

13.07.2023
Item No.13
RP
Ct. No.7

**WPA 8957 of 2020
With
IA No.CAN 1 of 2022**

**Contractors' Workers Union of BSNL (Calcutta
Telephone) & Anr.
Vs.
Union of India & Ors.**

Mr. Dibyendu Chatterjee
Mr. Pritam Majumder
Mr. Rahul Dev Goenka
Mr. S. Ghosh

... for Petitioners

Ms. Reshmi Ghosh
Mr. Soumya Sankar Chini
... for B.S.N.L

1. The petitioners have prayed for issuance of mandamus to rescind the circulars dated September 30, 2019 and May 19, 2020. The petitioner no.1 claims to be a registered trade union and the petitioner no.2 is the Secretary of such union.
2. It is the case of the petitioners' that BSNL engaged a large number of workers. They further state that BSNL issued a circular vide office order dated September 30, 2019 wherein it was expressly ordered to engage workers on contractual basis for works mentioned in item nos.1 to 5 of the said circular. In continuation of the said circular dated September 30, 2019 BSNL issued another circular

dated May 19, 2020 whereby the status of job of the contract labourers were proposed to be changed to Service Level Agreement (for short “SLA”). The petitioners state that the effect of such circular is that the skilled persons working for sufficiently a long period of time will now be engaged as per the discretion of some outside agency/contractor on commission payment basis. This action of BSNL, according to the petitioners, is a threat to the right to livelihood of the members of the petitioners’ association.

3. Mr. Chatterjee, learned advocate representing the petitioners submits that the members of the petitioners’ union were engaged by BSNL as skilled labourers and the BSNL authorities by entering into a Service Level Agreement have terminated the service of the members of the petitioners’ union.
4. Ms. Ghosh, learned advocate representing the BSNL authorities submits that in view of the worsening financial position of BSNL, the authorities of BSNL decided to implement certain austerity measures in respect of engaging contract workers for certain outsourcing works. She submits that a Division Bench of this Court by order dated December 20, 2021 passed in CRC 11 of 2021 arising out of Mat

122 of 2021 have held that the act of giving further appointment to contractual labourers even for the purpose of cover by item nos.3 and 4 of the order September 30, 2019 do not have any nexus or bearing upon the stay order passed by the Division Bench in MAT 122 of 2021 on 4th March, 2021.

5. Heard the learned advocates for the parties and perused the materials placed.

6. On query of this Court as to what was the status of the members of the petitioners' union whose services are alleged to have been terminated by BSNL, Mr. Chatterjee submits, in his usual fairness, that no document has been annexed to the writ petition to show that the members of the petitioners' union were directly appointed by BSNL authorities. Mr. Chatterjee, however, submits that the members of the petitioners' union prior to their termination of service were working under the direct control and supervision of BSNL and, therefore, such members of the petitioners' union have to be considered to have been appointed by BSNL as principal employer. In support of such submission Mr. Chatterjee refers to identity card, which has been annexed at page 7A to the exception to the report filed in connection with CAN

1 of 2022. From the identity card annexed to the said exception it appears that the members of the petitioners' union were engaged by the contractor, namely, P.C. Dey Enterprise and the address of the establishment where the members of the petitioners' union were supposed to render their service was that of Area Manager (in BSNL). Upon going through the said identity card this Court is of the considered view that the member of the petitioners' union, namely, Sudip Roy, was engaged by the contractor, namely, P.C. Dey Enterprise and not by BSNL.

7. A Gazette Notification being no.S.O.168(E) dated 6.2.2002 was issued by the Ministry of Labour, in exercise of powers under Section 10(1) of the Contract Labour (Regulation and Abolition) Act, 1970, thereby prohibiting the employment of contract labour in respect of the works specified in the Schedule thereto in the establishment of Telephone Bhawa, Calcutta Telephones. The writ petitioners claim that the members of the petitioner no.1/Association have been actually performing the nature of jobs which have been prohibited by the aforesaid notification. According to the petitioners, BSNL issued the Circular dated 19.5.2020 thereby changing the status of Job Contract Labourers to SLA (Service Level Agreement). According to the

petitioner, the Circular dated 30.09.2019 was issued to engage workers on contractual basis in respect of works falling within the schedule of the Notification dated 6.2.2002.

8. The petitioners' union has filed an application, being CAN 1 of 2022. The prayers made in the said application would be relevant for the purpose of deciding this writ petition. In the said application the petitioners' union made the following prayers.

“a) Direct the respondent authorities to immediately release the outstanding wages of the members of your applicant no.1 in terms of the admission contained in the order dated 24th February, 2022;

b) Allow the members of your applicant no.1 to render their services under the SLA system without prejudice to their rights and contentions in the writ petition.”

9. Learned advocate appearing for the BSNL submits that the outstanding wages of the members of the petitioners' union in terms of the admission contained in the order dated February 24, 2022 has been released. However, Mr. Chatterjee submits that some of the members of the

petitioners' union have not yet received the outstanding wages. From the statements made in the report in the form of affidavit filed in connection with the said application it appears that BSNL authorities have released the entire payment to the contractor, namely, P.C. Dey Enterprise pursuant to the bills raised by such contractor. Mr. Chatterjee submits that some of the members of the petitioners' union are yet to receive the said outstanding wages.

10. Since the BSNL authorities have released payment in favour of the contractor, it will be open to the members of the petitioners' union, who claim that they have not received payment, to approach such contractor and to proceed in accordance with law.
11. During the pendency of the writ petition, the writ petitioners filed an application, being CAN 1 of 2022, wherein it has been specifically admitted that the members of the petitioner association had been inducted in the rolls of the contractor. From the averments made in the writ petition and the application as well as the documents thereto, it is evident that the writ petitioner were working as Job Contract Labourers and are aggrieved by the

introduction of the SLA system which prompted the writ petitioner to file CAN 1 of 2022.

12. Insofar as the second prayer in the application is concerned, this Court finds that the petitioners' association has prayed for an order to allow the members of the association to render their service under Service Level Agreement system. That by itself amounts to giving a go bye to the challenge as to the circulars dated September 30, 2019 and May 19, 2020 are concerned.
13. From the said prayer it is evident that the relief which the petitioners' union is now seeking is to allow its members to render services under Service Level Agreement System. It is well settled that a mandamus cannot be issued directing a contractor to allow the members of an union to engage them for the purpose of rendering their services to BSNL.
14. For the reasons as aforesaid, this Court is of the considered view that the members of the petitioners' union are not entitled to any reliefs as prayed for either in the writ petition or in the application filed in connection thereto.

15. In view of the observations made hereinbefore, the writ petition as well as the connected application stand **dismissed**. There shall, however, be no order as to costs.

(HIRANMAY BHATTACHARYYA, J.)