

Ongc Labour Union and ors. Vs. Group General Manager (Project), O.N.G.C.

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Court : Gujarat

Decided On : Apr-29-2002

Reported in : [2002(94)FLR967]; (2002)IIILLJ659Guj

Judge : R.M. Doshit, J.

Acts : CLR Act - Sections 10(1)

Appeal No. : S.C.A. No. 6881/2001

Appellant : Ongc Labour Union and ors.

Respondent : Group General Manager (Project), O.N.G.C.

Advocate for Def. : Rajni H. Mehta, Adv. for Respondent No. 1,; Mukesh R. Shah, Adv. for Respondent Nos. 5 to 6 and;

Advocate for Pet/Ap. : N.R. Shahani, Adv. for Petitioner Nos. 1 to 17

Judgement :

R.M. Doshit, J.

1. Heard the learned advocates. This petition has come up before me for hearing on interim relief on a motion made by the respondent-Oil and Natural Gas Corporation Ltd. in Civil Application No.2130 of 2002. Learned advocate Mr. N.R. Shahani appearing for the petitioners had raised a preliminary objection that this

Bench has no jurisdiction to hear this matter. Thereupon, on April 9, 2002, an order was made on Civil Application No. 2130 of 2002, as under:

'Learned advocate Mr. N.R. Shahani appearing for the Opponents raises an objection that this is not the matter which should have been posted before this Court, in view of the present roster. The registry to decide the matter and post the petition before the concerned Bench.'

2. Pursuant to the said order, the registry has examined the matter and placed it before me today. Mr. Shahani has raised the same objection once again. According to Mr. Shahani, as per the present roster, the matter pertaining to the ONGC Ltd. should not have been placed before this Bench. Mr. Shahani has further submitted that the written note given by him has not been taken care of by the registry. Be that as it may, once the registry has examined the matter and placed the matter on the Board, it is the duty of the Court to hear and decide the same. I, therefore, do not intend to delve into the question. Moreover, my attention is drawn to the Office Note made on April 9, 2002 and the order made by the Hon'ble Chief Justice on April 24, 2002. Once the Hon'ble Chief Justice has directed to place a particular matter before a particular Bench, no further argument can be heard whether the Bench should take up the matter or not.

3. The petitioners herein claim that they are serving in the respondent-Oil & Natural Gas Corporation (hereinafter referred to as, 'the Corporation') as Drivers, Helpers, Clerks and Computer Operators. The appointment of the said categories of personnel through the Labour Contractor has been prohibited under the Government Notification dated September 8, 1994, Hence, the petitioners claim that they have a right to be absorbed in the service of the Corporation as its regular employees since the date they first joined the service through the concerned Labour Contractor. The petitioners have also prayed that the Regional Labour Commissioner (Central), the respondent No. 5 herein, be directed to produce the materials like employment cards, monthly slips, register of wages, muster roll, certificate issued by the principal employer, etc. and to submit his report on the matter at issue.

4. The petition is contested by the Corporation. It is denied that the Corporation has engaged the petitioners Nos. 2 to 17. It is denied that the contract is sham or bogus. It is also denied that the said petitioners have been engaged by the Corporation in the prohibited categories. The petitioners' claim against the Corporation has also been denied. It is asserted that the petitioners are the employees of the concerned labour contractor and they are engaged through such labour contractor.

5. Both the learned advocates have relied upon the judgment of the Hon'ble Supreme Court in the matter of Steel Authority of India Ltd. and Ors. v. National Union Waterfront Workers and Ors., AIR 2001 SC 3527 : 2001 (7) SCC 1 : 2001-II-LLJ-1087. Mr. Shahani has submitted that inspite of the Notification dated September 8, 1994, the Corporation has continued to engage contract labourers in the prohibited categories and the above referred petitioners are entitled to claim service benefits against the Corporation, Mr. Mehta has submitted that the matter involves disputed question of fact and adjudication by the proper forum is warranted. This Court, therefore, should not entertain the petition.

6. In Steel Authority of India Ltd. and Ors. (supra), similar was the issue before the Hon'ble Supreme Court. The Hon'ble Court, after considering the earlier judgments governing the field has held that, 'no recommendation can be made for automatic absorption of the contract labour by the principal employer'. The Hon'ble Court has concluded that, 'if the contract is found to be genuine and prohibition notification under Section 10(1) of the CLR 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 the establishment and wherein 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.'

7. Thus, in my view, the issues involved in this petition also require adjudication by the appropriate forum and no direction, as sought for, should be issued by this Court exercising its jurisdiction under Article 226 of the Constitution of India. In that view of the matter, the ad-interim status quo ordered by this Court requires to be vacated.

8. For the aforesaid reasons, the interim relief, pending this petition is refused. The status quo ordered to be maintained on August 24, 2001 shall stand vacated. However, with a view to enabling the petitioners to approach the appropriate forum for adjudication of the issues involved in this petition, the said status quo shall stand extended till June 30, 2002.

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