

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

Judgment Reserved on: July 29, 2015

Judgment Delivered on: July 31, 2015

+ **LPA 384/2014**

WORKMEN OF SPORTS AUTHORITY
OF INDIA KAMGAR UNION

..... Appellant

Represented by: Mr.Varun Prasad, Advocate

versus

SPORTS AUTHORITY OF INDIA

..... Respondent

Represented by: Mr.Anil Grover, Advocate with
Ms.Noopur Singhal, Advocate

LPA 385/2014

WORKMEN OF SPORTS AUTHORITY
OF INDIA KAMGAR UNION

..... Appellant

Represented by: Mr.Varun Prasad, Advocate

versus

SPORTS AUTHORITY OF INDIA

..... Respondent

Represented by: Mr.Anil Grover, Advocate with
Ms.Noopur Singhal, Advocate

LPA 15/2015

SPORTS AUTHORITY OF INDIA

..... Appellant

Represented by: Mr.Anil Grover, Advocate with
Ms.Noopur Singhal, Advocate

versus

DELHI ADMINISTRATION & ORS

..... Respondents

Represented by: Mr.Varun Prasad, Advocate for
Respondent No.3 (1-32)

Ms.Bharathi Raju, Advocate for
Respondent No.6

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. Sport Authority of India is a society registered under the Societies Registration Act, 1860 and is under the administrative control of the Department of Sports, Government of India. Amongst others, it maintains various stadiums built in Delhi from time to time as and when the Asian Games were held in Delhi. Per necessity, Sports Authority of India has to engage watch and ward as also security staff at its stadiums. The number of personnel required to maintain security varies from time to time for the reason when tournaments are held, the footfall being more, more number of people are required. On normal days when athletes visit the stadium for training purposes, footfall being less, staff requirement is less.
2. Retaining on its rolls, and with the status of permanent employees security staff, being the minimum number required, Sports Authority of India had been engaging contractors on basis of offers submitted pursuant to tender floated for managing the security of its stadiums.
3. On December 09, 1976 the Central Government issued a notification under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 prohibiting employment of contract labour for amongst others, the security of buildings, owned or occupied by the establishments in respect of which the appropriate Government under the Act was the Central Government.

4. The employees engaged by the contractor to whom the contract for providing security personnel and managing the security of stadiums was awarded by the Sports Authority of India formed a Union called Sports Authority of India Kamagar Union. On July 06, 1990 the Union sent a charter of 17 demands, one of which included regularization of the service of the workman engaged by the contractor for providing security at the various stadiums. The contract period having expired and the contractor not being able to be the successful bidder at the re-tender, services of these employees were disengaged by the contractor. The Union raised an industrial dispute claiming that the Sports Authority of India was the principal employer and that in view of the notification dated September 09, 1976 could not have resorted to employment of contract labour for providing security and thus termination of service of the workman engaged by the contractor was illegal. In the claim petition filed before the Conciliation Officer, case projected by the Union can be gleaned succinctly by reproducing paragraphs 2 to 6 and 8 of the claim petition. They read as under:-

“2. That Principal Employer engaged Sh. Puran Singh and 107 other workmen (List enclosed as Annexure) as Security Guards/Watch and Ward staff/Chowkidars through M/s. Security Development Services Pvt. Ltd. for the maintenance of their stadiums since 1982 onwards.

3. That the Management No.2 wrongfully and illegally terminated the services of Shri Puran Singh, Moti Lal, Naresh Kumar, Viveka Nand Pande, Ravinder Singh, Harish Ram and Shiv Bushan Pande without observing provisions of I.D. Act, 1947 and Principal of Natural Justice.

That when the workmen of S.A.I. (Principal Employer), including engaged through contractors by the Principal employer organised

themselves in the Trade Union of their choice visa Sports Authority of India Kamgar Union and demanded abolition of contract system on the works of M/s. Director General, Sports Authority of India and regularisation of contract labour as well as other daily rated workers in the said establishment as regular workmen the Principal Employer terminated the services of all the 101 workmen listed in the annexure w.e.f. 31.7.90 despite the fact that the works on which the dismissed workmen were employed were of regular nature.

