

Mathura Refinery Mazdoor Sangh Through Its Secretary

Vs

Indian Oil Corporation Ltd., Mathura Refinery Project, Mathura and Another

Civil Appeal No. 1430 of 1990

(K. N. Saikia, M. M. Punchhi JJ)

15.02.1991

JUDGMENT

PUNCHHI, J. –

1. This appeal by special leave is directed against the award of the Central Government Industrial Tribunal, New Delhi, in I.D. No. 40 of 1986 published in the Gazette of India, New Delhi dated October 21, 1989.

2. The appellant is the Mathura Refinery Mazdoor Sangh (hereafter referred to as the 'Union'). The contesting respondent is the Indian Oil Corporation Ltd., Mathura Refinery Project, Mathura, U.P. (hereafter referred to as the 'Refinery'). The Union represents about 900 casual labourers working in the Refinery. These labourers are contract labourers coming under the Contract Labour (Regulation and Abolition) Act, 1970. The nature of their work has grouped them. Some of the labourers have formed themselves into cooperative societies and those societies have entered into labour contracts with the Refinery. Other labourers are working under labour contractors who have contracts with the Refinery. There is not a constant relationship with one contractor and these labourers keep shifting from one contractor to another. However it is claimed that these casual labourers have been working in the Refinery for so many years in the past ranging between ten to fifteen years but they are denied wages and other benefits as also other beneficial service conditions enjoyed by workmen who are regular employees of the Refinery. Claiming that they had a right to be treated at par with regular employees, the Union filed Writ Petition No. 2876 of 1985 under Article 32 of the Constitution of India in this Court which was disposed of on January 16, 1986 by directing the Central Government to refer to the Industrial Tribunal for adjudication the following questions :

"1. Whether, in law, the petitioners and the 48 workmen whose services have been terminated are employees of the Indian Oil Corporation, Mathura Refinery Project, Mathura ?

2. Whether the termination of the services of 48 workmen was justified ? and

3. To what relief are the workmen entitled ?"

Status quo was ordered to be maintained and the services of the workmen were ordered not to be terminated. At that time, the services of 48 workmen alone were involved but as is evidence the adjudication of the Tribunal would have affected others too.

3. Pursuant to the order of this Court, the Central Government referred and the Industrial Tribunal

decided the above referred to questions holding that the workmen were not employees of the Refinery and were rather the employees of the contractors. With regard to the termination of the services of the workmen and to what relief they were entitled, the Tribunal, after answering the questions against the Union and in favour of the Refinery, suggested the following steps in the interest of industrial harmony :

(i) Though the Union should have pressed their demand for abolition of the contract labour system in the Refinery to the Central Advisory Board constituted under the Act, and even though it had been pursuing its remedies before this Court and the Tribunal, suggestions were made to the Refinery to approach the Advisory Board to make a study with regard to the desirability of continuance of the contract labour system in the Refinery.

(ii) Till the Central Advisory Board makes its recommendations and the action is taken, the management of the Refinery to ensure that the contract labour is paid at least the minimum of the pay scale of its regular employees performing the same or similar duties as the workmen of the contract labour and further that the workmen among the contract labour who have put in 5 years or more of work at the Mathura Refinery shall be continued to be employed in the same work even if there is a change in the contractor and such workmen shall not be terminated except as a punishment inflicted by way of disciplinary action for misconduct, etc., voluntary retirement or retirement on reaching the age of superannuation (which may be taken as the superannuation age for the IOC employees) or on ground of continuous ill health.

(iii) Refinery to give preference to those workmen in its employment by waiving the requirement of age and other qualifications wherever possible and it may also consider the creation of a benevolent fund for the contractor labour wherein it may make a lump sum contribution initially and then make equivalent or even more contribution to match the contribution made by the workmen of the contract labour.

4. Having suggested these, the Tribunal has clarified that these ameliorative steps, if taken by the Refinery, shall not be taken to mean that the contract labour has become the direct employees of the Refinery.

5. Learned counsel for the appellant says that though the above suggestions, which have the colour of directions, are in accord with the decision of this Court in *BHEL Workers' Association, Hardwar v. Union of India* ((1985) 1 SCC 630 : 1985 SCC (L&S) 371); yet they fall short of the expectancies of the Union and in particular to the wide sweep of the principles laid down by this Court in *Dharwad Distt. P.W.D. Literate Daily Wage Employees Association v. State of Karnataka* ((1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902) and prayed for directions such as those given to the State of Karnataka in the Dharwad case ((1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902).

6. The argument of the learned counsel has barely to be noted and rejected. The Tribunal has given to the appellant-Union the maximum which could be given in the facts and circumstances of the case. In Dharwad case ((1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902), the State of Karnataka had itself come out with a scheme to absorb the casual workers in regular government service in a phased manner and though it did not satisfy all concerned, yet it was given a workable

final shape. This Court observed as follows : (SCC headnote)

"Though the scheme so finalised is not the ideal one but it is the obligation of the court to individualise justice to suit a given situation in a set of facts that are placed before it. Under the scheme of the Constitution the purse remains in the hands of the executive. The legislative of the State controls the Consolidated Fund out of which the expenditure to be incurred, in giving effect to the scheme, will have to be met. The flow into the Consolidated Fund depends upon the policy of taxation depending perhaps on the capacity of the payer. Therefore, unduly burdening the State for implementing the constitutional obligation forthwith could create problems which the State may not be able to handle. Therefore, the directions have been made with judicious restraint."

Those casual workers were under the employment of the State and the State came out with a scheme for phased absorption and a graded financial responsibility. In the instant case before us, the contract labourers are not, and have also not been found to be, having a direct connection with the Refinery, even though it is a State for the purpose of enforcement of fundamental rights. The suggestions/directions given by the Tribunal, appear to us to be the only relief which was due to the appellant and its members in the given situation and circumstances. Therefore, the impugned award of the Tribunal cannot be improved upon.

7. Finding no merit in the appeal, we dismiss the same. No costs.

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