

Hindustan Steel Works Construction Ltd.

Vs

Commissioner of Labour and Others

Civil Appeal No. 11355 of 1996

(N. P. Singh, Sujata V. Manohar JJ)

03.09.1996

JUDGMENT

SUJATA V MANOHAR, J. –

1. Special leave granted.

2. The appellant, Hindustan Steelworks Construction Ltd., is a government company within the meaning of Section 617 of the Companies Act, 1956. It is engaged in the work of construction of various types in India and abroad. At all times material to this appeal, the appellant had undertaken to carry out civil engineering work for the fifth respondent, Vishakhapatnam Steel Plant under various contracts. The appellant had registered itself as an employer under Section 7 of the Contract Labour (Regulation and Abolition) Act, 1970.

3. Respondent 4, M/s Investigation and Security Services India Pvt. Ltd., is a private limited company which carries on the business of providing security services through contract labour for various companies and individuals. It maintains officers and workmen to render, inter alia, security services to various establishments and individuals. Respondent 4, at all material times, possessed a license as a contractor under Section 12 of the Contract Labour (Regulation and Abolition) Act, 1970, read with the Andhra Pradesh Contract Labour (Regulation and Abolition) Rules, 1971.

4. On or about 11-12-1980, the appellant entered into an agreement with Respondent 4 by which Respondent 4 agreed to supply to the appellant (i) security guards (ii) shift incharge and, (iii) security sergeants on the terms and conditions specified in that agreement. The agreement specifies that the appellant would pay to Respondent 4 monthly amounts at the rate of Rs 400, Rs 500 and Rs 600 as remuneration for the supply of security guards, shift incharge and security sergeants respectively. The appellant has accordingly paid to Respondent 4 the said amounts by way of monthly remuneration for each of the categories of workmen supplied by the fourth respondent. Respondent 4, however, in turn, paid to the security guards Rs 317.77 instead of Rs 400; to the shift incharge Rs 360.13 instead of Rs 500; and to the security sergeants Rs 359.46 instead of Rs 600 thus retaining Rs 82.23 in respect of security guards, Rs 139.87 in respect of shift incharge or head guards and Rs 240.54 in respect of security sergeants.

5. The Assistant Commissioner of Labour connected with the enforcement of provisions of the said Act visited the site of the appellant where the contract labour supplied by the fourth respondent was employed. He found that there was a difference between the wages paid by the appellant to its own watch and ward staff and the contract labour supplied by the fourth respondent who were doing similar work. On 19-5-1983, he filed a complaint before the Commissioner of Labour. Under the

proviso to Rule 25(v)(a) of the Andhra Pradesh Contract Labour (Regulation and Abolition) Rules, 1971, in the case of any disagreement with regard to the type of work, the same is required to be decided by the Commissioner of Labour, Andhra Pradesh whose decision shall be final. The Commissioner of Labour accordingly by an order dated 13-8-1984, held that the appellant was the principal employer and Respondent 4 was the contractor who had supplied contract labour under the said Act. He further held that the security guards supplied by the fourth respondent to the establishment of the appellant were performing the same kind of work as that performed by the security guards engaged by the appellant itself.

6. The fourth respondent thereupon filed a writ petition before the Andhra Pradesh High Court, being Writ Petition No. 12963 of 1984 challenging the order of the Commissioner of Labour. A learned Single Judge of the High Court by his order dated 6-7-1988 dismissed the writ petition and upheld the order of the Commissioner of Labour. Aggrieved by this order, Respondent 4 preferred an appeal before the High Court being Appeal No. 1196 of 1988. The Division Bench of the High Court decided to examine the legality of the agreement dated 11-12-1980 entered into between the appellant and the fourth respondent. It held this agreement to be ultra vires. It proceeded to give a direction to the fourth respondent to pay the amounts retained by it from out of the amounts which were paid by the appellant in respect of the wages of the security guards supplied by the fourth respondent. It further gave a direction to the appellant to pay to the contract labour the difference between the wages paid by the contractor and the wages which were paid by the appellant to its own security staff. The Division Bench further gave a direction that in case the contractor failed to pay the amounts to the contract labour concerned, the appellant shall pay the same to the contract labour employed by it and may thereafter recover the amount so paid from the fourth respondent either by deduction from any amount payable by the appellant to the fourth respondent under any contract or may recover the same as a debt payable by the fourth respondent to the appellant. Being aggrieved by these directions, the appellant has come by way of the present appeal.

