

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

DECIDED ON: 01th May, 2013

LPA 1164/2005

OIL AND NATURAL GAS CORPN. LTD. Appellant
Through: None.
versus

U.P.BHUTPURVA SAINIK KALYAN N. Respondents
Through : Mr. Mukesh Jain for Ms. Asha Jain
R-2 to 26.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

% **MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)**

1. When the matter was called out from the list of 'Regular Hearing Matters', there is no appearance on behalf of the appellant. The appellant had not caused appearance before the learned Single Judge.

2. The appellant – Indian Oil and Natural Gas Corporation Limited (ONGC) impugned the judgment and order of a learned Single Judge dated 22nd March, 2005 whereby the respondent Central Government Industrial Tribunal, was directed to make an appropriate order referring the dispute sought to be raised by the writ petitioners (respondents in this appeal). The said respondents had argued that they were employees of the appellant Oil and Natural Gas Corporation (ONGC); they were

working as Security Guards continuously without a break for many years. They claimed that even though they were engaged for discharging functions and work of ONGC, the employment was through camouflage, contrived mainly towards depriving them security of tenure and other benefits of services. The said respondents had also urged that the contractor was a name lender and that the work done by them was wholly for the benefit of the ONGC. It was also urged that their work was directly controlled and supervised by the ONGC.

3. The petitioners relied upon the authority of the Constitution Bench judgment of the Supreme Court in **Steel Authority of India Limited & others versus National Union Waterfront Workmen and others**, (JT) 2001 (7) SC 268. The learned Single Judge after considering the submissions of the parties and the contentions of the respondents directed that Central Government should make reference, in terms of the law and directions of the Supreme Court in the **Steel Authority of India Limited's case** (supra), particularly, in the following paragraphs:

“121.(5) On issuance of prohibition notification under Section [10\(1\)](#) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce

any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment subject to conditions as may be specified by it for that purpose in the light of para 6 hereunder.

(6) If the contract is found to be genuine and prohibition notification under Section [10\(1\)](#) of the CLRA Act in respect of the concerned establishment has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in 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.

122. We have used the expression "industrial adjudicator" by design as determination of the questions aforementioned requires inquiry into disputed question of facts which cannot conveniently be made by High Courts in exercise of jurisdiction under Article [226](#) of the Constitution. therefore, in such cases the appropriate authority to go into those issues will be Industrial Tribunal / Court whose determination will be amenable to judicial review.

4. This Court had been informed at the time of admission of the appeal, by the appellant that in similar circumstances, another judgment had been made by the learned Single Judge in CWP No.2704/2003, which was decided on 30th May, 2003. Apparently, that was the subject matter of another appeal, i.e. LPA No. 489/2003 (Indian Oil Corporation versus Union of India and Others). The appeal was eventually dismissed by order dated 15th January, 2009. The only difference between that case and the present one appears to be that in the said case the workmen were Safai Karamcharis. In the present case, workmen/respondents are Security Guards claiming benefit of regularization.

5. In the grounds of appeal, the ONGC urges that the respondents were never its employees and that the master and servant relationship never existed between it and the respondents. It, therefore, seeks to justify the rejection of the demand from the Central Government.

6. This Court is of the opinion that the reasoning and final order of the learned Single Judge is in tune with the directions of the Supreme Court in **Steel Authority of India's case** (supra). Furthermore, in similar circumstances, in the **Indian Oil Corporation's case** (supra), another Division Bench of this Court had concluded as follows:-

“16. In Madhya Pradesh Administration v.

Tribhuvan, IV (2007 SLT 544=(2007) 9 SCC 748, a Bench of two Judges of Supreme Court has examined judgment of Umadevi case and power of the Industrial Adjudication under the Industrial Disputes Act and it was observed as follows:

“6. The question, however, which arises for consideration is as to whether in a situation of this nature, the learned Single Judge and consequently the Division Bench of the Delhi High Court should have directed reinstatement of the respondent with full back wages. Whereas at one point of time, such a relief used to be automatically granted, but keeping in view several other factors and in particular the doctrine of public employment and involvement of the public money, a change in the said trend is now found in the recent decisions of this Court. This Court in a large number of decision in the matter of grant of relief of the kind distinguished between a daily wages who does not hold a post and a permanent employee. It may be that the definition of ‘workman’ as contained in Section 2(s) of the Act is wide and takes within its embrace all categories of workmen specified therein, but the same would not mean that even for the purpose of grant of relief in an industrial dispute referred for adjudication, application of constitutional scheme of equality adumbrated under Articles 14 and 16 of the Constitution of India, in the light of a decision of a Constitution Bench of this Court in Secy., State of Karnataka v. Umadevi and Other relevant factors pointed out by the Court in a catena of decisions shall not be taken into consideration.

17. It is thus clear that it is for the industrial adjudicator to decide whether the relief of regularization can be granted to the workmen and if not, what other relief can be granted to the workmen. It appears that workers were terminated on 20th March, 2003, after their prayer for reference was declined. The workers through their union had made

a request for modification of reference so as to include the issue of termination. Accordingly, the first respondent is directed to modify the reference order and to include the claim of the workmen for reinstatement with full back wages. The said modification/amendment will be done within a period of four weeks from today. The Industrial Adjudicator shall thereafter proceed with the reference and dispose of the same as expeditiously as possible and in any event on/or before 31st October, 2009. The appeal is dismissed with no order as to costs. ”

7. In the light of the above, this Court is of the opinion that there is no infirmity in the impugned judgment of the learned Single Judge.

8. It is however clarified that all rights and contentions available to the parties in law on the merits of their respective positions are open to them, before the Industrial Tribunal for adjudication.

The appeal is dismissed, but in the above terms.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

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