

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

Date of decision: 24th JANUARY, 2023

IN THE MATTER OF:

+ **LPA 534/2022 & CM APPL. 40588/2022, 40591/2022, 45161/2022**

UNION OF INDIA AND ORS

..... Appellants

Through: Mr. Chetan Sharma, ASG with Mr. Rajesh Gogna, CGSC with Ms. Priya Singh, Mr. Amit Gupta, Advocates & Mr. Yogender Tomar for CPWD

versus

VIJAY KUMAR AND ORS

..... Respondents

Through: Mr. Jasbir Singh Malik, Advocate for R-1 to R-9, R-11 to R-15

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SATISH CHANDRA SHAMAR, C.J.

1. Aggrieved by the Order dated 10.03.2022, passed by the learned Single Judge in W.P.(C) 1803/2004, allowing the Writ Petition filed by the Respondents herein, the Union of India has filed the instant LPA.

2. Shorn of details, the facts leading to the instant LPA are as under:-

- i. The Respondents herein approached this Court by filing W.P.(C) 1803/2004 contending that they have been working in the capacity of Mechanic, Electrician, Air Conditioner Mechanic and Air Conditioner *Khalasi*/Helper etc., with the Central Public Works Department (*hereinafter referred to as 'the CPWD'*) for a considerable point of time, in some cases for more than 20 years now. It is stated that though the

Respondents herein are contractual workers but they have always been working under the direct supervision of the CPWD. It is stated in the Writ Petition that the Petitioners therein (Respondents herein) have filed two Writ Petitions, namely, C.W.P. No. 1702/1998 & C.W.P. No. 2328/1998, before this Court seeking a writ of mandamus for regularization of their services on the ground that they were actually working under the CPWD. Material on record indicates that a number of Writ Petitions have been filed by the Respondents herein seeking regularization of their services, including C.W.P. No. 1702/1998 & C.W.P. No.2328/1998, and they were disposed of *vide* Order dated 26.05.2000 with the following directions:

“1. The services of these contract workers shall not be substituted with other contract workers i.e. if the respondent require to employ contract workers in the jobs assigned to these contract workers, then they will not replace the present contract workers with fresh contract workers.

2. In case of contract with a particular contractor who has engaged these petitioners/contract workers comes to an end the said contract may be renewed and if that is not possible and the contract is given to some other contractor endeavour should be made to continue these contract workers with the new contractor. It would be without prejudice to the respective stand of the parties before the “appropriate Government” and their continuation would depend upon the decision taken by the Government to abolish or not to abolish the contract labour system.

3. *These directions shall not apply in those cases where the particular contract or maintenance etc. give by other establishment to the CPWD earlier has ceased to operate with the result that CPWD is not having the work/contract any longer. In those cases it would be open to the CPWD to disengage such contract workers as not required any longer in the absence of work/job/particular activity with the CPWD.*

4. *If the decision is taken to abolish the contract labour in particular job/work/process in any of the offices/establishments of CPWD (as per the terms of reference contained in Resolution dated 30th March, 2000), as per judgment of the Supreme Court in Air India Statutory Corporation (supra) such contract workers would be entitled to be absorbed with CPWD and would be entitled to claim the benefits in terms of aforesaid judgment. In case the decision of the appropriate Government is not to abolish contract labour system in any of the works/jobs/process in any offices/establishments of CPWD the effect of that would be that contract labour system is permissible and in that eventuality CPWD shall have the right to deal with these contract workers in any manner it deems fit.*

5. *Such contract labours who are still working shall be paid their wages regularly as per the provisions of Section 21 of the Act and in those cases where the contractor fails to make payment of wages, it shall be the responsibility of the CPWD as principle employer to make the payment of wages.*

6. *The exercise undertaken by 'appropriate Government' under Section 10 of the Act, starting with the formation of a Committee by Resolution dated 30th March, 2000 should be completed as*

expeditiously as possible and in any case within a period of six months from today."