4. That the Principal Employer also terminated the contract of M/s. Security Development Services Pvt. Ltd., New Delhi and awarded the same works to M/s. Delhi Guard and Security Services (Regd.) New Delhi w.e.f. 31.7.90 thereby rendering more than 200 contract labour dismissed who were in the employment of Principal Employer through M/s Security Development Services Pvt. Ltd. and list of those workmen since was not maintained by the Principal employer on the same work which is of perennial nature, M/s. Delhi Guard and Security Services (Regd.) employed new workmen which makes it amply clear that Principal Employer and the contractors are in hand in gloves in as much as the workmen concerned be denied the fruits and benefits that of regular and permanent workmen of Principal Employer.

5. That the employment of Watch and Ward staff/Security Guards is of a perennial nature. There are regular workmen engaged by M/s. S.A.I. including chowkidars/guards and the work of Watch and Ward/Security Guards requires employment of sufficient number of whole time workmen but the Principal Employer is resorting to unfair labour practices as defined in Section 2(n) of the Industrial Disputes Act, 1947 by engaging through contractors contract labour on the works/employment which is of regular and perennial nature.

6. That there are regular Chowkidars/Guards/Watch and Ward Staff in the regular pay scales of permanent/temporary workmen that of the Principal Employer and the duties/responsibilities of Regular Chowkidars/Security Guards are the same and similar to that of security Guards/Watch and Ward Staff employed by the Principal Employer in the said

establishment through the contract system which is unfair labour practice as defined in Section 2(n) of the I.D. Act and such employments are liable to be prohibited under Section 10 (2) of the Contract Labour (Regulation & Abolition) Act.

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8. *That the contractors have dispensed away with the services of hundreds of security guards/Watch and Ward Staff without following the procedure of law and have also paid much less than Minimum Wages fixed under the Minimum Wages Act by Delhi Administration/Central Govt. what to talk of same pay and allowances a similar situated regular workmen under the Principal Employer the concerned workmen are entitled to. The Principal Employer and the Contractors are so much hand in gloves that the payments to the contractors have been fully made and with shock and dismay on behalf of the workmen of S.A.I., their trade union alleges that the security money which is deposited with Asstt. Labour Commissioner, Delhi Administration is also reported to have been released by the said authority and to that extent it is on record that wrong certification have been done by the Principal Employer/concerned labour enforcement authorities in which case there is want on violation of the Labour Laws on the subject”.*

5. Conciliation failed. The appropriate Government made the following reference of the industrial dispute to the Labour Court:-

“Whether the services of S/Shri Pooran Singh and 107 others as shown in Annexure A have been terminated illegally and/or unjustifiably by the Management and if so, to what relief are they entitled and what directions are necessary in this respect”.

6. Though the reference was made regarding 107 workmen, only 42 joined in filing a claim petition, and being relevant for purposes of adjudication of the above captioned appeals, case pleaded before the learned Labour Court by these 42 workmen could be gleaned succinctly by

reproducing paragraphs 3, 4, 5, 12, 13, 16, 17, 18, 20, 21, 22, 25, 26 and 27 of the claim petition. They read as under:-

“3. That the Principal Employer engaged Sh. Puran Singh and 107 others workmen for the work of watching of the buildings of their stadiums since 1982 onwards through M/s. Security Development Services Pvt. Ltd. as security guards/watch & ward staff/Chowkidars etc. on the full time and a perennial nature of job and their work directly supervised and controlled by the Chief Security Officers and Assistant Security Officers of Sports Authority of India”.

4. That these workmen and directly engaged workmen by the Principal Employer themselves organised and became the members of a Trade Union of their choice viz. Sports Authority of India Kamgar Union and demanded abolition of contract system on the works of watching the buildings of Principal Employer and also demanded regularization of contract labour as well as other daily rated workers in the said establishment, the Principal Employer terminated the services of these concerned workmen.

5. That after the termination of services of these concerned workmen, the Principal Employer awarded the same permanent work to M/s Delhi Guards and Security Services (Regd.), New Delhi on 31.7.90 thereby rendering more than 200 contract labour dismissed and indulged in unfair labour practice.

