



2024:DHC:1946



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

% **Date of order: 27th February, 2024**

+ **W.P.(C) 6597/2018 & CM APPL. 25179/2018 & CM APPL. 25181/2018**

MAHANAGAR TELEPHONE NIGAM LTD. Petitioner

Through: Mr. Chandan Kumar, Advocate

versus

GENERAL SECRETARY, ALL INDIA KAMGAR UNION AND

ORS. Respondents

**Through: Mr. Fidel Sebastian, Advocate for R-1
(Through VC)**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Article 226 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

*“a) issue a writ of certiorari or in the nature thereof or any other writ, order or direction setting aside/quashing the impugned order dated 12.3.2018 made by Respondent No. 3;
b) pass any other or further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.”*

2. The petitioner in the present case is the oldest telecom service provider incorporated as a company under the Companies Act, 1956 and



entrusted to operate mobile services under a license granted in the year 2001.

3. In the year, 2016, the petitioner invited bids for the Annual Maintenance Contract(AMC)*vide* tender Enquiry No. MM/WS/O/ & M services/ 2016-17/01 dated 8th July, 2016 and the said tender was allotted to the respondent no. 2 ('respondent Contractor' hereinafter) for a period of one year.

4. Pursuant to completion of the above said contract, the petitioner received a notice from the respondent no. 1 ('respondent Union' hereinafter) along with the copy of an application/petition filed under Rule 25(v)(a) of the Contract Labor (Regulation & Abolition) Rules, 1970 ('Rules, 1970' hereinafter) seeking equity in pay to those employed permanently in the petitioner entity.

5. After completion of the proceedings in the said application bearing no. ND20(04)2017-P.A.DYCthe learned Labor Commissioner ('Court below' hereinafter) passed the impugned award dated 12th March, 2018, thereby, directing the petitioner to pay an amount equal to the one paid to its regular employees.

6. Aggrieved by the same, the petitioner has approached this Court by way of filing the instant petition.

7. The learned counsel appearing on behalf of the petitioner submitted that Rule 25(2) of the Rules, 1970 provides for the limited jurisdiction of the Deputy Labour Commissioner (Central) to decide the issue of 'type of work' and the same is also to be availed if there is any disagreement over the issue of type of work done.



8. It is submitted that the sub-rule (v) (a) of the said rule only talks about the same or similar kind of work and not about the designation, therefore, failure to prove the similar work executed by the workman needs to be taken into account.

9. It is submitted that the onus of proof of parity in the duties and responsibilities of the subject post is on the person claiming the same, therefore, the failure of the same ought to have led to rejection of the claim of the workmen, therefore, allowance of the same is bad in law.

10. It is submitted that the learned Commissioner does not have powers to fix the pay scale of any of the employees, therefore, directions given in this regard are bad in law.

11. It is also submitted that the workmen of the respondent Contractor were getting similar wages from the entities availing services of the respondent Contractor, therefore, comparing their wages similar to those employed in the petitioner entity is unjustified and bad in law.

12. It is further submitted that the employees having a pay scale similar to that ordered by the learned Court below are entrusted to perform multiple tasks and the respondent workmen cannot seek the same as they did not perform any such work.

13. Therefore, in view of the foregoing submissions, the learned counsel for the petitioner submitted that the present petition be allowed and reliefs be granted as prayed.

14. *Per Contra*, the learned counsel appearing on behalf of the respondent-Union vehemently opposed the present petition submitting to the



effect that the same is a gross abuse of the process of law and an apt example of adventurous litigation undertaken at the cost of public money.

15. It is submitted that the present matter was earlier tagged with a bunch of contempt petition, and was de-tagged due to reasons unknown, however, the same clearly depicts that the petitioners narrowly escaped from being prosecuted for contempt due to the issue of non-grant of equal pay to the workmen.

16. It is further submitted that the workmen have already been removed from the services by the petitioner and the present petition is only adding up to the misery of the workmen where they were earlier forced to work at a disproportionate wage and subsequently dragged into litigation for no cause.

17. Therefore, in light of the foregoing submissions, the learned counsel appearing on behalf of the respondent-Union prayed that the present petition being devoid of any merit, may be dismissed.

18. Heard the learned counsel for the parties and perused the record.

19. It is the case of the petitioner entity that the learned Court below erroneously granted a pay scale to the contractual employees where the nature of work was different than the permanent employees of the establishment. Furthermore, it is contended that the same nature of work cannot be established merely on the basis of a similar name of the designation, rather the authority concerned ought to determine the same.

20. In the rival submissions, the learned counsel appearing for the respondent Union has termed the instant petition as an adventurous litigation and contended that the issue with regard to grant of pay similar to those



working permanently in an establishment is already settled. It has been further contended that whilst passing the impugned award, entire facts and relevant laws have been taken into consideration by the learned Commissioner and hence, there is no illegality of any kind therein.

