

Raj Kumar and ors. Vs. Union of India (Uoi) and ors.

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Court : Delhi

Decided On : Aug-04-2003

Reported in : 106(2003)DLT315; 2003(71)DRJ744; (2003)IIILLJ1031Del;
(2003)135PLR52

Judge : Mukul Mudgal, J.

Acts : Contract Labour (Regulation and Abolition) Act - Sections 10

Appeal No. : CM No. 8940/2002 in CWP No. 5248/2002

Appellant : Raj Kumar and ors.

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : Kirtiman Singh, Adv. for ; Maninder Singh, Adv. for
respondents 1 and 5, ;

Advocate for Pet/Ap. : Colin Gonsalves,; Vipin M. Benjamin and; Aparna Bhat, A

Judgement :

Mukul Mudgal, J.

1. This order will dispose of this application for interim relief filed by the petitioner in the present writ petition.

2. The writ petition challenges the order dated 20th July, 1999 of the Central Advisory Contract Labour Board and the consequent order dated 18th April, 2002 of the Government of India declining to abolish the contract labour system at domestic and international airports qua the trolley retrievers.

3. This writ petition is in respect of the 115 trolley retrievers and 12 supervisors of the domestic and international airports, Delhi where the some of the petitioners have been averred to be working from 1993. According to the petitioners, the trolley retriever system began in 1984 and is still continued. Even though some of the petitioners were working from 1993 they were given a fresh appointment letter in 1996. The chart (Annex P-1) annexed to the writ petition shows that the petitioners have started working from dates varying from 1993-1998. The petitioners have submitted that their functioning amount to contract labour and the respondent No. 4 is the contractor within the meaning of the Contract Labour (Regulation and Abolition) Act, 1970(hereinafter referred to as the Act). The petitioners are pleaded to be contract labour. The petitioners have in the alternative and without prejudice to the above plea submitted that the petitioners are the employees of respondent No. 1, Union of India and respondents 2 and 3.

4. The main thrust of the writ petition is that the nature of duration and the trolley retrieving work are such that the full time trolley retrievers can be made as permanent employees of respondents 1, 2 and 3. Due to disparity in the wage and service condition as compared to the permanent workers, the petitioner addressed a letter dated 13th April, 1994 to the Chief Labour Commissioner. Even though the petitioners work throughout the year continuously and do not get overtime for extra shifts and do not also get bonus & gratuity.

5. The petitioners have contended that the respondent's plea that the contract is not a labour contract and the contract was for advertising is a camouflage to mask the real nature of the petitioners' employment. The conditions of service of the petitioners and the work done by the petitioner is dictated by the officers of respondents 1, 2 and 3 who also do the overall supervision and control. The respondent No. 4 is a mere paper intermediary. Accordingly all the conditions set out in Section 10 of the Contract Labour Act are satisfied. The work is perennial

and has gone on for three shifts a day for the last 20 years. The supervisors work for 90% time as trolley retrievers and for the rest of the time mark attendance of the workers. The fresh contract entered into by most of the petitioners is under cloud and the subject matter of enquiry.

6. The petitioners aggrieved by the termination of services of some of the workmen also seeking their regularization, filed CWP No. 2425/1997 in this Court. On 17th May, 2001, the petitioners were directed by the learned Single Judge to approach the Government for notification under Section 10 of the Contract Labour Act. The said order of the learned Single Judge was upheld by the Division Bench. On 27th September, 1999, the Central Advisory Contract Labour Board after protracted hearing declined to recommend the abolition of the Contract Labour System for trolley retrievers. By letter dated 18th April, 2002 the Government of India communicated the decision not to abolish the Contract Labour System for the trolley retrievers. The order dated 20th July, 1999 and 18th April, 2002 have accordingly been challenged in this writ petition.

7. The principal plea of the learned counsel for the petitioner is that :

(i) Section 10 of the Contract Labour Act lays down the conditions that ought to be satisfied for the contract labour system to be abolished namely

- (a) The work must be essential/incidental
- (b) The work must be perennial.
- (c) Done ordinarily through regular workmen.
- (d) Sufficient work to employ whole time workers.

