

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved On: 9th September, 2011
Judgment Delivered On: 12th October, 2011

+ CRL.M.C.3008/2002

I.T.P.O. & ORS. Petitioners
Through: Mr.Saket Sikri, Advocate with
Ms.Neha Bhatnagar, Advocate

versus

STATE & ORS. Respondents
Through: Mr.Pawan Sharma, Standing
Counsel (Crl.) with Mr.Harsh
Prabhakar, Advocate for State

CRL.M.C.2038/2002

I.T.P.O. & ORS. Petitioners
Through: Mr.Saket Sikri, Advocate with
Ms.Neha Bhatnagar, Advocate

versus

STATE Respondent
Through: Mr.Pawan Sharma, Standing
Counsel (Crl.) with Mr.Harsh
Prabhakar, Advocate for State

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. Two complaints No.217/3 dated 23.4.2001 and No.190/3 dated 4.4.2002 filed by the Inspecting Officer (Labour) alleging violation of the Contract Labour (Regulation and Abolition) Act 1970 have resulted in cognizance being taken by the learned Metropolitan Magistrate and the accused being summoned to face trial.

2. The complaints have been filed under Section 22 read with Section 24 of the Contract Labour (Regulation and Abolition) Act 1970 alleging that ITPO has not obtained registration for employing contract labour through contractor and yet in spite thereof contract labour is being employed. Thus, Section 7 of the Contract Labour (Regulation and Abolition) Act 1970 is alleged to have been violated. It is further alleged that ITPO has failed to ensure disbursement of wages by the contractor and thus sub-Section (2) of Section 21 as also Rule 72 and 73 of the Contract Labour (Regulation and Abolition) Central Rules 1971 have been breached.

3. Section 7 of the Contract Labour (Regulation and Abolition) Act 1970 reads as under:-

“Registration of certain establishments. – (1) Every principal employer of an establishment to which this Act applies shall, within such period as the appropriate Government may, by notification in the Official Gazette, fix in this behalf with respect to establishments generally or with respect to any class of them, make an application to the registering officer in the prescribed manner for registration of the establishment:

Provided that the registering officer may entertain any such application for registration after expiry of

the period fixed in this behalf, if the registering officer is satisfied that the applicant was prevented by sufficient cause from making the application in time.

(2) If the application for registration is complete in all respects, the registering officer shall register the establishment and issue to the principal employer of the establishment a certificate of registration containing such particulars as may be prescribed."

4. Section 9 thereof reads as under:-

"Effect of non-registration. – No principal employer of an establishment, to which this Act applies, shall:-

(a) In the case of an establishment required to be registered under section 7, but which has not been registered within the time fixed for the purpose under that section ,

(b) In the case of an establishment the registration in respect of which has been revoked under section 8,

employ contract labour in the establishment after the expiry of the period referred to in clause (a) or after the revocation of registration referred to in clause (b), as the case may be."

5. Suffice would it be to state that no principal employer of an establishment can employ contract labour if the establishment is not registered under Section 7 of the Act.

6. Even where contract labour is permitted to be employed, Section 21 of the Contract Labour (Regulation and Abolition) Act 1970 has to be complied with. It reads as under:-

"Responsibility for payment of wages. – (1) A contractor shall be responsible for payment of wages to each worker employed by him as

contract labour and such wages shall be paid before the expiry of such period as may be prescribed.

(2) Every principal employer shall nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.

(3) It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer.

(4) In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.”

7. Thus, it is the duty of every principal employer to nominate a representative duly authorized to be present at the time of disbursement of wages by the contractor to the contract labour.

8. As noted hereinabove, complaints allege violation of sub-Section (2) of Section 21; in addition to the allegation that without obtaining registration, ITPO is employing contract labour.

9. The complaints allege that the job of sweeping and cleaning the complex of ITPO is being executed through

contract labour of M/s.Sulabh International, Delhi. 60 workers have been employed through the contractor.

