



2024:DHC:3684



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order: 7th May, 2024**
+ **CONT.CAS(C) 365/2013 & CM APPL. 22674 & CM APPL.**
6326/2016

VESHVIR SINGH & ANR. Petitioners

Through: **Mr. Jasbir Singh Malik and Ms.**
Chandni Sharma, Advocates

versus

ASHOK KHURANA & ANR. Respondents

Through: **Mr. Rajesh Banati, Mr. Ashish**
Sareen and Mr. Harsh Gupta,
Advocates

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J.(Oral)

1. The instant petition has been filed under Section 2(B), 11, 12 and 13 of the Contempt of Courts Act, 1971, seeking following relief:

“a) Initiate Contempt proceedings against the respondents-contemnors for willfully and deliberately violating the interim order dated 17.09.1998 and judgment dated 26.05.2000 passed by this Hon'ble Court in CWP No.4265 of 1996 titled as CPWD Karamchari Union (Regd.) & Ors. vs. Union of India & Ors.; and

b) Issue appropriate orders and directions to the respondents to comply with and continue to comply with the directions issued by this Hon'ble Court vide interim order dated 17.09.1998 and judgment dated 26.05.2000, in its



letter and spirit, and to take back the Petitioners in service with immediate effect; and

c) Pass such other orders or direction as this Hon'ble Court deem fit and proper in the interest of justice and in the facts and circumstances of the case.”

2. The relevant facts necessary for the adjudication of the instant petition are reproduced below:

- a) The petitioner no.1 and the petitioner no. 2 were working with the Central Public Works Department/respondents until 2013 when their services were terminated.
- b) The petitioners along with several other workers approached this Court by way of filing a writ petition bearing No. 4265 of 1998 titled '**CPWD Karamchari Union (Regd.) & Ors. vs. Union of India & Ors.,**' seeking abolition of contractual labourers and their absorption as per the judgment of the Hon'ble Supreme Court in ***Air India Statutory Corp. v. United Labour Union, (1997) 9 SCC 377***, wherein, it was held that upon abolition of contractual labourers under Section 10 of the Contract Labour (Regulation and Absorption) Act, 1970 (hereinafter “Act”), the principal employer is obligated to absorb the approved contractual labour.
- c) The Coordinate Bench of this Court *vide* order dated 17th September, 1998, granted *ad-interim* protection in the aforementioned writ to all the contractual labours and directed the Union of India not to substitute its workers.
- d) The aforesaid writ petition was disposed of on 26th May 2000, with directions to Union of India, that the services of the



contractual workers shall not be substituted with other contractual workers if a decision is made to abolish contractual labour in any specific job/work/process in any of the respondent's offices/establishments and that such contractual workers would be entitled to be absorbed by the respondent.

- e) It was further held that in case a decision is made to not abolish contract labour system in any works/job/process, the respondent would have the right to take a decision pertaining to these workers as it deems fit. Moreover, the contract labours who are working shall be paid their wages regularly as per Section 2 of the Contract Labour (Regulation and Abolition) Act, 1970. It was further opined by the Court that the formation of a Committee for regularisation of contractual employees vide resolution dated 30th March, 2000 shall be completed as expeditiously as possible within six months.
- f) Pursuant to the recommendation of the Central Advisory Contract Labour Board constituted under Section 5 of the Act, the government issued a notification on 31st July, 2002 prohibiting the employment of contractual labour in certain categories and subsequent to the issuance of the above said notification, the respondents issued an office memorandum on 27th December 2002 implementing the aforesaid notification.
- g) Thereafter, the petitioners approached this Court by way of filing writ petition bearing No. 1978/2008, seeking benefits of the directions issued in the ***CPWD Karamchhari Union (Regd.) &***



Ors (Supra) as well as for their absorption with the respondent department.

- h) The petitioners' services were allegedly terminated on 4th January, 2013.
- i) Aggrieved by the alleged termination of the petitioners as well as non-compliance of the judgment of this Court dated 26th May 2000 and the government notification dated 31st July, 2002, they have approached this Court by way of filing the instant contempt petition.

3. Learned counsel for the petitioners contended that the respondents have wilfully disobeyed the directions issued by the Coordinate Bench of this Court vide its judgment ***CPWD Karamchari Union (Regd.) & Ors (Supra)*** as well as the government notification dated 31st July, 2002.

4. It is submitted that the petitioners were employed as wiremen and electricians and were entitled for absorption by the government notification which was wrongly denied to them and the same amounts to "wilful disobedience" by the respondents.

5. It is further submitted that the respondents acted in complete disregard of this Court's direction and acted in an arbitrary manner and have illegally terminated and replaced the petitioners with other contractual labourers.

