a seasonal character and is performed for more than 60 days in a year.

7. The petitioners further allege that the work which they perform, such as supply of coal from colliery to the project, maintenance of railway line, diesel engines wagons Merry Go Round and Track Hopper System, is continuous in nature and the work goes on round-the-clock throughout the year. It is not of intermittent or casual nature but is continuous and essential in its nature. It is integral part of generation of electricity.

8. The petitioners further allege that the Contract Labour (Regulation & Abolition) Rules, 1976 framed by the U.P. Government also applies to the establishment of U.P. State Electricity Board where contract labour is employed. The contract labour is mostly employed at the projects where the work of setting up of power stations is being done. The work on these projects is being done both by the department as well as by the employees of the contractors. Section 7 of the Act provides for registration of covered establishments with the officers appointed by the State Government in exercise of powers conferred u/s 6 of the Act. The State Government has already notified such officers vide notification dated November 3, 1977. As per provisions of Sections 11 and 12 of the Act, no contractor to whom the Act applies, shall undertake or execute any work through contract labour except under and in accordance with the licence issued in that behalf by the Licensing Officer. Sections 10 to 21 of the Act provide for "facilities which are to be provided to the contract labour by the contractors. Sections 22 to 27 of the Act provide for penalties for violation of the provisions of the Act by various parties. In paragraph 12 of the writ petition, it has been alleged that no licence can be issued by the competent authority under the Contract Labour (Regulation & Abolition) Act, 1970 for work which is of continuous and permanent nature but the officers of the respondent Nos. 1 to 3, in collusion with respondent Nos. 4 and 5, issue licence for employment of contract labours with a view to victimise

the workers and to indulge in unfair labour practice to deny the workmen of their rightful dues and regularisation/permanency of service. They either change the contractor or get the work done by the workers of some contractor after changing the name of contractor from year to year. The modus operandi is that name of the contractor of earlier year is changed in the next year and workers are deprived of the benefits of a regular employee and equal pay for equal work and other allowances etc. No contract labour can be engaged on work of regular nature and the members of the petitioner's Union have been working against the permanent and regular jobs.

9. The petitioners allege that the Corporation being State Government Undertaking, would be model employer and it should treat its workmen accordingly but with a view to give lesser pay and to deprive the workmen from other facilities, and to victimise them, it has been indulging in unfair labour practice. On the demand being raised by the petitioner-Union, the officers of the respondent No. 1 became annoyed and decided to discontinue the services of members of the petitioner-union w.e.f. October 14, 1991. The petitioner-Union also raised demand for regularising the services of members before the Deputy Labour Commissioner, Pipri which has been registered as C.B. Case No. 19 of 1991. Various other pleas have been taken in the writ petitions and it is not necessary to narrate them at this stage.

10. On behalf of the respondents, it has been denied that the petitioners are performing permanent job. According to them, it is the Contractors who engage labourers for specified period and the respondents have no say in the matter of their employment. In case the contractors do not pay them the wages then alone the respondents come into play as it is their liability/responsibility to pay the wages u/s 21 of the Act. The wages have been fixed under the Minimum Wages Act read with Rule 25 of the Rules. In para 11 of the counter affidavit, it has been asserted that the petitioner Union is not a registered one and Dwarika Singh, who has filed; the affidavit and writ petition, is not the General Secretary, duly elected, of the Union. The respondents have denied the averments made in the writ petition and they have specifically denied that the persons mentioned in Annexure 1 are working with the answering respondents. It has also been denied that the work discharged by the persons mentioned in Annexure 1 is of continuous nature. On the other hand, the work is of casual nature. It has also been denied that the work is integral part of the generation of electricity. In para 23 of the counter affidavit, it has been asserted that contract labourers are not the workers of principal employer nor they are performing the same work which regular workers do perform. The petitioner-union has also raised dispute before Labour Commissioner, Kanpur under Rule 25 (2)(v)(a)(b) of the Rules in this regard.

11. I have heard learned counsel for the parties at length and have also gone through the record of the case and considered the case laws cited by them; such as, B.H.E.L. Workers Association, Hardwar and Others Vs. Union of India and

Others, : 1989 FIR 58 : 1991 FIR-63: 1992-I-LLJ-289 etc. However, without expressing any opinion on merits of the case and on the points as to whether the petitioners are entitled to the reliefs claimed and whether the contention of the respondents that they are not the employees of Principal but of contractors, and, whether the duty being discharged by them is of casual or permanent nature, I am of the view that the aforesaid points can only be gone into in a regular forum and since they are disputed questions of fact, the petitioner-Union can approach the Labour or the Industrial Court under the Industrial Law, which is self contained code. Thus, the petitioner-Union has an adequate alternative remedy where all these questions can be looked into.

12. It is true that alternative remedy of an industrial dispute is not a complete bar to the exercise of jurisdiction under Article 226 of the Constitution of India but at the same time, the same is dependent upon the facts and circumstances of each case. The Industrial Laws are self-contained laws and it is created to afford a pragmatic and comprehensive remedy to the litigants for settlement of their disputes where questions effectively can be gone into and evidence may be adduced. It is desirable that such Tribunals, which are self-contained, should be allowed to strike the roots and in the normal circumstances, the moment the question of fact is involved, exercise of jurisdiction under Article 226 may not be invoked on account of alternative appropriate remedy.

13. It is admitted by the learned counsel for the petitioner that out of the three writ petitions, members of the Union of one of the Unions have already approached the Labour Court and the matter is pending consideration. However, learned Counsel for the petitioner urged that the case laws, which are directly on the point, including the decision of Hon"ble the Supreme Court in Dena Nath and others Vs. National Fertilisers Ltd. and others, as well as a decision of this Hon"ble Court, clearly overlooked Section 1(5) of the Act and thus, these decisions will have no application to the facts of the present case.

14. Since I am taking the view that the petitioner-Union has an alternative remedy of approaching the Industrial Court where questions of fact can also be examined, I refrain myself from expressing any opinion on this aspect of the case as well and I leave it to the Labour Court to consider the same,

15. Thus, it is clear from the allegations in the writ petition and counter allegations in the counter affidavit that it is not possible for this Court, under Article 226, to embark into an enquiry where it concerns a few hundred: workers working in various capacities, engaged in multifarious activities, doing or not doing identical work to that of the employees of U.P. State Electricity Board. The question as to whether they should be treated workmen employed by U.P. State Electricity Board and not by the contractors is a question of fact and there is self-contained forum created in other statutes designed for such like questions and, therefore, I am not inclined to interfere under Article 226 of the Constitution on account of availability of alternative remedy.

16. From a perusal of the Act, it is quite clear that where a breach is committed by a contractor, the remedy is already provided for equal remuneration and other reliefs, where the Chief Labour Commissioner is the appropriate authority. It is not necessary to deal with this matter at greater length in view of what has been stated above and all these questions are those of facts and they are to be considered by an authority having exclusive jurisdiction to go into these aspects of the matter. On receipt of the case, the competent Court will record a finding in the light of the pleadings of the parties and any observation made in this judgment will not affect the merit of the case and will not prejudice the right of any party.

17. Accordingly the writ petitions fail and they are dismissed on the ground of alternative efficacious remedy of approaching the authority constituted under the Industrial Law. It appears to be desirable that if the State Government is approached by concerned workmen or any other registered Union, if permissible under the law, the State Government will refer the matter to the appropriate authority within a period of two months from the receipt of such prayer. Stay order, if any, stands vacated.