

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) No.1670/2011

Date of Decision: March 18, 2011

JAIPRAKASH SINGH & ORS Petitioners
through Mr. C.A.Sundaram, Senior Advocate
with Mr. Sudanshu Batra, Ms. Rohini
and Mr. Zafar, Advocates

versus

UOI AND OTHERS Respondents
through Mr. B.V.Niren, Advocate for
respondents No.1 to 4.
Mr. Sandeep Sethi, Senior Advocate with
Mr. Gaurav Kejriwal, Mr. S.B.Dwivedi,
Advocates for respondent No.5.

CORAM:
HON'BLE MISS JUSTICE REKHA SHARMA

1. Whether the reporters of local papers may be allowed to see the judgment? No
2. To be referred to the reporter or not? No
3. Whether the judgment should be reported in the 'Digest'? No

REKHA SHARMA, J (ORAL)

The petitioners before me are only five in number, though they claim to be representing huge number of workers. They are working as labourers at Quarry "D" of Kaliapani Chromite Ore Mines at Jajpur, Orissa. They have laid challenge, inter-alia, to the grant of licence to respondent No.5, namely, Dhansar Engineering Co. Private Limited, under Section 12(1) of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter called the "Act") for doing the work of

"HEMM Drilling and Blasting wherever necessary and dewatering, transport of overburden and chrome ore and disposal/stacking of the same work in the establishment of the Regional Manager, O.M.C. Ltd., Jajpur Road, Jajpur at South Kaliapani Chromite Mines of OMC Ltd., South Kaliapani."

It has been forcefully argued by the learned Senior counsel Shri C.A.Sundaram appearing for the petitioners that the aforesaid licence has been obtained by respondent No.5 by misquoting, rather suppressing, material part of an order dated February 18, 2011 passed by a Division Bench of this Court in a writ-petition that was filed by respondent No.5. As the order passed in the said writ-petition has been the mainstay of the submission of learned Senior counsel for the petitioners, it will be appropriate to re-produce the said order in its entirety:-

"CM No.2241-2242/2011

Allowed subject to just exceptions.

+ WP (C) No.1056/2011 & 2240/2011 (Stay)

On hearing learned senior counsel for the petitioner we are of the considered view that the writ petition is premature inasmuch as that if the legal position already stands settled by the Division Bench of this Court in WP (C) No.5550/1999 titled G.S. Atwal & Co. P. Ltd. & Anr. Vs. UOI & Anr. decided on 19.12.2002 vis-à-vis the principles of law, the petitioner must first approach the concerned authorities to make a representation that a notification dated 20.11.1984 would not apply to the petitioner as the petitioner is deploying its own permanent employees. The occasion for the petitioner to approach this Court would only arise if the concerned authorities take adverse view on this position.

In case a representation is made by the petitioner to the Labour Commissioner and the Orissa Mining Corporation, we would expect a decision to be taken within a week of making such representation.

The petition and the application stand disposed of with the aforesaid directions with liberty to the petitioner to approach this Court in case of any adverse decision being rendered by the concerned authorities.

Dasti to learned counsel for the petitioner under the signatures of the Court Master.”

On December 30, 2010, the Deputy Chief Labour Commissioner, Bhubaneswar had addressed a communication to the Orissa Mining Corporation Limited and to the Additional General Manager (Mining), OMC House, Bhubaneswar, warning them that the tender which they had invited for doing the work at Quarry “D”, South Kaliapani Chromite Mines, appeared to be in violation of Section 10 of the Act, which prohibits employment of contract labour in view of the Notification dated November 20, 1984. It is contended by the learned Senior counsel for the petitioners that inspite of the said communication, the Assistant Labour Commissioner on March 07, 2011 granted licence to respondent No.5 under Section 12(1) of the Act.