6. It is submitted that the issue pertaining to the absorption of the petitioners is pending adjudication before this Court and the respondent department has wrongly terminated the services of the petitioners during the pendency of the aforesaid writ petition.



7. In view of the aforesaid submissions, the learned counsel for the petitioners submitted that the instant petition may be allowed and the reliefs as sought may be granted.

8. *Per contra*, the learned counsel for the respondents vehemently opposed the contentions averred by the petitioners contending to the effect that the petitioners were never employed by the respondent department, since they were employees of the respondent's contractor, therefore, it is not the respondent who terminated or substituted the petitioners with other contract labourers as the said decision can only be taken by the respondent's contractor.

9. It is submitted that the petitioners were working as Operator (E&M) and not as Wiremen and Electricians and that the said category of Operator (E&M) has not been approved for absorption.

10. It is submitted that the petitioners have already challenged their non-absorption in a different writ petition and the same is pending adjudication before this Court.

11. It is contended that the petitioners were granted interim protection against the termination till the time the aforementioned Committee made its recommendation and the aforesaid notification was passed. Therefore, currently there is no interim protection in favour of the petitioners.

12. It is submitted that the respondents have not wilfully disobeyed any direction passed by this Court in the judgment of **CPWD Karamchari Union (Regd.) & Ors (Supra)**.

13. It is further submitted that the instant petition is a misuse of process of law.



14. In view of the aforesaid submissions, the learned counsel for the respondents submitted that the instant petition being devoid of any merit is liable to be dismissed.

15. Heard the learned Counsel for the parties at length and perused the records relied upon by the counsel to substantiate their respective submissions.

16. It is the case of the petitioners that the respondents have failed to absorb the petitioners despite the directions by the Coordinate Bench of this Court in ***CPWD Karamchari Union (Regd.) & Ors (Supra)*** as well as government notification dated 31st July, 2002, as the petitioners being eligible for absorption have not been absorbed.

17. In rival submissions, the respondents rebutted the aforesaid contentions of the petitioner on the ground that the *firstly* petitioners are employees of the respondents' contractor, *secondly* petitioners have wrongly averred that they were working as Wireman and Electrician, in fact, they were working as Operator (E&M), which position has not been approved for absorption.

18. The question which falls for adjudication is whether the respondents have wilfully disobeyed the orders of this Court, thereby, committing an act which constitutes as contempt of Court.

19. It is pertinent to note that whether the petitioners worked as Wireman and Electrician is a disputed question of fact since the respondents have averred that the petitioners were working as Operator (E&M), and the said category was not approved for absorption.



20. Before advertng to the merits of the instant petition, this Court shall reiterate the settled position of law pertaining to whether the contempt Court can adjudicate upon the disputed question of facts.

21. It is a settled principle of law that the Court while adjudicating upon a contempt petition shall not delve into adjudication upon the disputed facts since the same would lead to the Court transgressing its boundaries as enshrined under the Contempt of Courts Act, 1971, thereby, going beyond the judgment which has been alleged to be violated. The Court, while deciding upon the contempt petition, shall restrict itself to adjudicating upon the limited aspect which is whether there is a “wilful disobedience” by the party against whom contempt proceeding is being sought to be initiated.

22. The Hon’ble Supreme Court in the judgment of **Noor Saba v. Anoop Mishra, (2013) 10 SCC 248** held that no contempt petition would lie where the facts on which the contempt is sought is disputed. The relevant excerpts are reproduced hereunder:

“13... Disputed questions of fact therefore confront this Court.

14. To hold the respondents or anyone of them liable for contempt this Court has to arrive at a conclusion that the respondents have wilfully disobeyed the order of the Court. The exercise of contempt jurisdiction is summary in nature and an adjudication of the liability of the alleged contemnor for wilful disobedience of the Court is normally made on admitted and undisputed facts. In the present case not only there has been a shift in the stand of the petitioner with regard to the basic facts on which commission of contempt has been alleged even the said new/altered facts do not permit an adjudication in consonance with the established principles of exercise of contempt jurisdiction so as to



enable the Court to come to a conclusion that any of the respondents have wilfully disobeyed the order of this Court dated 1-9-2010...”