(ii) A section 10 notification ought to have been issued by the Board as all four conditions set out above were satisfied.

(iii) The Board order dt. 20th July, 1999 and the Govt. order dated 18th April, 2002 are :

- (a) Non speaking.

(b) Contrary to the record which shows Section 10 conditions satisfied.

(c) Perverse in as much as trolley retrieving is both essential/incidental.

(d) Vitiating as the condition precedent to the order i. e. the payment of wages on par has been withdrawn.

(iv) Had an abolition order (Section 10) been passed the workers would have a right of preference over other contract workers i. e. they would not be replaced by other contract workers. The main difference is that under Air India Statutory Corpn. Vs United Labour Union : (1997)ILLJ 1113 SC they had a right to absorption while under Steel Authority of India Limited Vs National Union of Waterfront Workers & Others : (2001)ILLJ 1087 SC , they have a right to preference.

(v) The interim order that ought to be made is that status quo should continue and the contract workers will not be replaced by other non-permanent workers as long as the work remains to be done. The contractor may be changed but the workers should remain. The contract workers services may be terminated for misconduct.

7. The learned counsel for the petitioner in support of interim relief of status quo in respect of the existing workers, has submitted that on 27th March, 1996, the Order of the Central Advisory Contract Labour Board, declining to abolish contract labour was set aside by the Bombay High Court and the Central Government was directed to constitute a Board within one month and status quo was granted in the meanwhile. Learned counsel for the petitioner has further relied upon an order of the Hon'ble Supreme Court dated 11th April, 1997 in S. L. P. Nos. 4088-4093 of 1997 which directed status quo to continue while the Board decided the issue of abolition of contract labour. Learned counsel for the petitioner has also relied upon an order of the Gujarat High Court dated 9th September, 1998 in SCA No. 7027 of 1997.

8. The learned counsel for the petitioner has further relied upon the fact that the two Board Members, S/Shri Shah and Sudarshan, who visited the Delhi Airport did recommend the abolition of the contract labour system for trolley retrievers. One

member, Shri Sankar Saha opined that supervision and control within the airport without trolleys would lead to chaos. He also referred to International Civil Aviation Organization (ICAO) Standards. Mr. L. R. Singh lodged a strong protest against the draft circulations as they were neither circulated nor approved by any Board meeting. It is also further submitted that the Board's final recommendations did not give any reason and in fact stated that two of the members have not accepted any conclusions and quite a few members did not furnish any comments. The conclusions have been arrived at without going into the majority or minority and its view which does not recommend the abolition of the contract labour in respect of the Trolley Retrieval Car-parking Counter Clerks in Airport Authority of India is challenged in this writ petition. Even in the impugned Order dated 18th April, 2002, the Central Government directed that the employment of the contract labour for trolley retrieval was not being prohibited provided the wages paid to the low category of employees in the respective establishments are paid to the contract labour. It is submitted that this direction for wages being on par was withdrawn on 24th February, 2003.

9. The learned counsel for respondents 2 & 3 has submitted while opposing the interim order, that the petitioners are working under respondent No. 4 and are not the employees of the respondent No. 2. Accordingly, no relief can be claimed against respondents 2 & 3, Airport Authority of India.

10. The learned counsel for respondents 2 & 3 also relied upon a judgment of the Andhra Pradesh High Court in 1989 FLR 689 to submit that conditions of engaging the petitioners cannot be imposed upon successive contractors. He has also stated that the learned Single Judge in WP (Civil) 2425/97 had declined on 17th May, 2001 to grant an interim order which order was upheld by the Division Bench.