In so far as the licence is concerned, it is contended that before it was granted, respondent No.3 had written a letter to Shri Sudhir Kumar Patra, Central Government Standing Counsel, seeking his legal opinion on the order passed by the Division Bench of this Court, but in the said letter, he misquoted the order of the Division Bench. As per the counsel, whereas, the Division Bench in its order had observed that, *“if the legal position already stands settled by the Division Bench*

of this Court in WP (C) No.5550/1999 titled G.S. Atwal & Co. P. Ltd. & Anr. Vs. UOI & Anr. decided on 19.12.2002 vis-à-vis the principles of law, the petitioner must first approach the concerned authorities to make a representation that a notification dated 20.11.1984 would not apply to the petitioner as the petitioner is deploying its own permanent employees.....”, respondent No.3 in its letter while quoting the order of the Division Bench intentionally omitted the word “if” and that had the effect of changing the entire connotation of the order. The order as quoted in the letter of respondent No.3 ran as under:

“.....the legal position already stands settled by the Division Bench of this Court in WP (C) No. 5550/1999 titled *G.S. Atwal & Co. P. Ltd. & Anr. Vs. UOI & Anr.* decided on 19.12.2002 vis-à-vis the principles of law, the petitioner must first approach the concerned authorities to make a representation that a notification dated 20.11.1984 would not apply to the petitioner as the petitioner is deploying its own permanent employees. The occasion for the petitioner to approach this Court would only arise if the concerned authorities take adverse view on this position.

In case a representation is made by the petitioner to the Labour Commissioner and the Orissa Mining Corporation, we would expect a decision to be taken within a week of making such representation.”

In view of the above, it is the submission of the learned Senior counsel for the petitioners that respondent No.3 in connivance with respondent No.5 misquoted the order of the Division Bench in order to somehow obtain the licence.

Besides the aforesaid submissions, it is also contended by the learned Senior counsel for the petitioners that since the Notification issued under Section 10 of the Act dated November 20, 1984

prohibiting employment of contract labour in the Chromite Mines has not been withdrawn till date, the Orissa Mining Corporation Limited could not have invited tenders in respect of the site in question and respondent No.4 could not have granted licence pursuant to the award of tender in favour of respondent No.5.

The learned Senior counsel, Shri Sandeep Sethi, appearing for respondent No.5 besides disputing the submissions made by the learned Senior counsel for the petitioners on merits, has raised a preliminary objection as to the very maintainability of the writ-petition in this Court. It is submitted that the main relief, which the petitioners are seeking, is contained in prayer (cc) of the writ-petition and thereby they have prayed that the licence No.L/52/2011 dated March 07, 2011 granted to respondent No.5 by respondent No.4 be set-aside. Referring to the licence in question, learned Senior counsel points out that this licence has been issued by the Assistant Labour Commissioner, Bhubaneswar and therefore, if the petitioners were to challenge the same, they should be doing so at Orissa High Court and not in this Court. The learned Senior counsel also points out that the order granting licence is an appealable order under Section 15 of the Act and that the said Section gives right to any person aggrieved by an order so made to prefer an appeal to the appellate officer nominated by the appropriate Government. Hence, it is the case of the respondents that without resorting to the provisions of Section 15 of the Act, the petitioners could not have filed the present writ-petition.

Having heard the learned counsel for the parties, I feel that the writ-petition is liable to be dismissed on the question of maintainability.

It is not in dispute that the authority which awarded the contract to respondent No.5, namely, Orissa Mining Corporation Limited is situated in Bhubaneswar; the site in question is located in Orissa at Quarry "D" of Kaliapani Chromite Ore Mines at Jajpur, Orissa; and the licence has been granted by an authority which also is at Bhubaneswar. In this view of the matter, no cause of action has arisen within the jurisdiction of this Court. The mere allegation by the petitioners that the licence has been obtained by misquoting and misrepresenting an order passed by the Division Bench of this Court will not confer jurisdiction upon this Court in relation to a licence which has been granted by respondent No.4 at Bhubaneswar.

For the fore-going reasons, the writ-petition is dismissed as not maintainable for want of jurisdiction. However, it will be open to the petitioners to raise before the Appellate Authority or before the Orissa High Court, whichever forum they are advised to choose, to raise all the pleas which they have raised in this Court.

REKHA SHARMA, J.

MARCH 18, 2011
PC/ka