Delhi High Court
Ashok Kumar Verma & Ors. vs Container Corporation Of India & ... on 10 April, 2015
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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on:20th March, 2015
% Date of Decision: 10th April, 2015

+ W.P.(C) 2027/2014

ASHOK KUMAR VERMA & ORS. ..... Petitioner
Through: Mr. Anand Nandan & Mr. D.S. Mishra, Advs.

versus

CONTAINER CORPORATION OF INDIA & ORS .....Respondents
Through: Mr. Rakesh Dwivedi, Sr. Advocate with Mr. Rajender Dhawan & Mr. B.S. Rana, Advocates for R-1.
Mr. Siddharth Dias, Advocate for R-2.

CORAM:
HON'BLE MR. JUSTICE VED PRAKASH VAISH

JUDGMENT

1. The petitioners have preferred the present petition under Article 226 of Constitution of India seeking directions to restrain respondent No.1 from disengaging the petitioners from their services till the decision/ disposal of the petition under Section 10(2) of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as CLRA Act) filed by the petitioners, which is pending before respondent No.3, Central Advisory Contract Labour Board, New Delhi.

2. Succinctly stating, the facts as borne out from the petition are that the petitioners are working as workers with the respondent No.1 without any break for a long period of time. Respondent No.1 keeps on changing the nomenclature of the petitioners. The contractors of respondent No.1 are appointed on the basis of license of surveyors. The petitioners, though, are working for respondent No.1, the contractors who actually do not have the license for keeping the petitioners are being used by respondent No.1 to show that the petitioners are employees of those contractors. For the period 2002- 2003, Unique Marine Services was the contractor for respondent No.1 for allegedly engaging the petitioners for the work of respondent No.1. During the period 2003-2008 the work of surveyor was given to the contractor namely Master Marine Company. The work of equipment operators was given to the contractor namely Computec Ltd.. After 2008 till 2010 the petitioners were managed by the contractor by the name of Metcalfe & Hodgkinson Pvt. Ltd., which has the license of surveyor and not for equipment operators. Further, from the period 2010-2011, a company by the name of Concept Marine Pvt. Ltd. which had a license of surveyor was used for employing the petitioners by the respondent No.1. However, the said company had abandoned respondent No.1. For the period for which the petitioners worked for respondent No.1, it paid the salaries directly to the workers.

Further, in the year 2011 a company by the name of Icon Marine was kept by respondent No.1 for sometime, which was essentially a sham company and did not have requisite legal existence. From 2011 till 2015 the contract has been given to Metcalfe & Hodgkinson Pvt. Ltd. which has the license of surveyor. The respondent No.1 is using the said company for the workers, although the said company has been essentially kept for the purposes of the surveyor. The petitioners are working with respondent No.1 since 2002-2003.

3. The petitioners moved an application under Section 10(2) of the CLRA Act before respondent No.3, which was duly acknowledged on 14.03.2014 by the office of the Director General, Labour and Welfare, Central Advisory Contract Labour Board, New Delhi. The petitioner has come to know that respondent No.3. has already initiated measures for formation of a Committee which will work on the feasibility of recommendation of abolition of contract labour in the work sphere of the petitioners. The petitioners have also come to know that respondent No.1 is in the process of removing the petitioners from their services on one or the other grounds. Under such circumstances, the petitioners have preferred the present petition.

4. Learned counsel for the petitioners urged that the petitioners are working with respondent No.1 continuously and despite the change of contractors, the petitioners continue to work with respondent No.1. All the petitioners have a login Id which can be traced down to their initial appointment with respondent No.1. The petitioners also have the gate passes issued by respondents, which can be traced back from the period 2002-2003.

5. Learned counsel for the petitioners further submitted that the work carried out by the petitioners is necessary for the functioning of the respondent organization. The containers of respondent No.1 are managed, filled, maintained and preserved by the petitioners. The work carried out by the petitioners is perennial in nature and they work in three shifts. The petitioners work is carried out by regular workmen in other departments of the railways and respondent No.1 is a subsidiary of these departments. The petitioners are exploited at the behest of the officers of respondent No.1 and benefits of many labour welfare measures are not given to them. The petitioners have already raised an industrial dispute under Section 10 of the Industrial Disputes Act, 1947 (for short, ID Act) along with an application under Section 10(2) of CLRA Act before respondent No.3.

6. Lastly, it was submitted by learned counsel for the petitioners that the respondent No.1 has come to know of the pendency of the aforesaid application before respondent No.3 and is in the process of removing the petitioners from their services on one or the other grounds with immediate effect. Respondent No.3 has already initiated measures for formation of a committee which will work on the feasibility of recommendation of abolition of contract labour in the work sphere of the petitioners with respondent No.1.

7. On the other hand, learned senior counsel for respondent No.1 contended that there is no privity of contract between the petitioners and respondent No.1. It is an admitted case of the petitioners that they had been employed by respondent No.2, therefore, the question of termination of their services by respondent No.1 does not arise.

