

20.02.2025.
Item No.21-25
Court No.654
sayandeep

W.P.A. 26341 of 2018
Netai Chandra Saha & Ors.
Vs
Union of India & ors.
with
W.P.A. 25168 of 2018
With
CAN 1 of 2019 (Old CAN 2986 of 2019)
Kolkata Zilla Security & Allied Service
Workmen's Union & Ors.
Vs
Union of India & ors.
With
W.P.A. 26343 of 2018
Manoj Kumar Singh & Ors.
Vs
Union of India & ors.
With
W.P.A. 26345 of 2018
With
CAN 1 of 2019 (Old CAN 2982 of 2019)
Shibaji Babu Hatkar & Ors.
Vs
Union of India & ors.
W.P.A. 26347 of 2018
Dew Nath Tiwari & Ors.
Vs
Union of India & ors.

Mr. Upendra Ray
Mr. Sunny Nandy

... For the petitioners

Mr. Prabal Kumar Mukherjee, Sr. Advocate
Mr. Rajat Dutta

...For the respondent nos. 2 to 8

For having thematic coherence, all the writ petitions are heard together.

These writ petitions have been filed by the Kolkata Zilla Security & Allied Service Workman's Union (hereinafter referred to as the Union) and its members, seeking a directive to Respondents 7 and 8 to allow the Union's members to resume their duties

as security staff at their respective posts in the Paharpur LPG Bottling Plant, in accordance with the terms and conditions outlined in the agreement dated 4th March 2023. Additionally, the petitioners have prayed that the concerned respondents be directed not to terminate or disrupt the petitioners' services, as well as the services of other security staff registered under the Union, across all units of Hindustan Petroleum Corporation Limited.

Mr. Upendra Ray, the learned Advocate representing the petitioners, draws my attention to an order dated 12th June, 2001, passed by a co-ordinate Bench in WP No. 2795 (W) of 2001. The order directed the respondents to decide on the petitioners' application under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970, in accordance with the law, within a specified time frame. Furthermore, Mr. Ray refers to the minutes of a meeting held on 4th March, 2023, between M/s. Swastik Security & Allied Service, Paschim Banga Security and Co-workmen's Union, and the Management of Hindustan Petroleum Corporation Limited (in short, the Corporation). He emphasizes that, following the resolution from the meeting, a tripartite agreement was signed between the Management of the Corporation, M/s. Swastik Security & Allied Service, and Paschim Banga Security and Co-workmen's Union.

Mr. Ray places significant emphasis on Clause 3 of the agreement, which, according to him, binds the Corporation's management to engage the petitioners as security guards. He argues that the Corporation should continue to allow the members of the Union to serve as security guards on its premises. Mr. Ray contends that the petitioners had been working as security guards at various branches of the Corporation for the past 25 years. However, he claims that, without prior notice, the Corporation's management instructed the local police station to forcibly remove the petitioners from the premises. As a result, the petitioners are now being unlawfully prevented from entering the premises. Mr. Ray asserts that this situation warrants the Court's intervention and an appropriate order.

Mr. Probal Mukherjee, the learned senior advocate representing the Corporation, strongly disputes the contentions raised by the petitioners. He submits that the petition is not maintainable in its current form because the agency through which the petitioners were engaged as security guards on the Corporation's premises has not been made a party to the proceedings. He argues that, due to the failure to implead this agency, which, in his view, is a necessary party to the proceedings, the petition is defective.

On the merits of the case, Mr. Mukherjee argues that the terms and conditions of the

agreement, which was entered into following the resolution adopted in the meeting held on 4th March 2003, do not apply to the petitioners, as they are members of a different union. Therefore, he contends that the petitioners cannot claim any benefit from the conditions or stipulations outlined in the agreement. He further submits that, if the petitioners are entitled to any relief under any relevant enactment, including the Contract Labour (Regulation and Abolition) Act, 1970 (in short, the Act of 1970), they have an adequate alternative remedy available to them. Mr. Mukherjee asserts that the petitioners should have approached the appropriate Tribunal instead of directly approaching this Court. He argues that, since an efficacious alternative remedy exists, these petitions should not be entertained.