- ii. It is stated that the Ministry of Labour, *vide* a notification dated 31.07.2002, abolished the system of contract labourers in CPWD in respect of works specified in the Schedule appended thereto. Thereafter, the Respondents herein filed W.P.(C) 18013/2004 with the following prayers:

"(i) Issue Writ of Mandamus directing the Respondents to give effect to the Ministry of Labour Notification No. SO 813 (E) dated 31.07.2002 [Annexure p-3] for the purpose of regularization of the services of the petitioners with all consequential benefits inclusive of regularization from back date.

(ii) Issue a writ of mandamus directing the Respondent to grant the same pay scale to the Petitioners, which is being granted to the counterparts employees in the CPWD."

- iii. Learned Single Judge *vide* the Order impugned herein allowed the Writ Petition directing the Appellants herein to comply with the Direction No.4 of the judgment dated 26.05.2000.

- iv. It is this Order which has been challenged in the instant Appeal.

3. Heard learned Counsel for the parties and perused the material on record.

4. Learned Counsel appearing for the Central Government places reliance on the judgment of the Apex Court in SAIL v. National Union Waterfront Workers, (2001) 7 SCC 1, to contend that the decision to absorb the contract labourers is not obligatory on the principal employer to order for absorption of the contract labourers working in the concerned establishment. He contends that the learned Single Judge has erred in

placing reliance on the judgment dated 26.05.2000, passed by this Court and on the judgment passed by the Apex Court in Air India Statutory Corpn. v. United Labour Union, (1997) 9 SCC 377, which directs that if a decision has to be taken to abolish contract labourers then such contract workers would be entitled to be absorbed in the concerned establishment and would be entitled to claim the benefit in the CPWD. He states that in the judgment dated 26.05.2000, there is no direction to absorb the Respondents herein and the direction is only that the present contract labourers ought not to be substituted by other contract workers and further that if a decision is taken that if the contract of a particular contractor comes to an end and the contract has to be given to some other contractor then endeavour should be made to continue those contract workers who are presently working with the department. He, therefore, states that in the absence of any positive direction, the Respondents herein cannot place their case on the judgment of the Apex Court in Air India (supra) which has been over-ruled by the Apex Court in SAIL (supra).

5. Learned Counsel for the Respondents supports the impugned judgment and submits that it does not require any interference from this Court.

6. Judgment dated 26.05.2000, passed by this Court is very clear. This Court has categorically stated that the Respondents herein (Petitioners in the Writ Petition) cannot be substituted by other contract workers. It also states that in case the contract to the present contractor gets terminated then efforts must be made by the new contractor to not dispense with the contract workers. The judgment is also categorical that if a decision is taken to abolish the contract labour then the contract workers would be entitled to be

absorbed with the Department and would be entitled to claim the benefit of the judgment of the Apex Court in Air India (supra).

7. The Apex Court in Air India (supra) has held that on abolishing contract labour, under Section 10 of the Contract Labour (Regulation and Abolition) Act 1970 (*hereinafter referred to as 'the CLRA'*), the principal employer must absorb the contract labourers. The judgment of Air India (supra) was doubted and in view of the conflict between two benches of the Apex Court as to whether the contract labourers must be absorbed by the principal employer or not, the matter was referred to a Bench of five Judges. The Bench of five Judges of the Apex Court in SAIL (supra) answered the reference as under:

"125. The upshot of the above discussion is outlined thus:

(1)

(a) Before 28-1-1986, the determination of the question whether the Central Government or the State Government is the appropriate Government in relation to an establishment, will depend, in view of the definition of the expression "appropriate Government" as stood in the CLRA Act, on the answer to a further question, is the industry under consideration carried on by or under the authority of the Central Government or does it pertain to any specified controlled industry, or the establishment of any railway, cantonment board, major port, mine or oilfield or the establishment of banking or insurance company? If the answer is in the affirmative, the Central Government will be the appropriate Government; otherwise in relation to any other establishment the Government of the State in which the

establishment was situated, would be the appropriate Government;

(b) After the said date in view of the new definition of that expression, the answer to the question referred to above, has to be found in clause (a) of Section 2 of the Industrial Disputes Act; if (i) the Central Government company/undertaking concerned or any undertaking concerned is included therein eo nomine, or (ii) any industry is carried on (a) by or under the authority of the Central Government, or (b) by a railway company; or (c) by a specified controlled industry, then the Central Government will be the appropriate Government; otherwise in relation to any other establishment, the Government of the State in which that other establishment is situated, will be the appropriate Government.