23. The Hon’ble Supreme Court in the judgment of ***Dr. U.N. Bora v. Assam Roller Flour Mills, (2002) 1 SCC 101***, held that in its contempt jurisdiction, a Court cannot make a roving inquiry into the disputed facts. The relevant extract of the aforesaid judgment is reproduced herein below:

“8. We are dealing with a civil contempt. The Contempt of Courts Act, 1971 explains a civil contempt to mean a wilful disobedience of a decision of the Court. Therefore, what is relevant is the “wilful” disobedience. Knowledge acquires substantial importance qua a contempt order. Merely because a subordinate official acted in disregard of an order passed by the Court, a liability cannot be fastened on a higher official in the absence of knowledge. When two views are possible, the element of wilfulness vanishes as it involves a mental element. It is a deliberate, conscious and intentional act. What is required is a proof beyond reasonable doubt since the proceedings are quasi-criminal in nature. Similarly, when a distinct mechanism is provided and that too, in the same judgment alleged to have been violated, a party has to exhaust the same before approaching the court in exercise of its jurisdiction under the Contempt of Courts Act, 1971. It is well open to the said party to contend that the benefit of the order passed has not been actually given, through separate proceedings while seeking appropriate relief but certainly not by way of a contempt proceeding. While dealing with a contempt petition, the Court is not expected to conduct a roving inquiry and go beyond the very judgment which was allegedly violated. The said principle has to be applied with more vigour when disputed questions of facts are involved and they were raised



earlier but consciously not dealt with by creating a specific forum to decide the original proceedings.

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10. On facts, we find that the High Court on the earlier occasion while dealing with the challenge made to Section 21 of the Act, made a categorical assertion that it did not wish to go into the disputed questions of fact. However, in the order under challenge it was done. A finding has been given on the documents produced by Respondent 1 which could at best be pieces of evidence to be appreciated by the committee constituted already. It is the specific case of the appellants that they did not violate the directives of the Court. There is no material to either establish their knowledge on the action of their subordinates, or that they acted in collusion with each other. Vicarious liability as a principle cannot be applied to a case of contempt. The question as to whether the drivers of two members of Respondent 1 showed the order passed by the court and the documents produced are true and genuine being in the realm of adjudication, ought not to have been taken up by the High Court while exercising contempt jurisdiction.”

24. In view of the aforesaid judgments, it is a settled position of law that the Court while adjudicating upon a contempt petition shall not decide upon the disputed question of facts. The Court under Contempt of Courts Act, 1971 shall only adjudicate upon the fact whether there is a wilful disobedience of any judgment/order passed by the Court.

25. Now advertent to the merits of the case, this Court shall peruse the directions passed by the Coordinate Bench of this Court in its judgment titled **CPWD Karamchhari Union (Regd.) & Ors (Supra)**. The relevant portion of the said judgment is reproduced hereunder:



“1) The services of these contract workers shall not be substituted with other contract workers le. If the respondent require to employee 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 ocotract maybe 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 of maintenance etc. given 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 contact labour in particular job/work/process in any of the offices/ establishments of CPWD (as per the terms of the reference contained in Resolution dated 30th March, 2000), as per the 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 be 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."



26. Upon perusal of the aforementioned extracts, it is revealed that the Coordinate Bench of this Court had clearly stipulated the course of action regarding the absorption of contract labourers. It was directed that if a decision was made to abolish the contract labour in any specific category/department, then the workers employed therein would be absorbed by the respondents. Conversely, if contract labour was not abolished in a particular category/department, then the respondents would have the right to deal with the workers as they deem fit, and no question of absorption would arise.

27. In the instant petition, the respondents have disputed upon the nature of the petitioners' employment, vehemently opposing that they were employed as wiremen/electricians and further submitted that the respondent's contractor engaged, petitioners as Operators (E&M). This disputed fact is pivotal as it directly impacts the question of whether there was an abolition of contract labour system in the specific category in which the petitioners were employed.

28. The respondents have averred that since there was no abolition of contract labour system in this category, the question of absorption does not arise.

29. The question of "wilful disobedience" is not straightforward, as it hinges on the determination of whether the petitioners are entitled to the benefits which they claim to have been denied to them.

30. In view of the aforesaid discussions, this Court is of the view that unless the Court has adjudicated upon the question of fact, i.e., there was an abolition of contract labour system in the category in which the



petitioners were employed, the benefit of the directions or any contempt thereof cannot be decided.

31. It is further observed that while entertaining a contempt petition, the Court's inquiry shall be limited, and it cannot delve into disputed questions of fact. The contempt jurisdiction is summary in nature and no contempt would be entertained which involves inquiry into the disputed questions of facts.

32. The Court while entertaining contempt petition has to ensure that the power to punish for contempt must be exercised judiciously, in cases where there is a wilful and contumacious disobedience of a Court's order/directions. Hence, contempt proceeding is not a tool for resolving factual disputes or determining the rights of parties.

33. In light of the above facts and circumstances, since the petitioners have not been able to satisfy the requirements and ingredients of the contempt as mandated by the statutory provisions and judicial precedents, this Court is not inclined to initiate contempt proceedings against the respondents.

34. Accordingly, the instant contempt petition is dismissed alongwith pending applications, if any.

(CHANDRA DHARI SINGH)
JUDGE

MAY 7, 2024
gs/db/ryp

Click here to check corrigendum, if any