SUPREME COURT OF INDIA

Rashtriya Chem. & Fertilizers Ltd

Vs.

General Employees Association

C.A.No.2122 of 2007

(Dr. Arijit Pasayat and R.V. Raveendran JJ.)

23.04.2007

JUDGMENT

Dr. ARIJIT PASAYAT, J.

Leave granted.

Challenge in these appeals is to the orders passed by a Division Bench of the Bombay High Court directing reference to the Industrial Tribunal and granting interim protection to the workers in the Civil Appeal relating to SLP(C) No. 594 of 2004.

First Respondent-General Employees Association (in short the 'Association') had questioned legality of the Circular dated 8.11.2000 issued by the Central Government conveying its decision refusing to abolish and prohibit contract labour in the Civil Works and Carpentry establishment of Rashtriya Chemicals and Fertilizers Ltd.-Respondent No.1, in W.P. No.7543/2000. It was alleged by the writ petitioner that respondent Nos. 5 to 8 in the writ petition (who are non-official respondent Nos. 4 to 7 in this appeal) were dummy and sham contractors. It was conceded by the writ petitioner that the said issue cannot be considered by the High Court in the writ jurisdiction under Article 226 of the Constitution of India, 1950 (in short the 'Constitution') and the appropriate forum - Industrial Tribunal has to go into such question. The writ petitioner requested that order may be made referring the matter to the Industrial Tribunal and meanwhile to afford interim protection. While accepting this prayer, the High Court, however, issued the following directions: "(i) The appropriate Government, i.e., the Central Government is directed to make a Reference of the following demands to the Industrial Court for adjudication within two months from today;

(a) Whether the contracts between the Ist respondent M/s. Rashtriya Chemicals and Fertilizers Ltd. and respondent Nos. 5 to 10 are sham and bogus and are a comoufiage to deprive the concerned contract employees of the benefits available to permanent workmen of the 1 respondent?

(b) Whether the employees listed at Exhibit A to the petition should be declared as permanent workmen of the 1 respondent?

(c) What are the wages and consequential benefits to be paid to the employees list at Exhibit 'A' to

the petition?

(ii) The Industrial Tribunal upon receipt of such Reference shall proceed with the matter expeditiously and dispose of the same as early as possible and in any case not later than 30.6.2004.

(iii) The interim order passed by this Court on 29.12.2000 shall continue until receipt of the communication by the petitioner from the Industrial Tribunal that the Reference has been received and for a period of two months therefrom. The petitioners shall be at liberty to make application before the concerned Industrial Tribunal for continuation of the interim relief upon receipt of the communication that Reference has been received and if such application is made by the petitioner, the same shall be disposed of by the Industrial Tribunal within a period of four weeks therefrom. Needless to say that if for any reason the Industrial Tribunal is not able to dispose of the application for interim relief that may be made by the petitioner within a period of four weeks from such application, the industrial Tribunal shall be free to pass an appropriate order for continuation of the interim order until disposal of the application for interim relief. In case interim order on the application is adverse to the petitioners same shall not be given effect to for a period f four weeks.

(iv) It is clarified that in case there is any change in the Contractor by respondent no.1 the new Contractor shall engage the same workers subject to the order of the Industrial Tribunal.

(v) It is further clarified that the above interim order is confined only to 39 employees who are presently working on the establishment of respondent no.1 through respondent nos. 5 to 10.

(vi) All contentions of the parties are kept open to be agitated before the Industrial Tribunal."

The connected Civil Appeal (relating to SLP(C) No.12961 of 2003) is in respect of workers in a canteen in the Thar factory of the Appellant No.1. The first respondent-Union filed W.P. No.2940/1998 for a declaration that the employees (whose names were shown in the Annexure to the writ petition) were the regular employees of Appellant No.1 and for consequential reliefs. A Division Bench of the High Court has given following directions while disposing of the petition by judgment dated 23.1.2003:

(i) The appropriate Government that is the Government of Maharashtra is directed to make a Reference of the following dispute/s to the Industrial Tribunal for adjudication within two months from today.

(a) Whether the contract between the Rashtriya Chemicals and Fertilizers Ltd. and the contractor/s is a sham and bogus one and is a camouflage to deprive the employees as per Annexure A of the benefits available to permanent workers of Rashtriya Chemicals and Fertilizers Ltd.?

(b) Whether the employees whose names are shown in Exhibit A annexed to this order are employees in the Canteen of Rashtriya Chemicals and Fertilizers Ltd. and if the answer is in the affirmative, whether such employees should be declared as permanent workmen of Rashtriya Chemicals and Fertilizers Ltd.?

(c) What are the wages and consequential benefits to be paid to the employees as per the list Annexure A?

(ii) The Industrial Tribunal upon receipt of the Reference shall proceed with the matter expeditiously and dispose of the same as early as possible and in no case later than 3 1. 12. 2003.