7. Under Chapter V of the Contract Labour (Regulation and Abolition) Act, 1970, dealing with "Welfare and Health of Contract Labour", Section 16 provides that the appropriate Government may make rules requiring that in every establishment canteens should be provided and maintained by the contractor as specified therein for the use of contract labour. Similarly, Section 17 casts an obligation on the contractor to provide rest rooms as set out therein. Section 18 casts a duty on every contractor employing contract labour to provide and maintain wholesome drinking-water, sufficient number of latrines and urinals and washing facilities as specified therein. Section 19 requires a contractor to provide and maintain first-aid facility for contract labour as set out therein. The primary liability to provide these amenities is on the contractor. Section 20, however, provides that if any amenity required to be provided under Sections 16, 17, 18 or 19 for the benefit of contract labour employed in an establishment, is not provided by the contractor as set out therein, such amenity shall be provided by the principal employer. Under sub-section (2) of Section 20, however, all expenses incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor in the manner set out therein. Thus the liability to provide amenities under Sections 16, 17, 18 and 19 is of the contractor who agrees to supply contract labour to an establishment. But under Section 21 if the contractor fails to carry out his obligations, the principal employer is required to provide the amenities at the cost of the contractor. Section 21 which forms a part of the same Chapter deals with the responsibility for the payment of wages. It provides as follows :

"21. Responsibility for payment of wages. - (1) A contractor shall be responsible for payment of wages to each worker employed by him as contract labour and such

wages shall be paid before the expiry of such period as may be prescribed.

(2) Every principal employer shall nominate a representative duly authorised by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.

(3) It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorised representative of the principal employer.

(4) In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor."

8. Under this section also, the liability for payment of wages to each employee engaged by a contractor as contract labour is of the contractor. But in case the contractor fails to make payment of wages, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the workers. The principal employer, in turn, is entitled to recover the amount so paid from the contractor. Thus, it is clear that under Section 21 also the responsibility for payment of wages of contract labourers is on the contractor who employs them. In case of any default by the contractor, the principal employer is required to make good the default, but at the cost of the contractor from whom the principal employer can recover the amount.

9. 'Wages' are defined in Section 2(1)(h) of the said Act to have the same meaning assigned to the term 'wages' in clause (vi) of Section 2 of the Payment of Wages Act, 1936. Section 2(vi) of the Payment of Wages Act, 1936, defines 'wages' to mean :

"... all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes -

(a) any remuneration payable under any award or settlement between the parties or order of a court;

* * *"#

10. Therefore, the term 'wages' for the purpose of Section 21 of the Contract Labour (Regulation and Abolition) Act, 1970, means contractual wages which are payable under the terms of employment as between the contractor who is the employer and the contract labourers who are his employees. 'Wages' would also include, inter alia, any remuneration which the contractor is required to pay under any award or settlement between the parties or under an order of the court. By reason of Section 21 of the Contract Labour (Regulation and Abolition) Act, 1970, the principal employer is required to nominate a representative to be present at the time of disbursement of wages by the contractor to the contract labour employed by him, in order to certify that the contractor has paid these wages. And similarly a duty is cast on the contractor to ensure that the disbursement of wages takes place in the presence of the authorised representative of the principal employer. The purpose

of keeping the representative of the principal employer present is obviously to ensure that the contractor makes full payment of wages to each worker employed by the contractor as contract labour. These wages are the wages which the contractor has to pay to his workers in terms of the agreement of employment, or any award, settlement etc. If the contractor does not pay these wages to his workmen engaged by him as contract labourers, then under sub-section (4) of Section 21 the principal employer becomes liable to make good the difference and recover this amount which the principal employer has paid to the workmen of the contractor, from the contractor. (Vide Gujarat Electricity Board v. Hind Mazdoor Sabha [(1995) 5 SCC 27 : 1995 SCC (L&S) 1166] [SCC at p. 44] and R.K. Panda v. Steel Authority of India [(1994) 5 SCC 304 : 1994 SCC (L&S) 1078] [SCC at p. 308].)

11. Under Section 35 of the said Act the appropriate Government is entitled to make rules for carrying out the purpose of this Act. Accordingly, the Government of Andhra Pradesh has framed the Andhra Pradesh Contract Labour (Regulation and Abolition) Rules, 1971. Rule 21 of these rules requires that every application by a contractor for the grant of a licence shall be made in the manner prescribed in that Rule. Rule 25 provides that every licence granted under sub-section (1) of Section 12 shall be in Form VI and shall be subject to the conditions specified in Rule 25. Condition (v)(a) is as follows :

"25. (v)(a) In cases where the workmen employed by the contractor perform the same or similar kind of work as the workmen directly employed by the principal employer of the establishment, the wage rates, holidays, hours of work and other conditions of service of the workmen of the contractor shall be the same as applicable to the workmen directly employed by the principal employer of the establishment on the same or similar kind of work :

Provided that in the case of any disagreement with regard to the type of work, the same shall be decided by the Commissioner of Labour, Andhra Pradesh, whose decision shall be final."

