Transport and Dock Workers Union Vs. Kandla Dock Labour Board and ors.

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Court : Gujarat

Decided On : Jul-23-1997

Reported in : (1998)1GLR481

Judge : S.K. Keshote, J.

Acts : Industrial Disputes Act, 1947

Appeal No. : Special Civil Application No. 7224 of 1993

Appellant : Transport and Dock Workers Union

Respondent : Kandla Dock Labour Board and ors.

Advocate for Def. : S.R. Brahmbhatt, Adv.

Advocate for Pet/Ap. : J.D. Ajmera, Adv.

Judgement :

S.K. Keshote, J.

1. The petitioner, Transport & Dock Workers Union, through its Vice-president, Kandla Port, Kachchh, filed this Special Civil Application before this Court and following prayers have been made :

(a) quash and set aside the tender notice dated 18-6-1993 Annexure 'A' reinviting the contract thereby terminating the service of the above workmen who are

working with the respondent No. 1 for the last 8 years :

(b) direct the respondents to continue the workmen at Annexure 'C' with all benefits as available to regular workmen of respondent No. 1;

(c) direct the respondent No. 1, forthwith to treat the above workers as per Annexure 'C', as the workers of respondent No. 1 and to extend them all service benefits including payment of weekly off, etc. with retrospective effect;

(d) pending admission, hearing and final disposal of this Special Civil Application this Hon'ble Court may be pleased to restrain the respondents, their agents, servants or subordinates from in any manner terminating the service and/or discontinuing the employees/ workmen as per Annexure 'C' and in any manner effecting any adverse conditions of service of the said workmen;

(e) the Hon'ble Court be pleased to grant such other reliefs, as are deemed fit in the interest of justice.

2. This writ petition has been filed by the petitioner espousing the cause of 24 workers mentioned in Annexure 'C' at page No. 20 of this Special Civil Application. These workers are working in Kandla Dock Labour Board, Kachchh through Contractor, M/s. Kandla Godi Kamdar Sahakari Mandali Limited, Kandla Port, Kachchh since long. The aforesaid Co-operative Society is impleaded as respondent No. 2. The petitioner has come up with a case that these 24 workers who are the members of the petitioner union are working with the respondent No. 1 for last 7 years through various Contractors. Through concerted efforts of the Union these workers have been able to get the regular employment as pump operators, sweepers and security guards. The contract for supplying pump operators, security guards and sweepers at the relevant time was with the respondent No. 2. That as per the contract condition, the respondent No. 2 is required to pay the wages to the workers at par with the wages applicable to the daily-rated casual workers of the respondent No. 1 and also the respondent No. 2 had to observe all the relevant Labour Laws, i.e. payment of all other benefits including weekly off, etc. The respondent No. 2 is getting a commission for the above services from respondent No. 1 and all the work etc., are supervised by the

respondent No. 1. That contract of the respondent No. 2 expired on 31st July, 1993. The petitioner filed this Special Civil Application having the apprehension that the respondent No. 1 with mala fide intention to deprive the existing workers from getting daily-rated wages and to remove them from the present job decided to invite tender notice from the public and to enter into contract with the lowest quoted tenders by flouting all the laws of the land and by reducing the existing strength of the workers from 1st August, 1993. It has further been stated in the Special Civil Application that calling of the said tender tantamounts to illegal termination and change of conditions of service of the 24 workers. The petitioner further stated in the Special Civil Application that at the time of calling the tender, the respondent No. 1 had asked for total 19 persons i.e., 10 security guards, 6 sweepers and 3 pump operators with a condition to observe all the Labour Laws including weekly off etc., and by passing of the time, the respondent No. 2 had deployed five more workers in the above category as per the contract terms who were also paid wages from time to time at par with the wages of D.L.B. workers. Even though the number of contract workers had exceeded 20 neither the principal employer nor the contractor had ever taken the statutory licences from the concerned authorities, as they were treated as the workers of the respondent No. 1. It has further been submitted that the work attended by the above 24 workers are of a permanent nature, for which even as per the laws of the Government, no contract labour can be deployed, and as such, they are deemed to be workers of the respondent No. 1. Further grievance has been made that as per the provisions of the Contract Labour (Regulation & Abolition) Act, 1970, the principal employer has to obtain a certificate of registration and that the workmen can be employed on contract labour basis only through licensed contractor. In the present case, what the petitioner contended that none of the above two conditions has been fulfilled or complied with. So the position would be that workmen employed by an intermediary like respondent No. 2 are deemed to have been employed by the principal employer. Further grievance has been made by the petitioner that in spite of the repeated demands made by it for making payment of weekly off, leave wages etc., the respondent No. 2 has not made the payment on the plea that the respondent No. 1 being a principal employer on whose advice the respondent No. 2 is working has shown their inability to make the payment. The

petitioner further stated that due to their continuous demand for regularising and extending all the benefits to the above workers at par with the other workers of the respondent No. 1, the respondent No. 1 had decided to call for another tender from the public. The conditions laid down in the said tender are illegal, arbitrary and capricious and is stipulated flouting all the relevant labour laws. New terms and conditions, the wages payable to the workers have not been mentioned and even the contract is going to be given to such persons who quote the lowest rates. Further, the respondent No. 1 had decided to reduce the existing strength of workers thereby putting only 12 persons instead of 21 required, by unfair labour practices. In this factual matrix, this Special Civil Application has been filed.