(iii) The interim order passed by this Court on 24.6.1998 shall continue until receipt of the communication by the Petitioners from the Industrial Tribunal that Reference has been received and for a period of two months therefrom. The Petitioner shall be at liberty to make application before the concerned Industrial Tribunal for continuation of the interim relief upon receipt of the communication that Reference has been received and we observe that if such application is made by the Petitioner, the same shall be disposed of by the Industrial Tribunal within a period of four weeks therefrom. We record the statement of the learned Senior Counsel for Respondent Nos. 1 and 2 that no objection shall be raised by the said respondents about the maintainability of the application for interim relief by the petitioner. Needless to say if for any reason, the Industrial Tribunal is not able to dispose of the application for interim relief that may be made by the petitioner within a period of four weeks from such application, the Industrial Tribunal shall be free to pass an appropriate order for continuation of the interim order until disposal of the application for interim relief.

(iv) It is clarified that in case there is any change in the Contractor by Respondent Nos. 1 and 2, the new Contractor shall engage the same workers subject to the order of the Industrial Tribunal.

(v) All contentions of the parties are kept open to be agitated before the Industrial Tribunal.

Learned counsel for the appellants submitted that after the decision of this Court in Steel Authority of India Ltd. and Others v. National Union Waterfront Workers and Ors. (2001(7) SCC 1) the High Court ought not to have given directions in the manner done. The prayer in the writ petitions was not for determination of the question whether the contract labour system was genuine, or was a mere camouflage to deprive the concerned contract employees of the benefits available to permanent employees of appellant No.1. The High Court in both the orders even formulated the terms of reference which is impermissible.

There is no appearance on behalf of the first respondent - Association in spite of service of notice.

In order to appreciate the stand taken by the appellant, it is necessary to take note of the observations made by this Court in several cases. In the Govind Sugar Mills Ltd. and Another v. Hind Mazdoor Sabha and Others [1976(1) SCC 60] while considering Section 4K of the U.P. Industrial Disputes Act, 1947(in short 'UP Act), in pari materia with Section 10(1) of Industrial Disputes Act, 1947 (in short 'ID Act') it was observed inter alia as follows:

"In the special appeal the High Court has taken the view following the decision of this Court in State of U. P. v. Basti Sugar Mills Co. Ltd. that when action was taken under Section 3(b) of the Act it was obligatory for the State Government to make a reference under Section 4K for adjudication of the industrial dispute raised in relation to the said action. The High Court on a consideration of the entire facts and circumstances of the case allowed the writ petition and quashed the order of the State Government dated June 22, 1966 by grant of a writ of certiorari. In this appeal since the special leave was granted on a limited question we are not called upon to interfere with the said portion of the order of the High Court. But it further directed the State Government and the Labour Commissioner to refer the dispute for adjudication in exercise of their power under Section 4K of the Act. It seems to have been so done on the view that it was obligatory for the State Government to do so after the issuance of the notification under Section 3(b) of the Act. In our opinion this was

not correct.

In the judgment of this Court delivered a few days ago, M Mahabir Jute Mills Ltd. Gorakhpore V. Shri Shibban Lal Saxena (judgment dated July 30, 1975), it has been held on a consideration of the provisions of law contained in Section 4K of the Act that after quashing the order of the. Government refusing to make a reference the High Court could ask the Government to reconsider the matter but it could not give peremptory directions to make a reference. We may, however, take note of a sentence occurring in the judgment of this Court the case of Bombay Union of Journalists (supra) at page 35 which reads thus:

"if the appropriate Government refuse to make a reference for irrelevant considerations, or on extraneous grounds, or acts mala fide, that, of course, would be another matter; in such a case a party would be entitled to move Court for a writ of mandamus."

We think what was meant to be conveyed by the sentence aforesaid was that the party would be entitled to move the High Court for interfering with the order of the Government and not necessarily for the issuance of a writ of mandamus to direct the Government to make reference. The mandamus would be to reconsider the matter. It does not seem to be quite reasonable to take the view that after the refusal of the Government to make a reference is quashed a writ of mandamus to make a reference must necessarily follow. The matter has still to be left for the exercise of the power by the Government on relevant considerations in the light of the judgment quashing the order of refusal"

It is now well settled that High Courts will not straightway direct the appropriate government to refer the dispute. It is for the appropriate government to apply its mind to relevant factors and satisfy itself as to the existence of a dispute before deciding to refer the dispute. We may refer to the following observations of this Court in Steel Authority of India Ltd. v. Union of India & Ors. [(Second SAIL Case) (2006(3) CLR 659)]:

"For the purpose of exercising jurisdiction under Section 10 of the 1970 Act, the appropriate government is required to apply its mind. Its order may be an administrative one but the same would not be beyond the pale of judicial review. It must, therefore, apply its mind before making a reference on the basis of the materials placed before it by the workmen and/or management, as the case may be. While doing so, it may be inappropriate for the same authority on the basis of the materials that a notification under Section 10(1)(d) of the 1947 Act be issued, although it stands judicially determined that the workmen were employed by the contractor. The state exercises administrative power both in relation to abolition of contract labour in terms of section 10 of the 1970 Act as also in relation to making a reference for industrial adjudication to labour court or a Tribunal under Section 10(1)(d) of the 1947 Act. While issuing a notification under the 1970 Act, the State would have to proceed on the basis that the principal employer had appointed contractors and such appointments are valid in law, but while referring a dispute for industrial adjudication, validity of appointment of the contractor would itself be an issue as the state must prima facie satisfy itself that there exists a dispute as to whether the workmen are in fact not employed by the contractor but by the management. We are, therefore, with respect, unable to agree with the opinion of the High Court.

We would, however, hasten to add that this judgment shall not come in the way of the appropriate government to apply its mind for the purpose of issuance of a notification under Section 10 of the

1970 Act."

The exception to the above is, when the Court finds that the appropriate government refuses to make a reference of a dispute is unjustified. In such circumstances, the court may direct the government to make a reference Sankari Cement Alai Thozhilalar Munnetra Sangam, Tamil Nadu v. Government of Tamil Nadu and Anr. (1983 (1) SCC 304), V. Veerarajan and Ors. v. Government of Tamil and Ors. (1987 (1) SCC 479 and TELCO Convoy Drivers Mazdoor Sangh and Anr. v. State of Bihar & Ors. (1989 (3) SCC 271).

The Circular dated 8.11.2000 of the Central Government which was the subject matter of challenge in the first matter is extracted below:

"I am directed to invite your kind attention to the above cited subject and to say that the matter relating to the prohibition of employment of contract labour in the establishment of Rashtriya Chemicals and Fertilizers Ltd., in their plants at Chembur, Mumbai and Thal District Raigad, Maharashtra was discussed in the 44 Meeting of the Central Advisory Contract Labour Boardheld on 6-7th April, 2000 under the Chairmanship of Shri T.S. Shankaran. The Board made the following recommendations to the Government:

"The Board observed that the Committee has examined in detail the issue with respect to the factors set out in Section 10 of the Act before coming too its conclusion. The Board, therefore, decided to accept the recommendations of the Committee and recommended to the Government accordingly"

2. In pursuance of the recommendations of the Board, the matter has been considered in detail by the Central Government and it has been decided not to prohibit employment of contract labour in the following work/jobs in the establishment of Rashtriya Chemicals and Fertilizers Ltd., in their plants at Chembur, Mumbai and Thal District Raigad, Maharashtra for which the appropriate government, under the Contract Labour (Regulation and Abolition) Act, 1970 is the Central Government:

1) Cleaning of Roads, Storm drains, Yards and Grass cutting.

2) Dosing of Chemicals.

3) Jobs in Canteen.

4) Maintenance of Railway Track in the Plant.

5) Material handling and

6) Civil Engineering maintenance i.e., in the jobs of carpentry, masonry, repairs to electrical switchgear and equipment such as pumps, cutters, maintenance operators, maintenance helpers, Assistants in Civil work, operators and general workers.

3. As the question of interpretation of the term "establishments" and applicability of the Act to township is pending before the Constitution Bench of the Supreme Court and their ruling is awaited, it has been decided not to prohibit the employment of contract labour in the job of Security Guards covered by the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act,

1981, deployed in the colonies, at present.

4. A notification prohibiting employment of contract labour in some other jobs/works in the establishment of Rashtriya Chemicals and Fertilizers Limited, in their plants at Chembur, Mumbai Priyadarshini Complex and Thal District Raigad, Maharashtra is being issued separately in consultation with the Ministry of Law, Justice and Company Affairs (Legislative Deportment).

5. The employment of contract labour in the loading and unloading jobs being done by the Hathadi Workers are being referred back to the Board for their elucidation."

As rightly contended by learned counsel for the appellants once the respondent No.1-Association approached the High Court on the foundation that the Contract Labour (Regulation and Abolition) Act,1970 (in short the 'Act') applied, it pre supposes existence of a valid contract. What the writ petitioner (respondent No.1 herein) wanted was quashment of Notification for reconsideration. In view of what has been stated in second SAIL case (supra) the High Court has to consider whether the stand taken in the writ petition was inconsistent. In the instant case the writ petitioner itself accepted that certain issues could not be decided in the writ petition. That being so, High Court giving directions in the nature done, do not appear to be appropriate. We are of the view that the High Court ought not to have given the directions in the manner done and should have left the respondent No.1-Association to avail remedy available in the I.D. Act.

It is open to the respondent No.1-Association, if it is so advised, to move the appropriate State Government seeking reference of the purported dispute to the Tribunal. It is for the State Government to consider whether any reference is called for. We make it clear that we have not expressed any opinion on the desirability or otherwise of making reference.

Appeals are allowed with no orders as to costs.