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12 That the Contract Labour (Regulations & Abolition) Act 1970 also provides for abolition by the appropriate Govt. in appropriate cases as per clauses (a), (b), (c) and (d) of sub section (2) of Section 10 of the said Act.

13. That on 9.12.1976 the Central Govt. had issued a notification in pursuance of the power vested in them under Section 10(2) of the said Act whereby the Central Govt.

prohibited employment of contract labour on and from the 1st March, 1977 for sweeping and watching of buildings owned or occupied by the establishment in respect of which under the Act is the Central Govt. A copy of the said notification is annexed hereto and marked as Annexure-I.

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16. That the employment of watch and ward staff/security guards/chowkidar is of perennial nature. There are regular workmen engaged by the Sports Authority of India including watchman/guards/chowkidars and the work of watch and ward/security guards requires employment of sufficient number of full time workmen by the management of Sports Authority of India bearing the Principal Employer has been continuously resorting to unfair labour practice as defined in the 5th Schedule of Industrial Disputes Act 1947 as also in flagrant violation of the provisions of Contract Labour (Regulations & Abolition) Act 1970 and the notice issued thereunder by engaging contract labour through contractors on the works/employment which is of a perennial nature.

17. That Sports Authority of India, Principal Employer wilfully and deliberately employs/engages contract labour through contractors to deny the workers the fruits and benefits of regular workmen and thereby indulged in unfair labour practice.

18. That there are regular watchman/chowkidars in the regular pay scale as permanent/temporary workmen employed directly by Sports Authority of India in the aforesaid establishments and their duties and responsibilities are similar to that of those workmen through contractors but they are not paid equal pay for equal work as provided in the Contract Labour (Regulations & Abolition) Act, 1970.

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20. That after the prohibition by Central Govt. vide notification dated 9.12.76 to engage contract labour through contractors by agreements, renewed from time to time is also illegal and unjust and contrary to labour jurisprudence.

21. That the action of the management terminating the services of these workmen and recruitment of new employees through new contractors is illegal and unjustified.

22. That the notification issued by the Central Govt. prohibiting employment of contract labour in watching work is binding on the management of Sports Authority of India hence the relationship between the management of Sports Authority of India and these workmen engaged by the contractor remains that of employer and workmen and deemed to the workmen of Principal Employer.

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25. That the contractor is merely the agent of Principal Employer and he only did the work for selecting the workmen for doing the service of the watching the buildings of Stadiums of Sports Authority of India and distributing the salary/wages earned by each workman on monthly basis.

26. That all these so-called contract labour had been doing the work directly under the control of Chief Security Officer and Asstt. Security Officer of Sports Authority of India and these regular officers have been appointed to look after the work of maintaining and watching the buildings of Management i.e. Principal Employer.

27. That these workmen had been doing the work in the premises of the Principal Employer on the permanent nature of job and termination of their services and engagement of new hands through new contractors for the same work is contrary to the provisions of Standing Orders and provisions of Industrial Disputes Act, 1947”.

7. Parties led evidence.
8. On December 06, 1996, the Supreme Court decided the decision reported as (1997) 9 SCC 377 *Air India Statutory Corporation & Ors. Vs. United Labour Union & Ors.*
9. Based upon the law declared by the Supreme Court in *Air India*'s case the learned Labour Court published an award dated May 28, 1998, holding that Sports Authority of India was the principal employer and that in view of the notification dated December 09, 1976, the linkage between the contractor and the employees stood snapped and a direct relationship came into being between the principal employer and the contract labour. Reinstatement of the 42 workmen as security guards was directed. Back wages were restricted to 30%.
10. Pending decision to be taken regarding the award dated May 28, 1998, Sports Authority of India and the contractor were served with recovery notices concerning the award holding in favour of the 42 workmen of being entitled to 30% back wages. Sports Authority of India filed W.P.(C) No.5574/1999 challenging the recovery certificates. The contractor filed W.P.(C) No.5745/1999 challenging the recovery certificates. Relevant would it be to note that in the said writ petition Sports Authority of India categorically pleaded that it would be challenging the award separately and by way of an independent writ petition. (Para 9 of the writ petition).
11. In a Civil Miscellaneous Application filed in W.P.(C) No.5574/1999 an interim stay was granted in favour of Sports Authority of India. Pending hearing of the writ petition the award was stayed.