3. Reply for the Special Civil Application has been filed by the respondent No. 1 and the respondent No. 1 has been come up with a case that the petitioners are the workmen of the contractor and they are not the employees of the respondents No. 1. It has further been stated that the contract labour supplied by the contractor, respondent No. 2, was only 19, and as such, the provisions of the Act are not applicable. It has been denied that the respondent No. 2 has supplied contract labourers exceeding 20 in number. It has been contended that as the workmen, mentioned in Annexure 'C' are not the employees of the respondent No. 1, no relief whatsoever can be claimed against it. The respondents No. 1 has denied any relationship of employee between itself and contract labourers. Further contention has been raised that the reduction in the requirement of the contract labourers does not tantamount to termination and/or change of service conditions of the contract labourers as the said contract labourers are not the employees of the respondents No. 1. Further defence of the respondents No. 1 is that it has all the right to call for labours for employment through contractor by inviting fresh tenders. The respondent No. 1 has submitted that the petitioner had raised a disputes in this very matter before the conciliation authority in the year 1989 and again in the year 1991.

4. The rejoinder to the reply has been filed by the petitioner and in Para No. 12 thereof the petitioner has admitted that it had taken up the issue before the conciliation authority for abolition of the contract system as works continued by the respondent No. 1 are of a permanent nature.

5. The Special Civil Application has come up for admission before this Court on 23rd July, 1993, on which date, the Court ordered, 'Notice returned on July 28, 1993. Mr. Shailesh Brahmbhatt waives service of notice on behalf of respondent No. 1.' On 30th July, 1993, the matter has come up for admission and on this date, the Court ordered, 'Rule. Mr. Shailesh Brahmbhatt waives service of Rule on behalf of respondents. Heard the learned Counsels appearing for the parties as regards ad interim relief. By way of interim relief, the respondent No. 1 is directed to see that workmen whose names are mentioned in Annexure-C to the petition are employed by the next contractor, till further orders. Hearing as to interim relief will take place on August 16, 1993.' Then matter has come up for consideration before this Court on 2-9-1993 and order passed by this Court reads as under :

'It is stated that respondent No. 3 who was to be given the contract has resiled and has not entered into contract with respondent No. 1 - Board. It is also an admitted position that the workmen concerned whose cause is espoused by the petitioner-Union have been provided work by the respondent No. 1-Board. The learned Counsel for the Board states that work has been provided to them in view of the order passed by this Court. In facts of the case, it is directed that the respondent No. 1-Board should make payment of wages to the concerned workmen at the same rate at which they were being paid prior to August 1, 1993. The payment of wages will be made by the respondent-Board to the workmen concerned without prejudice to the rights and contentions that the workmen are not the direct employees of the Board and that they are employees of contractor and they were engaged by the contractor. The aforesaid arrangement will not debar respondent No. 1 - Board from entering into fresh arrangement with any contractor. If and when the Board enters into such arrangement with other contractor, the direction given by this Court in order dated July 13, 1993 shall be complied with. If the arrangement that will be entered into by Board with another contractor is adverse to the interest of the workmen concerned, it would be open to the petitioner-Union to challenge the legality and validity of the same. It is hoped that if the Board makes fresh arrangement and enters into fresh contract with any other contractor, the Board will see to it that the wages paid to the concerned workmen are not lesser than what was being paid to the concerned workmen prior to August 1, 1993. Stand over to September 15, 1993.'

So the respondent No. 3, who was to be given the contract has resiled and has not entered into contract with respondent No. 1-Board. It has further been noticed by the Court that the workmen mentioned in Annexure 'C' have been provided the work by the respondent No. 1-Board. However, what the Counsel for the respondent Board stated that the work has been provided to them in view of the order passed by this Court. In this factual matrix, the Court has order that the Board should make payment of wages to the concerned workmen at the same rate at which they were being paid prior to August 1, 1993. This payment was ordered without prejudice to the rights and contentions that the workmen are not the direct employees of the Board and that they are employees of contractor and they were engaged by the contractor. It has further been ordered by this Court that the aforesaid arrangement will not debar respondent No. 1-Board from entering into fresh arrangement with any contractor. However, as and when the Board enters into such arrangement with other contractor, the direction given by this Court in order dated July 13, 1993 shall be complied with.

