
(2002) 08 AP CK 0013

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 1638 of 1999

Zindal Strips Security (Contract) Employees Union

APPELLANT

Vs

The Deputy Commissioner of Labour and Others

RESPONDENT

Date of Decision : 29-08-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Contract Labour (Regulation and Abolition) Act, 1970 — Section 10, 12, 33A

Citation : (2002) 08 AP CK 0013

Hon'ble Judges : S.R. Nayak, J;Dubagunta Subrahmanyam, J

Bench : Division Bench

Advocate : D. Ramalingaswamy and V. Malathi, for the Appellant; O. Manohar Reddy and S. Ravindranath, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Nayak.

1. The appellant is a trade union and unsuccessful writ petitioner. It filed Writ Petition No. 9575 of 1999 under Article 226 of Constitution of India praying for the following relief"s:

"...to issue a Writ, Order or direction more particularly one in the nature of Writ of Mandamus, directing the 1st respondent to take necessary steps, for prosecuting the respondents 2 and 3 for allowing contract labour system with regard to watch and ward personnel in the establishment of the 2nd respondent in their unit at Kothavalasa near Visakhapatnam on wages for lower than the lowest paid employee of the 2nd respondent, violating the provisions of Sections 10 and 23 read with G.O. Ms. No. 287 IEN & TE (Lab-II) dt. 7.5.1981 of the A.P. State Government.

(2) To direct the 2nd respondent immediately to absorb the members of the Union as regular staff as stated above; and to direct the respondents 1 to 3 not to give any effect to any transfer orders with regard to any members of the

petitioner union declaring that the employment of the members of the Union as watch and ward personnel on contract labour system is against the ban imposed u/s 10 of the Contract Labour (Regulation and Abolition) Act, 1970; that as the members of the union are working since more than 240 days in the establish, the 2nd respondent is liable to absorb them as their regular employees; that since contract labour is adopted against the ban, both the respondents 2 and 3 became liable for prosecution and that the 1st respondent has to take necessary legal action against any such violation."

2. The writ petition was opposed by respondents 2 and 3 by filing separate counter affidavits. In the counter affidavit filed by the second respondent, it is stated:

"The second respondent being a company incorporated under the Companies Act is not amenable to writ jurisdiction under Article 226 of the Constitution of India and it has not contravened any of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970, for short "the Act". The second respondent registered its establishment u/s 7 of the Act and the third respondent, who is supplying the Watch and Ward personnel, also obtained licence u/s 12 of the Act, which was valid up to 5.11.1999. The second respondent entered into an agreement for supply of security guards for a period of one year which expired on 30.6.1999 but basing on the representation of the third respondent it was extended up to 31.12.1999. Since the third respondent is paying wages as per Notification No. 202, dated 22.4.1998, the statutory provisions are complied with. As there is no privity of contract or the relationship of master and servant between the members of the petitioner union and the second respondent, the petitioner-union cannot claim absorption and the writ petition filed by the petitioner is only an abuse of process of law and they have got an effective alternative remedy under the provisions of the Industrial Disputes Act. Without availing the said alternative remedy, the petitioner cannot approach this Court under Article 226 of the Constitution."

3. In the counter affidavit filed by the third respondent, it is stated:

"It obtained licence u/s 12 of the Act and entered into an agreement with the second respondent for supply of security guards and the said agreement is extended till 31.12.1999 and the employees under its organization were being paid wages fixed by the Government under the Act. Transfers were effected in a routine manner and due to exigencies of service. In spite of receiving transfer orders, the members of the petitioner union have not reported to duty, the amounts due to them were also sent by money orders and some of them have received them and by virtue of interim order to continue them in the second respondent establishment, it will cause loss to them."

4. The learned single Judge on a consideration of the rival contentions has opined that the question whether the Helper is the lowest cadre in the establishment of the principal employer or any other lowest post exists in that establishment has

to be determined by the adjudicatory authority under the Industrial Disputes Act, 1947 (for short "the I.D. Act"). So opining, the learned single Judge has declined the relief to the petitioner; however, reserving liberty to the petitioner-union to make a complaint before the Deputy Commissioner of Labour, the first respondent herein u/s 33-A of the Act and further directing the first respondent to dispose of such complaint in accordance with law. Hence, this writ appeal by the petitioner-trade union.

5. We have heard the learned counsel for the parties and perused the judgment of the learned single Judge. The learned counsel for the appellant strenuously contended that in paragraph-7 of the writ affidavit it is specifically contended that in the establishment of the second respondent, the post of Helper is the lowest post and it carries a monthly salary of Rs. 2164/- and the Watch and Ward staff provided by the third respondent to serve the second respondent are paid a meager monthly salary of Rs.1300/- only and that that factual assertion made on oath is not denied by respondents 2 and 3 in their counter affidavits and therefore, it should be held that the case of the members of the appellant-union does not fall within the exclusionary clause contained in paragraph-1 of G.O. Ms. No. 287, dated 7.5.1981 and that therefore the learned Judge is not justified in not granting the relief"s to the writ petitioner-Trade Union.

6. Even assuming that the above factual assertion made by the union in the writ affidavit is correct, even then, in the light of the latest pronouncement of the Constitution Bench of the Supreme Court in STEEL AUTHORITY OF INDIA LTD. v. NATIONAL UNION WATERFRONT WORKERS¹, the absorption of services of the contractor labour is not an automatic event to follow. In such cases, the rights of the contract employees have to be worked out in terms of the statements of law formulated by the Constitution Bench itself in paragraph-125 of the judgment. Be that as it may, at the time of hearing, it was brought to our notice that even before filing the writ petition, the appellant-union submitted a representation dated 9.4.1999 to the first respondent on 19.4.1999 and that first respondent, who is the conciliation authority under the I.D. Act, has taken cognizance of the same and issued notices to the concerned parties and the proceedings are pending before him.

7. It is trite that the I.D. Act is a Code in itself as regards the legal remedies available to the industrial workers. In order to grant the relief"s as sought for by the appellant-union in the writ petition, the adjudicatory authority is required to resolve not only the factual controversies, but also legal issues. In that view of the matter, it is appropriate that the appellant-trade union should work out legal remedies, in the first instance, before the conciliation and the adjudicatory authorities under the I.D. Act before invoking the extra- ordinary jurisdiction of this Court under Article 226 of the Constitution of India by way of judicial review. This Court cannot take up the resolution of disputed facts under Article 226 of the Constitution, such as whether the contract labour secured by the third respondent and supplied to the second respondent is a camouflage to defeat the

legitimate rights of the contract employees or not and whether there is a need for the second respondent-management to absorb the services of all the contract employees procured and supplied to it or not. Looking from that angle, we do not find any substantial ground to interfere with the order of the learned single Judge. The writ appeal is devoid of merit and it is accordingly dismissed with no order as to costs. However, the first respondent is directed to expedite the conciliation proceedings pending before him with promptitude and diligence.