SUPREME COURT OF INDIA

Nitinkumar Nathalal Joshi

Vs.

Oil & Natural Gas Corporation Ltd.

C.A.No.2078 of 2002

(S.N. Phukan and K.G. Balakrishnan JJ.)

14.03.2002

JUDGMENT

K.G. Balakrishnan, J.

1. Leave granted.

2. The Judgment of the Division Bench of the High Court of Gujarat at Ahmedabad in Letters Patent Appeal No. 395 of 1999 is challenged before us. The appellants alleged that they were workmen employed as contract labourers in the capacity of Boiler Operators through the Contractor, Ahmedabad Electricity Co. Limited. According to these appellant workmen, they were employed on contract labour with the first respondent-principal employer, namely, Oil & Natural Gas Corporation Limited(hereinafter being called as "ONGC Limited"). Consequent upon the notification dated 8.9.1994 under Section 10(1) of the *Contract Labour(Regulation and Abolition) Act, 1970* by the Central Government, the contract labour in the posts of Boiler Operators, Attendants, Helpers and Peons was prohibited and these appellants claimed that they should be treated as the employees of the first respondent. They filed a Writ Petition before the High Court of Gujarat and learned Single Judge held that these appellants were persons engaged for attending different operations of the boiler in the boiler house of ONGC Ltd. through the contractor, which was clearly in breach of the provisions of the Act. It was held that these appellants must be deemed to be performing duties directly under the first respondent ONGC Limited and they must be given the terms of service as applicable to other employees of ONGC Limited with effect from the date of notification.

3. The Judgment of the learned Single Judge was challenged before the Division Bench and the Division Bench was of the view that there were some disputed questions of fact and an investigation into facts regarding service conditions of contract labour was necessary before granting them the relief of direct employment with the principal employer and that the proceedings under Article 226 of the Constitution were not appropriate. It also held that there should be an investigation by the Industrial Tribunal and these appellants were directed to approach the Conciliation Officer of the concerned area and further direction was given to the Conciliation Officer to complete the conciliation proceedings within three months and if

the dispute survived, the matter be referred to the Industrial Tribunal under Section 10 of the Industrial Dispute Act and the Industrial Tribunal/Labour court to take a final decision in the matter within a period of four months thereafter. These directions are challenged before us.

4. We heard Shri T.R. Andhyarujina, learned senior Counsel on behalf of the appellants and Mr. Mukul Rohtgi, learned ASG on behalf of the respondents. What is the effect of abolition of contract labour by virtue of the notification issued by Central Government under Section 10 of the Industrial Disputes Act was considered in detail in *Steel Authority of India Ltd. and Others Vs. National Union Waterfront Workers and Others*[1]. The main question that arose for consideration in that case was whether there should be an automatic absorption of contract labourers working in the establishment of principal employer as regular employees consequent upon the notification under Section 10(1) of the Act. This Court held in clause (5) and (6) of paragraph 125 at page 63 as under:-

> "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.
>
> 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."

5. In the present case, the appellants have alleged that after the filing of the said appeal, the contract between first respondent ONGC Limited and the second respondent Ahmedabad Electricity Co. Limited came to an end on 30.11.2000 for operation of boilers and first respondent ONGC Limited entered into a contract with M/s. S.S. Construction, Mumbai and M/s. Essel Engineering Services, Mumbai for operation of the boilers at ONGC Limited with effect from 1.12.2000. They have also alleged that some of the appellants were given

employment with a lesser payment but these facts have been denied by the first respondent. As these are disputed questions of fact, we do not propose to go into these questions and do not interfere with the directions given in the impugned Judgment. However, we make it clear that the Industrial Tribunal/Labour Court shall also consider these allegations and shall give appropriate direction. We may also emphasise that the Constitution Bench of this Court in Steel Authority of India Ltd. case(supra) in paragraph 107 observed as under:-

> "An analysis of the cases, discussed above, shows that they fall in three classes: (i) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the industrial adjudicator/court ordered abolition of contract labour or because the appropriate Government issued notification under Section 10(1) of the CLRA Act, no automatic absorption of the contract labour working in the establishment was ordered; (ii) where the contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer were held, in fact and in reality, the employees of the principal employer himself. Indeed such cases do not relate to abolition of contract labour but present instances wherein the Court pierced the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited; (iii) where in discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer availed the services of a contractor the courts have held that the contract labour would indeed be the employees of the principal employer."

6. These matters are also to be considered by the Industrial Court/Labour Court if reference ultimately reaches before that forum.

7. The learned Counsel for the appellants contended that the decision in Steel Autority of India Ltd. case(supra), is prospective in operation, therefore, these appellants should have been given the benefit of employment under the principal employer, the first respondent ONGC Limited. It is true that in Steel Authority of India Ltd. case(supra), it was specifically made clear in clause (4) of paragraph 125 as follows:-

> "We overrule the judgment of this Court in Air India case prospectively and declare that any direction issued by any Industrial adjudicator/any court including the High Court, for absorption of contract labour following the judgment in Air India case shall hold good and that the same shall not be set aside, altered or modified on the basis of this judgment in cases where such a direction has been given effect to and it has become final."

8. In the present case, the appellants were not absorbed by the principal employer. Therefore, it cannot be said that the decision in Steel Authority of India Ltd. case(supra) cannot be applied. The directions issued by the learned Single Judge were modified by the Division Bench of the High Court and never given effect to. Therefore, the directions issued by this Court in the Steel Authority of India Ltd. case(supra) are applicable on all force.

9. We do not find any reason to interfere with the directions given in the impugned Judgment. They are to be complied with subject to the observations made above and also having due regard to the decision rendered by this Court in Steel Authority of India Ltd. case(supra). The appeal is disposed of accordingly.

[1]*(2001) 7 SCC 1*