(2)

(a) A notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour in any process, operation or other work in any establishment has to be issued by the appropriate Government:

(1) after consulting with the Central Advisory Board or the State Advisory Board, as the case may be, and

(2) having regard to

(i) conditions of work and benefits provided for the contract labour in the establishment in question, and

(ii) other relevant factors including those mentioned in sub-section (2) of Section 10;

(b) Inasmuch as the impugned notification issued by the Central Government on 9-12-1976 does not satisfy the aforesaid requirements of Section 10, it is quashed but we do so prospectively i.e. from the date of this judgment and subject to the clarification that on the basis of this judgment no order passed or no action taken giving effect to the said notification on or before the date of this judgment, shall be called in question in any tribunal or court including a High Court if it has otherwise attained finality and/or it has been implemented.

(3) Neither Section 10 of the CLRA Act nor any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by the appropriate Government under sub-section (1) of Section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order absorption of the contract labour working in the establishment concerned.

(4) We overrule the judgment of this Court in Air India case [(1997) 9 SCC 377 : 1997 SCC (L&S) 1344] 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 [(1997) 9 SCC 377 : 1997 SCC (L&S) 1344] 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.

(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 with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not 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 regularise the services of the contract labour in the establishment concerned subject to the 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 establishment concerned 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."

8. A perusal of paragraph No.125(4) shows that the judgment of the Apex Court in Air India (supra) has been over-ruled only prospectively . The Bench of five Judges of the Apex Court has held that any direction issued by any internal adjudicator/any Court including a High Court for absorption of contract labour following the judgment in Air India (supra) shall hold good and that the same shall not be set aside, altered or modified on the basis of the judgment in SAIL (supra).

9. The issue that arises in the present case is that since the notification under Section 10 of the CLRA has been issued after the judgment of the Apex Court in SAIL (supra), the Respondents herein would be entitled to the benefit of the judgment of the Apex Court in Air India (supra) or not.

10. The Order dated 26.05.2000 discloses that the Government has already started the exercise of abolition of Section 10 of the CLRA with the formation of a Committee *vide* Resolution dated 30.03.2000 and this Court had directed that the said exercise must be completed within six months. This Court had, thereafter, directed that the benefit of Air India (supra) should be extended to the contract labour whose services were not to be dispensed with by any other contractors. Thus the benefit granted by the five Judges Bench of the Apex Court in SAIL (supra), which states that the direction issued by an adjudicator/any Court including a High Court, for absorption of contract labour following the judgment in Air India (supra) shall hold good and that the same shall not be set aside, altered or modified on the basis of the judgment in SAIL (supra), would squarely apply to the Respondents herein.

11. As stated by the learned Single Judge, the decision of this Court dated 26.05.2000 has been specifically saved by the judgment of a Bench of five Judges of the Apex Court in SAIL (supra) and, therefore, the notification dated 31.07.2002, abolishing CLRA, even though has been issued after the judgment of SAIL (supra) and even though the said notification does not make any reference to the judgment of the Apex Court in Air India (supra).

12. Since this Court in its decision dated 26.05.2000 had specifically granted the benefit of Air India (supra) to the Respondents herein and the claim of the Respondents herein would not be hit by the prospective ruling of Air India (supra) by the Apex Court in SAIL (supra). Therefore, the rights of the Respondents stood crystallized by the judgment dated 26.05.2000, passed by this Court.

13. With these observations, the appeal is dismissed, along with pending application(s), if any.

SATISH CHANDRA SHARMA, C.J.

SUBRAMONIUM PRASAD, J

JANUARY 24, 2023

Rahul