Additionally, Mr. Mukherjee asserts that there is no privity of contract between the Corporation and the Kolkata Zilla Security & Allied Service Workmen Union or its members. However, this contention has been strongly disputed by the learned advocate representing the petitioners.

Mr. Mukherjee further submits that, in accordance with the Directorate General Resettlement (DGR) Guidelines, the Corporation is authorized to engage security guards on its premises in a ratio of 90% ex-servicemen and 10% civilians. Consequently, the Corporation is entitled to outsource security

services from agencies that are empanelled with the DGR and have the capacity to provide 90% ex-servicemen. Therefore, he contends that the petitioners do not meet the qualifications required to be re-engaged as security guards on the Corporation's premises.

Mr. Mukherjee acknowledges that, in compliance with the order passed by a co-ordinate Bench on 16th June 2001, in WP No. 2795 (W) of 2001, a meeting was held between the management of the Corporation, the representatives of Swastik Security & Allied Services, and the representatives of Paschim Banga Security and Co-workmen's Union. However, he points out that the petitioners, being members of the Kolkata Zilla Security & Allied Service Workmen Union, were not parties to this agreement.

Undeniably, the agreement (though in form of a resolution) was entered into between the management of the Corporation, the representatives of Swastik Security & Allied Services, and the representatives of Paschim Banga Security and Co-workmen's Union. The Union and its members were not parties to that agreement. Thus, it is obvious that the terms and conditions and/or stipulations engrafted in that agreement are not applicable to the petitioners.

Significantly, a clause was inserted in the agreement, which has been referred to by both Mr.

Roy and Mr. Mukherjee. For better appreciation of its contents, it would be apt to reproduce it, which is as follows:

“Corporation will provide suitable protection Clause in tender agreement of contract of DGR Services that existing Security Guards who are members of Paschim Banga Security and Co-workers should be considered for employment as Security Guards with new Contractors.”

Upon perusal of the contents of that Clause 3 and the entire agreement, it appears that the clause applies solely to the members of the Paschim Banga Security and Co-workmen’s Union. The Kolkata Zilla Security & Allied Service Workmen Union is a separate entity, and during the course of the hearing, it was brought to my attention that two distinct registration numbers have been allotted to the different unions.

During the hearing, Mr. Ray, learned advocate for the petitioners, seeks to impress upon me that initially, all security guards were members of their parent union, namely, the Paschim Banga Security and Co-workmen’s Union. However, no documents have been presented to substantiate this claim. Furthermore, no documents or instruments have been submitted before this Court to demonstrate that the

management of the Corporation, either expressly or impliedly, agreed to extend the benefits of the terms and conditions of the agreement dated 4th March 2003 to the Kolkata Zilla Security & Allied Service Workmen Union or its members.

Mr. Roy draws my attention to a communication from the Senior Manager to the Additional Labour Board and argues that, in the said letter, there is a reference to the Kolkata Zilla Security & Allied Service Workmen Union.

I have carefully perused the contents of the said letter. It is undisputed that the letter contains a reference to the Kolkata Zilla Security & Allied Service Workmen Union, which may indicate an acknowledgment by the Corporation of the existence of such a union. However, this reference should not be construed as an undertaking or agreement by the Corporation to extend the terms and conditions of the agreement dated 4th March, 2023, to the petitioners.

Therefore, based on the discussion in the preceding paragraphs, I am not inclined to accept the contention advanced on behalf of the petitioners.

Accordingly, I am of the view that no interference is called for in these petitions.

However, it is clarified that if the petitioners are found to be entitled to any relief under any applicable enactment, including the Contract Labour (Regulation and Abolition) Act, 1970, this order shall

not prevent the petitioners from seeking such relief in the appropriate forum.

With these observations, all the aforementioned writ petitions and connected applications are dismissed, with no order as to costs.

(Partha Sarathi Chatterjee, J.)