8. It was also contended by learned senior counsel for respondent No.1 that even assuming that a notification under Section 10 of CLRA Act is issued, it would only prohibit the continuation of employment of contract labour and even the issuance of such notification would not make petitioners employees of respondent company. It was further contended that the relief sought by the petitioner in their conciliation proceedings is not maintainable as the same is contrary to their case set up before the Contract Labour Advisory Board.

9. Learned counsel for respondent No.2 submitted that the petitioners are working under the direct supervision and control of respondent No.2 and not respondent No.1. Salary is provided to the petitioners as per their appointment letter by respondent No.2. Statutory benefits like Provident Fund, Employees State Insurance Benefit, Bonus, Leave, Group Accidental Insurance, etc. are also provided to the petitioners by respondent No.2. It is also submitted by learned counsel for respondent No.2 that the present petition is not maintainable for the fact that the petitioners are engaging in Forum Shopping in as much as they have filed a claim against the respondent before the Conciliation Officer, Delhi as they have also approached the Contract Labour Board.

10. I have given my thoughtful consideration to the submissions made by learned counsel for the parties and have also perused the material on record.

11. The CLRA Act is intended to "regulate" the employment of contract labour in certain establishments and to provide for its "abolition" in certain circumstances and for matters connected therewith. The Statement of Objects and Reasons mentions that the system of employment of contract labour has tended itself to various abuses and the question of its abolition had been under the consideration of the Government for a long time. The Planning Commission had made certain recommendations in the Second Five Year Plan viz., undertaking of study in this behalf and improvement of service conditions of contract labour where the abolition was not possible. The general consensus thereafter was that the contract labour system should be abolished wherever possible and practicable and further that in cases where this system could not be abolished altogether, the working conditions of the contract labour should be regulated so as to ensure payment of wages and provision of essential amenities.

12. With these objectives, the CLRA Act was enacted in 1970. Section 10 of CLRA Act which is pertinent to the present case deals with prohibition of employment of contract labour case and reads as follows:

> "10. Prohibition of employment of contract labour:-
>
> (1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.
>
> (2) Before issuing notification under Sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits

provided for the contract labour in that establishment and other relevant factors, such as-

(a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation carried on in that establishment;

(b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;

(c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;

(d) whether it is sufficient to employ considerable number of whole time workmen.

Explanation: If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government there on shall be final."

13. The consequence of issuance of notification under Section 10 of CLRA Act came up for consideration before the Honble Supreme Court in Steel Authority of India Ltd. & Ors. vs. National Union Waterfront Workers & Ors., (2001) 7 SCC 1, and it was observed as under: -

"125. .....

(5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour 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 labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with 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 labour will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labour in the establishment concerned subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.

(6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA 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 any establishment and where in such process, operation or other work of the establishment the principal employer intends to

> employ regular workmen, he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications."

14. In the aforesaid judgment, the Apex Court further observed that the question for determination under Section 10 of CLRA Act require inquiry into disputed question of facts which cannot be made by the High Court under Article 226 of the Constitution of India. The Apex Court thus observed: -

> "126. We have used the expression "industrial adjudicator" by design as determination of the questions aforementioned requires enquiry into disputed questions of facts which cannot conveniently be made by High Courts in exercise of jurisdiction under Article 226 of the Constitution. Therefore, in such cases the appropriate authority to go into those issues will be the Industrial Tribunal/Court whose determination will be amenable to judicial review.

15. The petitioners too, before this Court have confined their prayer to the extent that they want directions against respondent Nos.1 & 2 not to terminate their services during the pendency of their petition under Section 10 of CLRA Act. The petitioners are apprehending that their services would be terminated by respondent Nos.1 and 2. It is also their case that they have come to know that the respondent No.1 is in the process of removing the petitioners from their services on one or the other ground. However, this Court is of the opinion that the relief sought by the petitioner is premature. No material is brought on record for the basis of such an apprehension on the part of the petitioners. Even the contention of the petitioners that there is likelihood that their services would be terminated in view of the fact that they have preferred petition under Section 10 of CLRA Act before respondent No.3 would not justify granting the relief as prayed by the petitioners at this stage as is observed in the light of the decision of the Honble Supreme Court Steel Authority of India Ltd. & Ors. vs. National Union Waterfront Workers & Ors.(supra) that the issuance of a notification under Section 10 of the CLRA Act only entitles the petitioners to a right for regularization once the contract is found as sham or in the alternate, a right for consideration of such employees when the principal employer intends to employ regular workmen. Such a stage clearly arises after a decision is taken by an appropriate government. Under such circumstances, in my view, petition under Article 226 of the Constitution of India cannot be entertained merely on apprehension.

16. In view of the aforesaid discussion, the petition deserves to be dismissed and the same is hereby dismissed. There is no order as to cost.

C.M. Appl. Nos.4228/2014 & 17792/2014 The applications are dismissed as infructuous.

(VED PRAKASH VAISH) JUDGE APRIL 10th, 2015 hs