

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

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Date of decision: 2nd July, 2014

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W.P.(C) No.1400/2012

**AKHIL BHARTIYA RAILWAY MAL GODAM MAZDOOR
KALYAN SANSTHA** **Petitioner**

Through: Mr. Sushil Jain, Adv.

Versus

UNION OF INDIA & ORS. **Respondents**

Through: Mr. Hashmat Nabi with Mr.
Chanchal, Advs. for UOI.
Mr. M.P. Singh with Ms. Ranjana
Singh, Advs. for R-4.
Mr. K.S. Negi with Mr. Alok Kumar,
Advs. for R-5.

CORAM :-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This petition under Article 226 of the Constitution of India filed as a Public Interest Litigation (PIL) seeks; i) a direction to the respondent Railways to provide basic amenities to the workers of the Railway Freight Godam / Warehouse and also ensure measures against their exploitation; ii) a direction for regularization of the services of these workers and their absorption in the mainstream employment; and, iii) a direction for issuance of badges to all

workers of Mal Godam / Warehouse like other workers / coolies in the Railways.

2. The petitioner, though stated to be a Society formed for ventilating the cause of the down-trodden and poverty stricken but its membership is stated to be that of Mal Godam workers / Warehouse workers of the Railways only. Members of the petitioner thus, strictly speaking, are personally concerned with the reliefs claimed in the petition and the petition has been wrongly given the nomenclature of a PIL.

3. On enquiry from the counsel for the petitioner on 07.03.2012 as to whose goods the members of the petitioner were handling, the counsel for the petitioner stated that the members of the petitioner were generally handling the goods of the Food Corporation of India (FCI) transported to various destinations across the country through the Railways. On oral request of the counsel for the petitioner, FCI was also impleaded as a respondent and notice issued.

4. It is the case of the petitioner:

- (i) that the members of the petitioner though contribute to the major portion of the profit of the “respondents”, do not even have the basic

amenities like drinking water, rest room, toilet, and receive wages less than the minimum wages;

(ii) reliance is placed on *National Federation of Railways Porters, Vendors & Bearers Vs. Union of India* 1995 Supp. (3) SCC 152 in support of the relief of absorption of the members of the petitioner in the mainstream of Railways and / or FCI;

(iii) that though the respondent Railways has on 21.12.2006 notified that some facilities be provided “to the workers of the Railways, but the respondent No.1 (Railways) till now has not provided any facilities to the railway workers”;

(iv) that the Railway Mal Godam workers are living in extreme depravity similar to the working conditions of bandhua workers or bonded labour;

(v) that the State is required to provide measures for protection of health and strength of the workers and their families;

(vi) that the Railways Mal Godam / Warehouse workers are being harassed by the contractors; that the contractors in turn delegate their jobs to sub-contractors who do not even have a license; reliance is placed on *Standard Vacuums Refining Co. of India Ltd. Vs. Its Workmen*

(1960) 3 SCR 466 and on *Catering Cleaners of Southern Railway Vs. Union of India* (1987) 1 SCC 700 for abolition of the contract labour;

(vii) that the respondents have ignored the demands of the members of the petitioner, thereby violating Articles 14, 21 and 23(1) of the Constitution of India.

5. The respondent Railways filed a counter affidavit, pleading:

(a) that the prayer in the writ petition, for provision of basic amenities to the workers of the Railway Mal Godam / Warehouse and for taking measures against their exploitation, stands satisfied in terms of Rates Circular No.18/2004 dated 25.05.2004 communicating the decision of the Railway Board to all General Manager of Railways to, in addition to the provision of drinking water, toilet and resting facilities already being provided in the goods sheds, raised taps for bathing purpose be also provided depending upon the local requirements, as a gesture of general welfare; the said Rates Circular has already been implemented at most of the stations; that non implementation at a few stations was owing to funds constraints;

(b) that the prayers in the writ petition for absorption of the Railway Mal Godam / Warehouse workers in the mainstream of employment in

the railways and / or regularization of their services and / or issuance of badges to them is in the nature of back door entry to get government employment and which is not permissible;

(c) that the Mal Godam workers / constituents of the petitioner are not employees of the respondent Railways – they are hired by the consignors / consignee for loading / unloading of goods at railway siding / railway sheds designated for this purpose.