10. In the petitions it is not disputed that the work in question is being carried out through labour provided by M/s.Sulabh International. It is pleaded that M/s.Sulabh International is a social organization activities whereof have been held to be purely charitable by the Patna High Court and thus it is stated that there is no violation.

11. It was urged at the hearing that the agreement pursuant whereto M/s.Sulabh International sends persons for cleaning and sweeping the ITPO complex clearly notes that social workers would be executing the works in question. It was thus pleaded that ITPO has not violated any law inasmuch as the decision of the Patna High Court in favour of M/s.Sulabh International recognizes it being a social voluntary organization engaged in cleanliness and the work is performed by social workers.

12. Now, it is the content and not the form of a document which matters.

13. I note the agreement upon which the petitioners rely. It reads as under:-

“This agreement is made on this 19th day of June One thousand nine hundred ninety-six between the India Trade Promotion Organization, Pragati Maidan, New Delhi-110001, a Govt. of India Undertaking (hereinafter called the first party of the one part and M/s.Sulabh International, Mahavir Enclave, Palam Dabri Road, New Delhi-110045, a Registered Society under the Societies Registration Act 1860 (hereinafter called as the second party) of the other part. The term and expression “the first party” and “the second party” wherever used or occurring in this deed shall always, unless

expressly or by necessary implication excluded being contrary to the subject and context mean and include their respective heirs, successors, administrators, assignees etc. in office.

Whereas the first party owns and possesses Pragati Maidan and it wants to award the contract of sweeping, cleaning, scavenging services and maintenance of Pragati Maidan, New Delhi including toilets. And whereas the second party desirous of taking over the aforesaid contract, has agreed to maintain Pragati Maidan against payment of ₹2,43,520/- per month (inclusive of cleaning material) for a period of one year commencing from 1-4-1996.

This agreement between First Party and Second Party witnesseth as per terms and conditions set forth hereunder:-

1. That the second party shall attend to the maintenance of the Pragati Maidan including the toilets therein for a period of one year commencing from 1-4-1996.
2. The elements of work involved are as under:
 - i) Sweeping/cleaning of all the toilets during activation period.
 - ii) Sweeping of entire open space and green area.
 - iii) Cleaning of garbage bins, spittoons etc.
 - iv) Collection of garbage and loading of garbage on loaders provided by the India Trade Promotion Organisation.
 - v) All the cleaning material would be provided by the second party including phenyl, detergents, disinfectants, dusters, brooms, acid and deodorants etc.
 - vi) The second party shall provide adequate cleaning material for providing satisfactory

hygienic and sanitary conditions in Pragati Maidan and in all the toilets.

3. That the second party shall raise the bill (inclusive of cost of cleaning materials) after every month which shall be duly verified by the officer-in-charge (Conservancy) of India Trade Promotion Organisation and which shall be processed on priority basis by the first party and efforts will be made to arrange payment promptly.
4. That the first party may pay mobilization advance of ₹1.20 lakh to the second party which shall be adjusted in four months from the date of payment.
5. That the second party shall sign an inventory of the fittings and fixtures that are installed at the toilets at the time of taking over of the toilets and the second party shall hand over the toilets to the first party without causing any damage at the time of handing over the toilets back to the first party on termination of the contract.
6. That the repair and maintenance of civil, electrical, water supply and sanitary works of toilets shall be carried out by the first party as and when needed.
7. That the second party shall always engage minimum forty social workers and two supervisors in each shift for actual performance and maintenance work. In addition to above, the second party shall always engage 14 social workers for loading of garbage and two sewer men.
8. That if the authorized inspecting officer of the first party finds any discrepancy in deployment of adequate number of social workers,

supervisors or use of material for maintenance work as agreed in the proposal, the contract may be terminated even after giving adequate number of warnings if it is noted that the deficiencies pointed out have not been rectified by the second party.