11. The learned counsel for respondent No. 4 has submitted that the job of trolley retrieval is not perennial in nature and with the passage of time various modern techniques such as coin operated machines have been introduced. It is also submitted that the petitioners are employed by the respondent No. 4. Reliance has been placed on the Order of this Court dated 17th May, 2001 in CWP. No. 2452/97, declining interim relief. Reliance has also been placed on the status quo

order in favor of the petitioners being varied in case they were guilty of insubordination and indiscipline. The operative portion of the said Order dated 17th May, 2001 passed by Hon'ble Dr. Justice M. K. Sharma is as under:-

'Accordingly, I am satisfied that no interim order, as sought for by the petitioners could be granted in this case except for observing that in case the contractor, namely, respondent No. 4 decides to continue the service of the petitioners till expiry of its contract, it shall be open to the said contractor to continue with the services of the persons mentioned at Sr. Nos. 1 to 130 in Annexure-A. In terms of the aforesaid observations and directions, this writ petition stands disposed of. '

12. I am, therefore, required to consider whether an interim order should be issued in this matter pending the hearing and final disposal of the present writ petition which is ripe for final hearing. The petitioners have challenged the Order dated 20th July, 1999 and the consequential Order dated 18th April, 2002. Upon a perusal of the impugned Order of the Central Advisory Contract Labour Board, the following conclusions emerge:-

(a) that quite a few members of the Board did not furnish any comments;

(b) that the conclusions were arrived at without going into the question of the majority or minority support among the Members of the Board for arriving at the conclusions;

(c) that the conclusions have been formulated by the Chairman on the basis what was perceived by him to be the broad consensus of opinion;

(d) that the non-recommendation of the Contract Labour Board in respect of the Trolley Retrieval Car Parking Counter Clerks was not supported by any reason whatsoever except the perception of the Chairman that this was done upon the conclusions arrived at by the Board.

13. In my prima facie view the impugned order dated 20th July, 1999 of the Central Advisory Contract Labour Board is susceptible to challenge. Prima facie the major flaw in the impugned order appears to be that the conclusions arrived admittedly do not reflect the stated views of the majority. The very purpose of a

multi member authority would be entirely negated if the conclusions do not reflect the opinion of the majority. The effect of the above anomaly is further heightened by the plea of the petitioner, which was not countered, that the two members of the Board, Shri Shah and Shri Sudarshan who visited Delhi Airport and, therefore, had first hand information about the functioning of the trolley retrieval system at the Delhi Airport did recommend abolition of contract labour qua the trolley retrievers. The conclusions are also not reasoned. Furthermore, there is no indication why the two members' views recommending abolition was not found acceptable in the conclusions. Even the decision of this Court reported in ICM Engg. Workers' Union Vs Union of India : (2001)ILLJ1127 Del held that when requirements of Section 10 are prima facie satisfied and till the decision under Section 10 of the Act the Court is not powerless to grant protection to such workmen. Furthermore the reliance by the respondents on the Order dated 17th May, 2001 of the learned Single Judge in CWP 2425/97 is not of relevance as that order was passed before the matter was considered by the Board and often the said matter was placed before the Board pursuant to this Court's Order in CWP 2425/97, the proceedings and the material available before the Board.

14. Upon considering the facts enumerated above, it is clear that prima facie it does appear that the trolley retrieval work is essential for a successful functioning of an airport since flights arrive and depart throughout the day. Furthermore since flights are arriving/departing almost throughout the day, the work appears to be perennial. There is no doubt that such a work would ordinarily would be done through regular workmen and thus there is sufficient work to employ full-time workers in view of the nature and extent of the work. Even under the judgment of Steel Authority of India Limited's case (supra), the workmen certainly have a right of preference over other contract workers who may be sought to be engaged.

15. In view of the aforesaid factors and the view taken by the Hon'ble Mr. Justice A. K. Sikri in ICM Engg. Workers' Union (supra), I am satisfied that since the decision made under Section 10 of the Act prima facie does not appear to be sustainable, therefore, interim protection is required till the final disposal on the validity of the impugned orders. In the aforesaid view of the matter, I am satisfied that while status quo should be granted to the petitioners qua their services at the

Airports of Delhi at the moment, I am not at present inclined to impose a condition upon respondents 1 to 3 that the petitioners should be permitted re-employment by successive contractors in view of the fact that I am fixing the writ petition for final hearing on 26th August, 2003, subject to the over-night part-heard and the position of law laid down by the Hon'ble Supreme Court in Steel Authority's case (supra) which shows that only preference can be given to the petitioners' herein.

16. The application for interim relief stands disposed of accordingly in the above terms.

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