21. Therefore, the limited question for adjudication before this Court is whether the learned Court below exceeded its authority by directing a pay scale similar to the permanent employees of the petitioner establishment despite the nature of job performed by the said set of employees being different.

22. In order to answer the aforesaid query, it is imperative for this Court to examine the extracts of the impugned order and determine whether the learned Court below rightfully adjudicated the issue or not.

23. The extracts of the impugned award reads as under:

“Sri Vinod Kumar Singh Gautam, General Secretary of the All India General Kamgar Union filed an application on 14/08/2017 on behalf of contract labourers deployed by the contractor M/s Shivam Infocom Pvt Ltd in the establishment of non applicant No 1, CGM, BSS(W/S) for claim of wages and other amenities equal to the wages and other amenities available to the regular employees of the CGM, BSS(W/S) doing the same or similar work.

Applicant has submitted that M/s Shivam Infocom Pvt Ltd has deployed Sri Balram Chaudhary and 110 other workmen in the Establishment of CGM, BSS(W/S) in different categories of Phone Mechanic (PM) and TTA and workmen coming in C & B in the category of



technician and super technician. It is further submitted by the union that after the 6th CPC the Group B & C employees of the MTNL were designated as Group Phone Mechanic and TTA. The contract workers are not being paid equal wages for equal work as is being paid to regular workmen of Not-applicant No.1.

The Non applicant No. 1 on the other hand has submitted that the AMC contract was given to Non-Applicant No.2, M/s Shivam Infocom Pvt Ltd that expired on 14/10/2017 after completing the one year contract. It was further submitted by the non applicant No 1 that the said AMC work was given on need basis and several work under AMC have now ceased to exist like diesel filling, cleaning etc.

The Non-Applicant No.2 has stated that the said application is liable to be rejected as it is not signed by the workmen who are also not the members of the union. It is further stated that Non Applicant No.2 is the contractor of the Non Applicant No. 1, therefore the liability to pay wages and other amenities as demanded by the union if any, is the responsibility of Non Applicant No. 1 being the Principal Employer. It is also stated that since the deployed workmen have not produced the document for skilled category therefore all workmen be treated as unskilled.

The matter was adjourned on several dates and finally on 15/2/2018 for disposal of application dated 14/08/2017 of the applicant Union in the presence of both the parties. The Union submitted this application on behalf of 111 workmen but could produce authorization of only for 64 workmen as per Annexure 'A', therefore the said application shall be considered only for these 64



workmen. The Non Applicant No 2 has himself stated that M/s ShivamInfocommPvtLts has been engaged by the Non Applicant No.1 as his contractor for AMC contract for a period of one year that expired on 14/10/2017. The contractor has failed to produce the licence as per provision under section 13 of the Contract Labour (R&A) Act 1970. It was the statutory liability on the part of the contractor to apply for licence. The non compliance by non applying for the licence by the contractor does not absolve him of his statutory liabilities. There deployment of these workmen as contract workers by the contractor for the work is stated above in the establishment of the non applicant No 1, the Principal Employer is not objected. The provisions under Rule 25(2)(v)(a) of Contract Labour (R&A) Central Rules 1978 specifically provides that in case where the workmen employed by the contractor perform the same or similar kind of work as the workmen directly employed by the principal employer of the establishment, the wage rates, holidays, hours of work and other conditions of service of the workmen of the contractor shall be the same as applicable to the workmen directly employed by the principal employer of the establishment on the same or similar kind of work. The work order for AMC as submitted by the Non Applicant No1 clearly requires the deployment of skilled workmen for the job. The union has admitted the statement of wages received by these workmen to the tune of Rs 10203/- per month. The applicant has also submitted the wage slip as Annexure 'B' issued by the MTNL in June 2017 with respect to his regular technician as Phone Mechanic (PM) with departmental Pay Scale as 12500-27170 with additional DA @ 117.1% per month for doing the same or similar work. There is no hesitation in accepting the genuineness of the document as both the non Applicants did not submit the



details of wages paid to theses workmen and also to the regular employees of the Principal Employer even after availing several opportunities. The contention of the non applicants that the said contract expired on 14/10/2017 is not acceptable as the said application was moved by the union during the pendency of the contract. The other contentions of non applicant are devoid of any merit as per provisions under Rule 25 (v) (a) of the Rules.

The Hon'ble Supreme Court has also established on 26 Oct 2016 in CIVIL APPEAL NO. 213 OF 2013 in State of Punjab & Others V/s Jagjit Singh and others that:

'The principle of 'equal pay for equal work' has to be made applicable to those engaged as daily wagers, casual and contractual employees who perform the same duties as the regulars. Terming the denial of equal pay for equal work as "exploitative enslavement", "oppressing, suppressive" and "coercive", the apex court said that in a welfare state, the principle has to be extended to temporary employees as well.'