6. The respondent FCI has also filed a counter affidavit,

(I) pleading that the petition does not fall within the ambit of PIL;

(II) denying that the Mal Godam workers / Warehouse workers of the Railways were not being provided the basic amenities like drinking water, rest room and toilet;

(III) denying that the said workers were not being paid minimum wages as required by law;

(IV) pleading that (i) the respondent FCI appoints handling and transport contractors for its godowns / railway sheds and warehouses for the purpose of transportation of its goods and which entails loading / unloading of food grain bags from / into railway wagon and trucks etc, stacking the food grain bags after unloading from trucks in the godown,

de-stacking the food grain bags and loading into trucks for dispatch, transportation of food grains from railway good sheds / siding to FCI godowns and vice-versa and for bagging, weighment, standardization, cleaning etc; (ii) that these contractors are appointed through open tender enquiry on the basis of Model Tender Forms (MTF) which constitutes a binding agreement between the contractor and the respondent FCI; (iii) that as per MTF, the contractor is bound to provide basic facilities like drinking water, rest room, toilet etc. at the places of operations; (iv) that the respondent FCI also ensures that the contractor pays the workers not less than the minimum wages i.e. at the rate notified by the appropriate authority from time to time; (v) that the wages are distributed in the presence of officials / employees of the FCI; (vi) that wherever minimum wages are not notified by the appropriate authority, the wages prescribed by the General Manager (R) of the respondent FCI as minimum wages are made applicable; (vii) that it is further a term of the said contract of the respondent FCI with its contractors that all statutory laws, rules and regulations shall be abided by;

(V) pleading that the said contract labour system is permissible under the Contract Labour (Regulation & Abolition) Act, 1970;

- (VI) pleading that the Government of India has not abolished contract labour for such work;
- (VII) pleading that the claim of the petitioner for absorption of its members in the mainstream of employment is misplaced;
- (VIII) pleading that the MTFs insist upon provision of canteen / rest room, latrine, urinal, washing facilities, first aid facilities, sufficient supply of drinking water at convenient places for the workers;
- (IX) pleading that the respondent FCI does not allow sub-contracting and all agreements entered into by the respondent FCI with the contractor provide that the contractor would not sublet, transfer or assign the contract or any part thereof;
- (X) pleading that the MTF has been drafted in such a manner that it ensures the welfare of workers engaged in loading / unloading of wagons;
- (XI) pleading that the contractors are responsible for the deposit of share of employee's contribution along with employer's share of provident fund as per various provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952;

(XII) pleading that the security deposit of the contractor is not released without ensuring that the PF dues of the workers have been deposited with the Regional Provident Fund Authority for the contract period;

(XIII) pleading that as the respondent FCI is ensuring of basic amenities, there is no violation of Articles 14, 21 & 23(1) of the Constitution of India.

7. Though the petitioner has filed rejoinders to the aforesaid two counter affidavits but of nothing more than bare denial and reiteration.

8. The petitioner has filed written submissions dated 19.03.2014 in which the petitioner has drawn a parallel, between coolies at the railway station who load and unload the goods of the passengers in the trains and its members who are also stated to be coolies, with the only difference being that they unload and load the freight carried out through the railways. It is contended that while several facilities are being given to the coolies loading / unloading goods of the passengers, no such facilities are being given to coolies who load / unload freight. It is further elaborated that while the coolies loading / unloading passenger goods are given (i) plate / badge, (ii) uniform (iii) free railway pass, (iv) drinking water, (v) toilet and urinal facilities, (vi) rest houses, (vii) job card, (viii) medical facilities, (ix) permanent service of Group D; and, (x) limits

imposed on the weight they are to carry, no such amenities / facilities are being provided to the coolies loading / unloading freight.

It is thus contended that a provision should be made in the respondent FCI for employment of such workers.

9. In view of the aforesaid written submissions, the respondent Railways were directed to file an additional affidavit, explaining the difference between porters who carry luggage for passengers and porters who carry goods in respect of goods train.

10. The respondent Railways in the affidavit so filed have explained:

- (a) that the porters who carry load for the passengers, have free access to various platforms of railway station and interact with the passengers and carry their goods / luggage, and need was thus felt to issue license to such porters through a proper process of screening and to make them work under the control of the Station Master / Station Manager; per contra the loading / unloading of freight / goods is required to be done by the consignor / consignee themselves and through labour of their own choice and the respondent Railways have no role to play therein, which is in the exclusive domain of the consignor / consignee;

- (b) that the goods rakes are loaded / unloaded in the goods sheds or wherever they are placed;
- (c) loading / unloading of the said goods is not done on a daily basis but as and when required;
- (d) that the labour engaged in loading / unloading of goods / freight is not engaged on a permanent basis;
- (e) that the consignor / consignee pick / employ labour from the open market as and when they need to load / unload their rakes;
- (f) that such workers thus cannot be granted license on permanent basis as in case of coolies who handle the passengers luggage.