12. The fourth respondent has, in the present case, obtained a licence under Section 12(1) of the Contract Labour (Regulation and Abolition) Act, 1970 in accordance with the Andhra Pradesh Contract Labour (Regulation and Abolition) Rules, 1971. The fourth respondent had applied for a licence under Rule 21 and the licence which was granted to the fourth respondent contained, inter alia, the condition specified in Rule 25(v)(a) to the effect that the fourth respondent was required to pay to the workmen employed by it the same wages as those paid by the appellant in its establishment to workmen performing the same or similar kind of work. Apparently, the fourth respondent-contractor did not comply with this term of its licence.

13. The short question that arises for determination is whether the appellant who is the principal employer is liable to pay to the contract workers any amount which constitutes the difference between the wages payable to the contract labour by the contractor and the wages paid by the appellant to its own employees doing similar work. The Division Bench seems to have relied upon Section 21(4) of the said Act for this purpose. Section 21(1), however, provides that the contractor shall be responsible for the payment of wages to each worker employed by him. Section 21(4) provides that if the contractor fails to make this payment or any part thereof, the principal employer is liable to make this payment and may recover the same from the contractor as set out in that sub-section. Looking to the definition of wages under the said Act read with the definition of wages in the Payment of Wages Act, which we have set out earlier, it is clear that Section 21 only deals with

the payment of contractual wages by the contractor to each of his workers. The definition of wages would cover within its scope, inter alia, also those amounts which the contractor is liable to pay to his workers under any award, settlement or order of court as well as other amounts falling within the definition of 'wages' under the Payment of Wages Act. Sub-section (2) provides for a representative of the principal employer supervising this payment. Clearly, therefore, the wages which are the subject-matter of Section 21 are specified sums which are payable in praesenti by the contractor under the terms of his contract of employment with each worker as well as under any existing award, settlement or order of the court. Section 21 does not deal with, nor does it cover the obligations which are imposed upon a contractor under the provisions such as the Andhra Pradesh Contract Labour (Regulation and Abolition) Rules, 1971. Hence Section 21(4) will not apply to such obligations of the contractor which may be the subject-matter of dispute between the contractor and his workers at the time of disbursement of wages and which do not fall within the definition of 'wages' under the Act.

14. Rule 25 of the Andhra Pradesh Contract Labour (Regulation and Abolition) Rules, 1971 imposes on the contractor certain conditions subject to which a licence is granted to him. One such condition is to the effect that the contractor shall not pay to the contract labour in his employment wages which are lower than the wages paid by the principal employer to his own workers which do the same or similar kind of work. This is a condition of the contractor's licence. There is no provision under these rules by which the principal employer is made liable for payment in the event of non-compliance by the contractor with this condition. If the contractor commits a breach of the conditions of his licence he alone will take the consequences. The right of the workers to recover any additional wages which may be so determined would be against the contractor. Section 2(4) has no application to a situation where a contractor may have paid the wages but has not complied with the condition imposed by Rule 25(v)(a) of the Andhra Pradesh Contract Labour (Regulation and Abolition) Rules, 1971. The definition of wages under Section 2 of Contract Labour (Regulation and Abolition) Act, 1970 read with the definition of wages under the Payment of Wages Act, 1936, does not cover any additional amount found payable under Rule 25(v)(a) if the principal employer has its own workers doing similar work. If the principal employer does not have any employees doing similar work that question will not arise. Such contingencies are not covered by Section 21 of the Contract Labour (Regulation and Abolition) Act, 1970. The contractor cannot recover any such additional amount from the principal employer under Section 2(1). Significantly, in the present proceedings the workers are not a party at all. It is the contractor who sought to quash a finding given by the Commissioner of Labour under the proviso to Rule 25(v)(a) of the Andhra Pradesh Contract Labour (Regulation and Abolition) Rules, 1971. In the present appeal before us also the contract workers employed by the fourth respondent are not a party. The dispute is between the contractor and the principal employer. We are, therefore, not called upon to pronounce on the rights of the contract labour employed by the fourth respondent to recover these amounts. The appellant, however, who is the principal employer, is not liable to pay this additional amount under Section 21(4). The appellant would, however, be liable under Section 21(4) to pay to the workers any difference between the wages contracted for under its agreement with the fourth respondent-contractor and the lesser wages actually paid by the contractor to contract labour, and recover the same from the contractor.

15. In the result, the appeal is allowed as above. The direction of the Division Bench insofar as it directs the appellant to pay additional wages as per the provision of Rule 25(v)(a) of the Andhra Pradesh Contract Labour (Regulation and Abolition) Rules, 1971, is set aside. In the circumstances, however, there will be no order as to costs.