

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.11496 of 2002

ORDER:

The petitioners, who worked as contract labours under the control of respondent No.2, filed this writ petition to issue a writ of mandamus, declaring the action of the respondents in violating the provisions of the Contract Labour (Regulation and Abolition) Act, 1970, as illegal and arbitrary, and sought a consequential direction to respondent No.2 to regularize the services of the petitioners from the date of their initial appointment.

The case of the petitioners is that they were engaged in the year 1997 from the inception of the factory in various works, such as Boiler Operators, Electricians and Attenders in Larsen & Toubro Limited, A.P.Cement Works, Bhograsamudram village, Tadipatri, Ananthapuram District. The petitioners state that they were fully qualified and eligible to be appointed on regular basis in the factory. However, the 2nd respondent engaged the petitioners through the contractors in violation of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 (for short "the Act"). The petitioners are being paid meager wages, their wages are far less than the regular employees engaged in the factory. The petitioners are discharging similar duties as of regular employees, but they were being paid meager wages. The contractors used to obtain signatures of the contract labour on blank wage register and pay meager wages and thereafter used to fill the wage register as if they paid higher wages to the contract labours. The 2nd respondent engaged the petitioners as contract labours contrary to the provisions of the Act. The

petitioners further state that the contract labour system was abolished by the Government of Andhra Pradesh by issuing notifications through G.O.Ms.No.492, LEN & TE (L-II), dated 08.07.1980 and G.O.Ms.No.287, LEN & TE (Lab-II), dated 07.05.1981 in certain categories, including boiler house workers, workers employed in the routine maintenance of plant, machinery, persons engaged inside the factory where the work is continuous etc. In spite of abolition of the contract labour system in the above said categories of work, the 2nd respondent is engaging services of the petitioners through the contractors in violation of the statutory rules, continued the services of the petitioners as contract labours, contrary to G.O.Ms.No.492, dated 08.07.1980 and G.O.Ms.No.287, dated 07.05.1981 and in violation of the provisions of the Act. In spite of representation, dated 17.04.2002, the services of the petitioners are not regularized by abolishing the contract labour system in the cement factory. Being aggrieved by the same, the present writ petition is filed.

Respondent No.2 filed counter. The engagement of the petitioners through the contractors was not denied. It is contended that the petitioners were engaged through the registered contractors in strict adherence to the provisions of the Act. None of the petitioners could be said to be employed through the contractors on any of the prohibited activities. In fact, there is no notification issued by the competent Government prohibiting the engagement of the contract labours in the cement factory, and the cement factory being regulatory industry, it is under the control of the Central Government, but not under the control of the State Government, and so far the Central Government has not issued any notification, exercising the power under Section 10(1) of the Act,

prohibiting the employment of the contract labour on any activities of the cement factory. Hence, the G.Os issued by the Government of Andhra Pradesh in G.O.Ms.No.492, dated 08.07.1980 and G.O.Ms.No.287, dated 07.05.1981 have no application to the cement factory, where the petitioners are said to be engaged through the contractors. It is further contended by the 2nd respondent that the writ petition is not maintainable before this court under Article 226 of the Constitution of India, in view of catena of judgments of the Hon'ble Supreme Court and this court. To regularize the contract labour in an industry, the workmen have to approach the Industrial Court by adducing the evidence in support of their claim or to approach the competent Government for abolition of the contract labour system under the provisions of the Section 10 of the Act, through the statutory machinery available under the provisions of the Act only. It is further contended by the 2nd respondent in its counter that the writ petition is bad for non-joinder of proper and necessary parties. The company as well as the Central Government are not made as party respondents, and hence, it is contended that the writ petition is liable to be dismissed.