12. Sports Authority of India thereafter W.P.(C) No.2482/2002 challenging the award, and necessary to be highlighted would be the fact that by then the Constitution Bench decision of the Supreme Court had been pronounced on August 30, 2001 which is reported as (2001) 7 SCC 1 Steel Authority of India Ltd. & Ors. Vs. National Union Waterfront Workers & Ors. Decision in Air India's case was overruled, but prospectively. The notification dated December 09, 1976 issued by the Competent Authority under the Contract Labour (Regulation and Abolition) Act, 1970 was held to be illegal and hence quashed. Law was clarified as to what industries would be treated as being carried on under the authority of the Central Government. It was clarified that only if a contract with a contractor for supply of labour was found to be a sham and nominal or a camouflage alone could the Court pierce the veil and declare that from the stage when employment of contract labour stood prohibited the workman became the direct employees of the principal. The writ petition was obviously premised on the law as declared.

13. After more than two years of the writ petition being filed, the workman filed CM No.7347/2004 invoking right under Section 17B of the ID Act, 1947 which was disposed of by the learned Single Judge on October 26, 2004 directing that with effect from April 26, 2004 the workman shall be paid 30% of the last drawn wages. It was clarified that whether the workman would be entitled to 30% of the back wages with reference to last drawn wages or as per the minimum wage prescribed from time to time under the Minimum Wages Act, whichever is higher, would be decided when the writ petition would be decided.

14. It is apparent that faced with the decision of the Supreme Court in

Steel Authority of India's case, the only way about for the workman was to argue that the award in their favour which is dated May 28, 1998 had attained finality, because if this challenge failed, the workman had nothing to argue inasmuch as when they had filed the claim before the Labour Court they understood the law to mean that by virtue of the notification dated December 09, 1976 contract labour employment pertaining to watch and ward staff was banned under the Sports Authority of India because it would be an industry under the Central Government. The workman litigated and proved such facts which would show that they were the workman of the contractor to whom labour supply contract was given by the Sports Authority of India. They never pleaded and hence did not prove that the Labour Contract awarded by Sports Authority of India to the contractor was a sham or a camouflage.

15. Our view aforesaid flows out of the pleadings of the workman before the Conciliation Officer and thereafter before the Labour Court, which we have extracted in paragraphs 4 and 6 above.

16. The principal issue which came up for consideration before the learned Single Judge was therefore : whether the impugned award dated May 28, 1998 had been implemented. Of course, the workers also argued that the award was legal. An ancillary issue regarding implementation of the order dated October 26, 2004 passed in W.P.(C) No.2482/2002 also arose.

17. The two writ petitions filed by the Sports Authority of India and the writ petition filed by the contractor were disposed of by the learned Single Judge vide impugned order dated March 12, 2004. On the issue whether the award had been implemented and what was the law declared by the Supreme Court in Steel Authority of India's case in the context of the decision being

prospective, in paragraph 18 of the impugned decision, the finding has been returned in favour of Sports Authority of India and against the workman.

The reasoning is as under:-

“18. A perusal of the paragraph reproduced above would reveal that the directions given by the Industrial Adjudicator or any Court for absorption of contract labour following the judgment in Air India Statutory Corporation’s case (supra) shall hold good where such directions have been given effect to and has become final. It is not the case of the respondent No. 3/claimants that the impugned award has been implemented in their favour. It is true that the petitioner initially filed a Writ Petition (C) No. 5574/1999 limited against the issuance of recovery notice by the respondent No. 1, without impugning the award. This Court cannot ignore the fact that in the said petition, the petitioner did say that it reserves its right to challenge the award passed by the Labour Court. When such a right has been reserved, it can be inferred that the petitioner had no intention to give effect to the award of the Labour Court in favour of the claimants before the Labour Court. It is not a case of the respondent No. 3/claimants that the petitioner had not challenged the award at all. The Division Bench has granted liberty to the parties to argue the said issue before this Court while deciding main writ petition. Suffice to state that phraseology ‘attained finality’ has to be read in conjunction with the subsequent words ‘and/or it has been implemented’. The intention of the Supreme Court is also clarified in Para 4 where the Supreme Court has used the word ‘where such a direction has been given effect to and it has become final’. It is clear that the Supreme Court intended that those cases where the orders of the Industrial Adjudicator/any other Court or the High Court have been implemented and the contract labour has been absorbed, those cases would not be re-opened. It is not one such case where the claimants before the Labour Court have been absorbed. This Court is of the view that the Judgment of the Supreme Court in Steel Authority of India’s case (supra) would be applicable while deciding the issue which falls for consideration in these writ petitions. The submission of Mr. Varun Prasad, Advocate is liable to be rejected.”