Hence, In view of the above, I am of the considered view that all the 64 contract workers as per list in Annexure 'A' deployed by the contractor M/s Shivam Infocom Pvt Ltd, the non applicant No 2 in the establishment of principal employer, the non applicant No 1, are entitled to the pay Scale of Rs 12500-27170 with additional DA @ 117.1%. per month for the contract period from 15/10/2016 to 14/10/2017. There is no order as to other amenities claimed by the union as the contract has already expired on 14/10/2018.

Given under my hand and seal this on 12th day of March, 2018 and parties are informed accordingly."



24. Upon perusal of the above cited extracts, it is made out that the learned Court below had directed the enhancement of wages of the workmen on the basis of principle of 'equal pay and equal work' whereby the learned Court below held the temporary workers to be working equal to the permanent employees of the petitioner establishment.

25. Furthermore, the learned Court below also held that the temporary employees as employed by the petitioner are eligible for the same pay as the said principle has been reiterated by the Hon'ble Supreme Court in ***State of Punjab v. Jagjit Singh, (2017) 1 SCC 148.***

26. As per the material on record, the petitioner entered into an agreement with the respondent Contractor for numerous services and the nature of the contract was already stipulated in the tender document whereby, the services availed by the petitioner were specifically termed to be on a principal to principal basis without creation of a right of employer-employee to any of the workmen supplied by the respondent Contractor.

27. Therefore, this Court needs to decide whether the employees/workmen as employed by the petitioner were through a direct hiring or a contract for certain services was given to the respondent Contractor, thereby, delegating the responsibilities in *toto*.

28. It is no dispute that the workmen were employed by the respondent Contractor and the responsibility of disbursement of salaries/wages to them was of the said Contractor itself. In this backdrop, this Court only needs to determine whether the said contract entered between the petitioner and the



respondent Contractor was of the service or for the services.

29. It is true that the settled position of law restricts the determination of the said relationship by a higher Court to an extent, and therefore, this Court can only interfere with the impugned award if there is any perversity on face of it.

30. It is the contention of the petitioner that the tasks provided to the contractor were not assigned to particular workmen (represented through the Union herein), rather the respondent Contractor was entrusted to deploy the workmen as and when need arise in the petitioner establishment.

31. The list of tasks assigned to the respondent Contractor is as under:

*“Filter cleaning and washing of Air Conditioners parts.
Cleaning and oiling of diesel Generator Set 85 AMF
Panel
Cleaning of power plant Voltage measurement of VRLA
Battery cells and if required rearrangement of battery
cells
DCDB/ ACDB fault repairs
Earth pits and earthing plate/ cable maintenance for
proper earthing
Energy meter connection maintenance Including all
MCBs
Tower/ Mast/Poles for MW, GSM antennas maintenance.
Cleaning and locking of prefab shelters for equipments
maintenance of all environmental alarms wiring at
BTS sites & their periodic testing,
In case of any theft, service provider has to report to the
police station and get the FIR copy.
Attending of media / El /RSL faults....”*



32. The perusal of the said responsibilities as mentioned in the contract clarifies that the workmen employed by the respondent Contractor were not assigned a particular task, rather were given responsibilities as mentioned above.

33. At this juncture, it is also pertinent to mention that the workmen did not have any specific role in the petitioner establishment, rather were working under the control and directions of the respondent Contractor.

34. Therefore, this Court is of the view that the contract as awarded to the respondent Contractor was not sham and bogus, rather a contract on principal to principal basis, and in no manner, the workmen can be held to be direct employees of the petitioner establishment.

35. At last, it is also imperative for this Court to draw a distinction between the permanent employees of the petitioner and those employed by the respondent Contractor.

36. The pleadings and other material adduced by the petitioner clearly suggests that the permanent employees of the establishment were responsible for performing duties of a lineman, wireman, cable splicer and other duties as directed by the officials of the petitioner entity.

37. Therefore, it is crystal clear that the nature of the job as performed by both the employees was different as the material on record nowhere suggests any similarity with the tasks performed by both sets of the employees.

38. In light of the same, this Court is of the view that the impugned award is not legally tenable as the contract as entered between the parties, i.e., the petitioner and the respondent Contractor was on a principal to principal



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contract basis and the same does not create a right of the workers employed by the contractor to be held as an employee of the petitioner establishment.

39. Therefore, the impugned award passed by the Deputy Chief labor Commissioner on 12th March, 2018 in ND-20(04)2017-P.A.DYC, is set aside and the present petition is allowed.

40. Accordingly, the instant petition stands disposed of, along with, pending applications, if any.

41. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

FEBRUARY 27, 2024
gs/av/ryp

Click here to check corrigendum, if any