Sri A.Bhaskarachari, learned counsel, appearing for the petitioners, would contend that the petitioners were engaged as contract labour from 1997 from the inception of the factory as Operators, Electricians, Attenders, Store Keepers etc., contrary to the provisions of Sections 11 and 12 of the Act, to say that, without any licences obtained under the provisions of the Act. The petitioners are being engaged through the contractors, who are said to be bogus contractors, and they are being paid meager wages when they are discharging the duties similar to

regular employees in the factory. The State Government exercising the power under Section 10 of the Act, issued G.O.Ms.No.492, dated 08.07.1980 and G.O.Ms.No.287, dated 07.05.1981 prohibiting the engagement of the contract labour in the prohibited areas of the factory, as the factory is situated within the jurisdiction of the 1st respondent authority-the Assistant Commissioner of Labour, Ananthapur. The said G.Os are binding on the 2nd respondent, and the 2nd respondent is prohibited from engaging the petitioners as contract labours by adopting sham and fictitious contract labour system in the factory. Camouflage method of contract system is being adopted in the cement factory contrary to the provisions of the Act and the petitioners are being continued without regularizing their services. The petitioners made a representation on 17.04.2002 to the 1st respondent, but the 1st respondent failed to take any action against the 2nd respondent. The learned counsel further contended that engagement of the petitioners on contract basis is in violation of the provisions of the Act. He further contended that after filing of the writ petition, the services of the petitioners were disengaged even through the contractors, for which the petitioners filed a miscellaneous petition seeking their reinstatement into service. But no orders are passed on the said petition and the same is tagged with the writ petition for hearing. The 2nd respondent is engaging the petitioners as contract labours in violation of the rights of the petitioners for regularization, and when they approached this court, they were also disengaged, depriving their right to work, and their right to livelihood was taken away by adopting unfair labour practice. The learned counsel further contended that the petitioners are entitled for

reinstatement into service and regularization by abolishing the contract labour system in the 2nd respondent factory, as the nature of work which is being done by the petitioners are perennial and they could not be continued temporarily through the contractors for ever. Hence, the petitioners sought a direction to respondents Nos.1 and 2 to regularize their services on re-engagement by abolishing the contract system.

Sri C.R.Sridhar, learned senior counsel, appearing on behalf of Sri Salloori Ramesh, learned counsel, appearing for the 2nd respondent, would contend that this court under Article 226 of the Constitution of India has no jurisdiction to pass any orders for regularizing the services of the petitioners by abolishing the contract labour system under Section 10 of the Act, and the writ petition is not maintainable, as the factory is not made as a party respondent and only the Manager of the factory was made as respondent No.2. Respondent No.2 is Manager of the cement factory which is under the control of the central Government and the Central Government is the competent authority and the same is not made as a party respondent to the writ petition. However, this court cannot go into the disputed facts as to whether the petitioners were engaged on contract basis in the prohibited nature of works under Section 10 of the Act and their engagement is contrary to the provisions of Sections 11 and 12 of the Act. The petitioners have to prove by adducing proper evidence before the competent Industrial Court. The competent court is the Industrial Adjudicator, which is competent to decide the issues raised in the writ petition by considering the evidence adduced by the parties. The learned counsel further contended that this court under Article 226 of the Constitution of India could not conduct roving enquiry to find out the

veracity of the averments of the petition. In support of his contentions, the learned senior counsel has relied on several judgments viz., (1) *G.Bassi Reddy v. International Crops Research Institute*¹, (2) *Federal Bank Ltd. v. Sagar Thomas*², (3) *BHEL, Workers Assn v. Union of India*³, (4) *Catering Cleaners of Southern Rly v. Union of India*⁴, (5) *Nitinkumar Nathalal Joshi v. ONGC Ltd.*⁵, (6) *Municipal Corpn of Greater Mumbai v. K.V.Shramik Sangh*⁶, (7) *RAC & CW Union v. Fertilizer Corporation of India (FCI)*⁷, (8) *K.Butchi Reddy v. Central Administration Tribunal, Hyd.*⁸, (9) *Sk.Ali v. Managing Director, Bharat Heavy Plates & Vessels Ltd.*⁹, (10) *A.P.SRTC v. G.Srinivas Reddy*¹⁰, (11) *Steel Authority of India Ltd. v. Union of India*¹¹, (12) *Ferro Alloys Corporation Limited v. Govt. of Andhra Pradesh*¹², (13) *Workers' Union v. Food Corporation of India*¹³ and (14) *Gujarat Electricity Board v. Hind Mazdoor Sabha*¹⁴. In all the cases, the Hon'ble Supreme Court held that this court has no jurisdiction to abolish the contract labour system in the industry by exercising the power of judicial review under Article 226 of the Constitution of India. For abolition of Contract Labour System, the workman has to approach the competent Industrial Court or Government.