18. We concur with the view taken by the learned Single Judge, both on the interpretation of the law declared in Steel Authority of India's case and on facts as well. Summarizing the law declared by it in para 125, the fourth point listed by the Supreme Court is as under:-

“(4) We overrule the judgment of this Court in Air India case prospectively and declare that any direction issued by any industrial adjudicator/any court including the High Court, for absorption of contract labour following the judgment in Air India case shall hold good and that the same shall not be set aside, altered or modified on the basis of this judgment in cases where such a direction has been given effect to and it has become final.”

19. The learned Single Judge has correctly noted that while challenging the recovery certificates concerning back wages as per the award to be paid to the workman, W.P.(C) No.5574/1999 filed by Sport Authority of India was limited to challenging the recovery certificates; and in paragraph 9 of the writ petition it was clearly pleaded that Sports Authority of India has not accepted or implemented the award and that it would be laying a challenge to the award by filing a separate writ petition. The learned Single Judge has thus returned a correct finding on facts. As regards the law the learned Single Judge has correctly noted that the prospective overruling by the Supreme court meant that such decisions which had attained finality as per the law declared in Air India's case and had been implemented would not be reopened.

20. On the merits of the award, unfortunately for the workman, the change in the direction of the current which took place when decision in Steel Authority of India's case was pronounced by the Supreme Court, has

resulted in the undercurrent not only sweeping away but additionally drowning the workman. Having not pleaded that the contract between Sports Authority of India and the contractor for providing security, watch and ward personnel was a sham or a camouflage and therefore not having led evidence to establish the same, in view of the decision in Steel Authority of India's case the learned Single Judge has correctly opined that the award has to be set aside.

21. Thus, there would be no merit in LPA No.384/2014 and LPA No.385/2014 for the reason as regards Sports Authority of India the award would be illegal and as regards the contractor we simply note that notwithstanding there being no award against the contractor recovery certificates were even issued against the contractor which were challenged by the contractor by way of W.P.(C) No.5745/1999 which has been disposed of by the learned Single Judge declaring that since there is no award in favour of the workman against the contractor the question of any recovery from the contractor does not arise.

22. As regards the appeal filed by Sports Authority of India, the grievance relates to the direction issued that in view of the order dated October 26, 2004 passed in W.P.(C) No.2482/2002, in which the question whether amount payable to the workmen as envisaged by Section 17B of the ID Act, 1947 would be 30% of the last drawn wages or minimum wages was left open, the workman would be entitled to 30% of the last drawn wages or minimum wages, whichever was higher.

23. As per Sports Authority of India no liability can be fastened upon it to pay any wage because the workmen were not its workmen and it was not the employer. As per the Sports Authority of India the workmen were those of

the contractor. Learned counsel for the Sports Authority of India held that the learned Single Judge having held so could not have directed any wage whatsoever to be paid.

24. The appeal filed by Sports Authority of India has to be dismissed for the simple reason the order dated October 26, 2004 in W.P.(C) No.2482/2002 was not challenged by Sports Authority of India and had attained finality. The said order enjoins upon Sports Authority of India to pay 30% of the last drawn wage to the workman with effect from April 26, 2004 i.e. from the date when CM No.7347/2004 was filed by the workmen; but the question whether it should be 30% of the minimum wages was left open. Thus, the liability to pay was fastened upon the Sports Authority of India and merely because it ultimately succeeded in the writ petition would not mean that the liability to pay would fall. It is trite that amount payable to the workman under Section 17B of the ID Act, 1947 has no concern with the ultimate fate of the writ petition filed by the management.

25. Thus, all appeals are dismissed, but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

JULY 31, 2015

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