9. That in the event of any social worker not being available for any reasons, the second party shall immediately provide a substitute without any addl. Charge and shall ensure high standard of cleanliness.
10. That the second party shall be responsible for payment of salary/wages/benefits in respect of injuries and accidents to persons engaged by them and for damage to fittings, fixtures and equipments arising out of the negligence on the part of the second party shall also indemnify the first party for any monetary loss due to negligence on the part of its staff, the second party shall be responsible for compliance to the labour terms in this regard.
11. That the second party shall issue uniforms to all their social workers which they shall wear while on duty.
12. That M/s.Sulabh Intl. shall look after the well-being of social workers. The second party shall undertake liability arising out of any accident and consequential injury to its social worker. No responsibility or liability shall rest on the first party on this account. The second party undertakes to indemnify the first party against all losses, damages, costs etc. and shall always keep it fully indemnified during the period of contract.
13. That the second party shall not appoint any sub-contractor to carry out any obligation under the contract.

14. That the second party shall pay to the social workers the wages prescribed by the Delhi Government in case of revision of minimum wages by the Delhi Govt. during course of the agreement. The first party shall revise and match the differential amount to the second party.
15. That the first party shall provide an office space with telephone facility to the second party within Pragati Maidan for proper monitoring and supervision of work. The first party shall pay for the telephone charges.
16. That the successful implementation of the terms and condition of the agreement will be ensured by the second party by proper control in supervision of the work.
17. That the standards of sanitation shall always be to the satisfaction of the authorized representative of the first party whose decision shall be final and binding to the second party. In case of default first party may get improvements done at the cost of the second party.
18. That in case the second party fails to perform any of the terms and conditions of this agreement or commits any breach of the contract, the first party may cancel the contract after giving three months notice in advance in writing to the second party. The second party shall not be entitled to claim compensation from the first party on this account.
19. That in case of any dispute between the parties aforesaid with regard to the interpretation of any clause of agreement, the

matter shall be referred to the Sole Arbitrator appointed by the Chairman/CMD or the Administrative Head of the first party at the time of such appointment and the decision of the Arbitrator so appointed shall be conclusive and binding on both the parties.

20. That no person other than a person appointed by the Chairman/Chairman and Managing Director or the Administrative Head of the first party would act as Arbitrator.”

14. A very interesting reading.

15. Who is the signatory on behalf of M/s.Sulabh International? Some scribbled signatures are to be found. Name and designation is not given in the agreement.

16. The agreement clearly records that ITPO has awarded the contract of *‘sweeping, cleaning, scavenging, services and maintenance of Pragati Maidan, New Delhi, including toilets to M/s.Sulabh International’*. The consideration is ₹2,43,520/- per month.

17. Clause 7 of the agreement says that the social workers sent by M/s.Sulabh International to be deputed would be 40 in number with 2 supervisors in each shift. 14 social workers would be engaged for loading of garbage. 2 persons to clean the sewer lines would be sent. Clause 10 records that M/s.Sulabh International would be responsible for making payment of salary/wages and other benefits to the social workers.

18. The clauses aforesaid and others make it plain clear that the contract is one where under M/s.Sulabh International is providing workers for cleaning and maintenance the hygiene in

Pragati Maidan and for which a fixed agreed amount is being paid to M/s.Sulabh International. Merely because these workers are referred to as social workers is neither here nor there.

19. At the stage of taking cognizance in a complaint, evidence has not to be gone into. Prima facie views have to be formed. I hold that the complaints disclose sufficient cause where under cognizance can be taken and has rightly been taken to proceed against the accused.

20. As regards the plea that Upinder Singh and Manohar Singh the General Manager and the Deputy General Manager of ITPO complex are government servants and hence would not be liable without a sanction from the Central Government as contemplated by Section 197 Cr.P.C., suffice would it be to state that ITPO is a statutory authority and if a government servant is on deputation to the organization, any act of omission or commission would not be in his capacity as a government servant but as an officer-in-charge of the affairs of ITPO and thus there is no scope to apply Section 197 Cr.PC.

21. The petitions are dismissed.

22. No costs.

(PRADEEP NANDRAJOG)
JUDGE

OCTOBER 12, 2011
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