11. We have heard the counsel for the parties.

12. From the counter affidavits filed and the material placed on record, we are satisfied that the basic amenities for the Railway Mal Godam / Warehouse workers exist and directions in that regard have already been issued. We are confident that the same are being abided by. Though the plaintiff has generally stated that the said amenities are not being provided at some places but no list of places, where the amenities directed by the Railway Board to be provided are not being provided, has been given. In any case, this writ petition is not concerned therewith. We, however still direct that if the amenities which the

respondent Railways has already directed to be provided for railway Mal Godam / Warehouse workers are not being provided at any place, the concerned officer of the railways shall, immediately upon the deficiency if any being brought to his / her notice, remedy the same.

13. As far as the claim in the writ petition for absorption of the railway Mal Godam / Warehouse workers in the mainstream of employment in the respondent Railways or in the respondent FCI is concerned, the petitioner has failed to make out any basis therefor. The reliance placed on *National Federation of Railways Porters, Vendors & Bearers* (supra) in this regard is misconceived. The Supreme Court in that case was concerned with the workers employed by the Railways through the medium of contractors. It is not the case of the petitioner here that the contractors / sub-contractors who hired the services of the members of the petitioner are so contracted by the respondent Railways. On the contrary, from the documents filed by the respondent Railways before this Court, it is clear that as far as loading of freight is concerned, the same is not the responsibility of the Railways but of the consignor / consignee. No such relief of absorption in the respondent Railways is made out.

14. As far as the claim for employment in the respondent FCI is concerned, the petitioner in the writ petition as originally filed had not even impleaded the FCI as a respondent thereto. FCI was impleaded on the Court's prodding. Rather, there are no averments in the writ petition against the respondent FCI. For this reason alone, the question of the grant of such relief against the respondent FCI does not arise.

15. The Supreme Court in ***Bank of Baroda Vs. Ghemarbhai Harjibhai Rabari*** (2005) 10 SCC 792 has held that the burden of proof that a claimant was in the employment of a management, primarily lies on the workman who claims to be a workman, though the degree of proof so required would vary from case to case. Similarly in ***Workmen of Nilgiri Co-op. Mkt. Society Ltd. Vs. State of Tamil Nadu*** (2004) 3 SCC 514, it was held that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer or employee, the burden to prove the same would be upon him.

16. There is also merit in the plea of the FCI that such contract labour has not been abolished. Reference in this regard may be made to ***Gujarat Electricity Board Vs. Hind Mazdoor Sabha*** (1995) 5 SCC 27 and to ***International Airport Authority of India Vs. International Air Cargo Workers' Union*** (2009) 13 SCC 374 where it has been held that after the

coming into operation of the Contract Labour (Regulation & Abolition) Act, 1970 the authority to abolish contract labour is vested exclusively in the appropriate Government which has to take its decision in the matter in accordance with provisions of Section 10 thereof and no Court including Industrial Adjudicator has adjudication to do so. It was further held that neither Section 10 nor any other provision of the Contract Labour (Regulation & Abolition) Act provides for automatic absorption of contract labour even on issuance of Notification by the Appropriate Government and consequently the principal employer cannot be required to absorb the contract labour working in the establishment. It was however clarified that even in the absence of abolition of contract labour it is open to contract labour to contend that the contract between the principal employer and the contractor is sham, nominal and a camouflage and if such contention is proved the Industrial Adjudicator is entitled to direct the principal employer to absorb or regularize the services of contract labour. No such case of the contract entered into by the FCI being nominal or sham or camouflage has been made out in the present case.

17. That leaves only the aspect of discrimination if any of the Mal Godam / Warehouse workers with the porters carrying the passenger luggage. Besides the differences already culled out in the affidavit of the respondent Railways,

we may state that the same fall in two separate and distinct categories and no parallel between the two can be drawn. While the passengers travelling on the Railways constitute unorganized sector and are unable to handle / deal with the porters available at the station or take action against them and thus the need for the Railways to regulate them, the same cannot be said of the Mal Godam / Warehouse workers. Normally, the need of the persons / organizations / companies / institutions availing the services of transportation of freight on the Railways is on a regular or on a permanent basis and they are thus in position to deal with the freight workers. The nature of the job is also entirely different. Thus no parity can be drawn and no case of discrimination is made out.

18. We thus do not find any merit in the petition save for the direction aforesaid issued and dismiss the same.

No costs.

RAJIV SAHAI ENDLAW, J

CHIEF JUSTICE

JULY 02, 2014
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