¹ (2003) 4 SCC 225

² (2003) 10 SCC 733

³ (1985) 1 SCC 630

⁴ (1987) 1 SCC 700

⁵ (2002) 3 SCC 433

⁶ (2002) 4 SCC 609

⁷ 2002 (5) ALD 118 (DB)

⁸ 2001 (2) ALD 241 (DB)

⁹ 2001 (2) ALD 674 (DB)

¹⁰ (2006) 3 SCC 674

¹¹ (2006) 12 SCC 233

¹² 2002 (4) ALD 501 (DB)

¹³ (1985) 2 SCC 294

¹⁴ (1995) 5 SCC 27

The learned senior counsel further contended that the G.Os. issued by the Government of Andhra Pradesh are not applicable to the petitioners, since the 2nd respondent factory is a cement factory, the controlling and competent authority is Central Government, and so far the Central Government has not issued any notification prohibiting the engagement of the contract labour, where the petitioners are alleged to have been working in the factory. Even the contention of the learned counsel for the petitioners that after filing the writ petition before this court, the petitioners were disengaged, which tantamount to unfair labour practice could not be decided by this court, and the competent court is only the Industrial Adjudicator and the petitioners have to adduce evidence before it, if the 2nd respondent has adopted any unfair labour practice and disengaged them after filing of the writ petition. He further contended that it is for the contractors to engage the petitioners to work or not in the 2nd respondent factory, and for the reasons stated above, he prays to dismiss the writ petition.

In the facts and circumstances of the case and having perused the entire material available on record, this court found that the 2nd respondent has engaged the petitioners as contract labours through the contractors, respondents Nos.3, 4, 5 and 6. The 2nd respondent as well as the contractors obtained the required licences under the provisions of Sections 11 and 12 of the Act. The competent Government is the Central Government and the Central Government has not abolished the engagement of the contract labour by exercising the power under Section 10 of the Act, as contended by the learned senior counsel, appearing for the 2nd respondent. This court under Article 226 of the Constitution of

India has no jurisdiction to abolish the practice of contract labour system in the 2nd respondent factory, as per the provisions of the Act, when there is no prohibition of engagement of the contract labour by the competent Government. The allegations of the petitioners that they being engaged as contract labours for meager wages without regularizing their services contrary to the provisions of the Act, and by adopting unfair labour practice have to be adjudicated based on the evidence adduced by the parties, for which the competent court is the Industrial Adjudicator, as held by the Hon'ble Supreme Court and this court in various judgments, relied on by the learned senior counsel for the 2nd respondent. Accordingly, this court found that the remedy available to the petitioners for redressal of their grievance is to approach before the competent Industrial Adjudicator. Further, the petitioners have not made the Central Government so also the company as party respondents to pass appropriate orders, directing the Central Government to consider abolition of the engagement of the contract labour in the 2nd respondent cement factory under the provisions of the Section 10 of the Act. Therefore, the writ petition is liable to be dismissed.

For the reasons stated above, the writ petition is dismissed. However, it is left open to the petitioners to approach the competent Government or Industrial Adjudicator for redressal of their grievance. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.GANGA RAO,J

Date: 02.08.2018
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