6. The petitioner filed C.A. No. 3157 of 1997 and copy of the same was given to the Counsel for the respondent No. 1 on 18-3-1997. The respondent No. 1 has not filed any reply to the said C.A. In para No. 4 of the C.A., the petitioner stated that from 1-8-1993 the opponent, the respondent No. 1, has not engaged any contractor and the workmen in question are paid their wages directly by the Board. Even in a given case the Board initiated disciplinary proceeding and takes decision as if it is done in case of regular workmen. It has further been stated that for all the practical purposes, the workmen in question are employees of the Board as there is no contract since 1993. In C.A., the prayer has been made for grant of interim relief. The Counsel for the respondent No. 1 orally submitted that though no contractor has been engaged from 1-8-1993, but these workmen are being continued by the respondent No. 1 under this Court's order.

7. The matter pertains to industrial dispute, and as such, the Counsel for the petitioner was called upon to make the submissions, why this Court should not direct the petitioner, a Union of the workers, to take the recourse to the remedy available under the Industrial Disputes Act, 1947, or Bombay Industrial Relations Act, as the case may be. The learned Counsel for the petitioner has taken the time

to make the submissions on this question and matter was adjourned for today. The Counsel for the petitioner relying on the decision of the Hon'ble Supreme Court in the case of Air India Statutory Corporation v. United Labour Union, reported in 1997 I CLR 292 contended that the petitioner may not be relegated to the alternative remedy available under the Act, 1947 and this Court should decide this matter as observed by the Hon'ble Supreme Court in the aforesaid case.

8. On the other hand, the Counsel for the respondent contended that there is a serious disputed questions of fact in the present case. The relationship of employer-employee has been disputed and to decide this question evidence has to be taken. This Court sitting under Art. 226 of the Constitution will not take the evidence. It has further been contended that the Union is a petitioner before this Court and when the Union is there then the proper recourse and the remedy is an available under the Industrial Disputes Act, 1947 or under Bombay Industrial Relations Act. It has next been contended that the petitioner in fact had raised an industrial dispute by approaching the conciliation officer, but without taking any final decision thereof, the petitioner has shifted to this remedy. Once the petitioner has approached to the conciliation officer in the matter then he should have sticked to that remedy rather than to come up before this Court.

9. I have given my thoughtful consideration to the submission made by the learned Counsels for the parties.

10. The facts which are not in dispute are that the workmen mentioned in Annexure 'C' of this petition are working with the respondent No. 1-Board for last about 11 years by this time. It is also not in dispute that from 1st August, 1993, the respondent No. 1 has not entered into contract of labour with any of the contractors. From 1st August, 1993, the workmen are working with the respondent No. 1 though may be under the order of this Court.

11. In view of the decision of the Hon'ble Supreme Court as well as in view of the subsequent developments which have taken place during the pendency of this Special Civil Application, that from 1st August, 1993, the respondent No. 1 has not entered into any contract of labour with any party and all these workmen are working with the respondent No. 1, I consider it to be appropriate that the

respondent No. 1 should examine the matter afresh by giving fresh though without any motives or ill-will against any of the workmen rather than relegating the petitioner to the remedy under the Industrial Disputes Act, 1947 or Bombay Industrial Relations Act. The respondent No. 1-Board after hearing the petitioner shall decide whether these persons should be continued in employment or not or how many persons it requires in the employment. While deciding this matter, the respondent No. 1-Board will take into consideration the decision of the Hon'ble Supreme Court in the case of Air India Statutory Corporation v. United Labour Union (supra). The petitioner is directed to send a xerox copy of this decision to the Board immediately on receipt of certified copy of this order or the petitioners representative may take the copy of this order along with him when he is called for personal hearing in the matter by the Board. The decision has to be taken by the Board after keeping in mind the fact that all these workmen are working for about more than 10 to 11 years with it and there may be increase of workload by passing of the time. For last about four years, the respondent No. 1 is paying the salary to these workmen, and there is no intermediary. So, this is another fact which is relevant to the claim of the workmen of regularising their services in the Board. However, this Court cannot compel the Board to take the workmen more in number than what it requires. If the employees are surplus even then this matter has to be considered by the Board and a reasoned order has to be passed by it. In case the matter is decided by the Board against the workmen as a whole or some of the workmen are not absorbed in the services, it is again hereby directed that a reasoned order has to be passed. This order, if made, shall not be given effect to for a period of two months from the date of despatch of the order to the petitioner. This order has to be sent to the petitioner by respondent No. 1-Board by registered post A.D. The question of regularisation of services of the workmen in question are lingering for years together, and as such, it is hereby directed that the respondent No. 1-Board to decide this matter within a period of three months from the date of receipt of certified copy of this order. In case the Board decides the matter in favour of the workmen then they shall be entitled for the consequential benefits which follows therefrom from the date of filing of the Special Civil Application i.e., 22nd July, 1993. The Special Civil Application and Rule stands disposed of in the aforesaid terms with no order as to costs.

12. Petition partly allowed.