A R.K. PANDA AND ORS.

v.

STEEL AUTHORITY OF INDIA AND ORS.

MAY 12, 1994

B [KULDIP SINGH, P.B. SAWANT AND N.P. SINGH, JJ.]

Contract Labour (Regulation and Abolition) Act 1970—Held, does not confer any right on contract labourers to be absorbed or to become employees of the principal employer—Question whether engagement of labourers through C *a contractor is a camouflage, held, to be normally decided under Industrial Disputes Act—However, in view of the fact that interim relief had already been given by Court, directions regarding absorption given in Article 32 petition—Practice and procedure.*

A Writ Petition under Article 32 of the Constitution was filed on D **behalf of workers employed through contractors at the Rourkela Plant of the Steel Authority of India (SAIL) contending that they had been working for periods ranging from 10 to 20 years under different contractors. They contended that they were doing jobs which are being done by the regular employees of SAIL. They claimed parity in pay with the regular employees** E **and regularisation. After the Writ petition was entertained in 1986, several interim orders were passed by the Court.**

Allowing the Writ Petition with certain directions, this Court

HELD : 1. The framers of the Contract Labour (Regulation and F **Abolition) Act 1970 have allowed and recognised contract labour, and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course, if any expenses are** G **incurred for providing any amenity to the contract labourers or towards the payment of wages by the principal employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that the appropriate Government may after consultation with the Central Board or the State Board, as the case may be, prohibit by notification in the** H **Official Gazette, employment of contract labour in any process, operation**

or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration. [1038-F-H, 1039-A] A

2. No right flows from the provisions of the Act for the contract labourers to be absorbed or to become the employees of the principal employer. Many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labourers cannot by itself give rise to a right to regularisation in the employment of the principal employer. [1039-B-C; 1040-D] B C

3. Whether the contract labourers have become the employees of the principal employer in course of time and whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case is a question of fact and has to be established by the contract labourers on the basis of the requisite material. Normally the Labour Court and the Industrial Tribunal under the Industrial Disputes Act are the competent fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them. [1040-F-H] D

4. Normally, the petitioners herein would have been directed to pursue the same remedy, but in view of various interim orders already passed by this Court since 1986 as a result of which the majority of contract labourers are continuing in employment it is directed that all labourers who had been initially engaged through contractors, but have been continuously working with the Respondent SAIL for the last 10 yeras on different jobs assigned to them in spite of the replacement and change of contractors shall be absorbed by the Respondent as their regular employees subject to their being medically fit and below the age of superannuation viz. 58 years. [1041-A, 1042-D] E F

Gammon India Ltd. v. *Union of India,* [1974] 1 SCC 596 = [1974] SCC (L & S) 252; *BHEL Workers' Assn.* v. *Union of India,* [1985] 1 SCC 630 = [1985] SCC (L & S) 371 = AIR (1985) SC 409; *Mathura Refinery Mazdoor Sang* v. *Indian Oil Corpn. Ltd.,* [1991] 2 SCC 176 = [1991] SCC (L & S) 533 and *Dena Nath* v. *National Fertilizers Ltd.,* [1992] 1 SCC 695 = [1992] SCC (L & S) 349, relied on. G H

A ORIGINAL JURISDICTION : Writ Petition (C) No. 617 of 1986.

(Under Article 32 of the Constitution of India.)

Altaf Ahmed, Additional Solicitor General Shanti Bhushan, A.K. Ganguli, Prashant Bhushan, Madan Lokur, Gaurav Banerjee, P.K. Sinha,
B M.P. Sharma, K.J. John, A.K. Panda, Ms. Kitty Kumaramangalam, (NP), S.N. Terdal, Ms. Sushma Suri, (NP), Ms. Indu Malhotra, Ms. Aysha Khatri, Ms. Dania Pradhan, Ms. Jaishree Suryanarayan, Parijat Sinha, (NP), Ms. Madhu Moolchandani and N.R. Choudhary for the appearing parties.

C The Judgment of the Court was delivered by

N.P. SINGH, J. This writ petition has been filed on behalf of the petitioners, alleging that, they had been employed by the respondent - Steel Authority of India (hereinafter referred to as the 'Respondent') through various contractors at its Rourkela plant, but they are doing jobs which are
D perennial in nature and identical to the jobs which are being done by the regular employees of the said respondent. As such they are entitled to same pay which is being paid to the regular employees of the respondent and are entitled to be treated as the regular employees of the respondent. It is alleged that the respondent in order to frustrate the claims of the
E petitioners and other labourers similarly situated, to be treated as regular employees of the respondent, designated them as contract labourers. It has been asserted that the petitioners had been working for the respondent for the last 10 to 20 years under different contractors. The contractors used to be changed, but while awarding the contract, one of the terms incorporated in the agreement used to be, "the incoming contractors shall employ the
F workers of the respective outgoing contractors subject to the requirement of the job". Reading the agreement aforesaid, it appears that the workers concerned had been employed through the contractros concerned for different purposes like construction and maintenance of roads and buildings within the plant premises, public health, horticulture, water supply
G (town) etc. In the said agreement, it has been stated that parties shall be governed by the provisions of Contract Labour (Regulation and Abolition) Act, 1970 as well as Payment of Bonus Act. But one of the terms of the agreement is that incoming contractor shall employ the workers of outgoing contractor.

H With the industrial growth, the relation between the employer and

the employees also has taken a new turn. At one time the establishment being the employer all persons working therein were the employees of such employer. But slowly the employers including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed workers, who had no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act 1970 was enacted to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith.

The "contract labour" has been defined in Section 2(1)(b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2(1)(c) defines "contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor. "Principal employer" has been defined to mean (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the Government or the local authority, as the case may be, may specify in this behalf and (ii) in a factory, the owner or occupier of the factory. In view of Section 10, the appropriate Government may after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process, operation or other work in any establishment." Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, which is to be taken into consideration is whether the work performed by the contract labourers is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through contract labour except under and in accordance with a licence issued in that behalf by the licensing authority. The licence so issued may contain conditions in respect

A of hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any amenity required to be provided under Section 16, Section 17, Section 18 or Section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed therefor, such B amenity shall be provided by the principal employer within such time as may be prescribed and all expenses incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable to the contractor". C Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a representative duly authorised by him to be present at the time of disbursement of wages by the contractor. D It shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed. The same section also enjoins a duty on the contractor to ensure the disbursement of wages in the presence of the authorised representative of the principal employer. Because of sub-section (4) of Section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal E employer shall be liable to make payment of wages in full to the contract labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.

F From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognised contract labour and they have never purported to abolish it in its entirely. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as G well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principal employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that appropriate Government may after consultation with the Central Board or the State Board, as H the case may be, prohibit by notification in official Gazette, employment

of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration. A

Of late a trend amongst the contract labourers is discernible that after having worked for some years, they make a claim that they should be absorbed by the principal employer and be treated as the employees of the principal employer especially when the principal employer is the Central Government or the State Government or an authority which can be held to be State within the meaning of Article 12 of the Constitution, although no right flows from the provisions of the Act for the contract labourers to be absorbed or to become the employees of the principal employer. This Court in the case of *Gammon India Ltd.* v. *Union of India,* [1974] 1 SCC 596, pointed out the object and scope of the Act as follows :- B C

> "The Act was passed to prevent the exploitation of contract labour and also to introduce better conditions of work. The Act provides for regulation and abolition of contrract labour. The underlying policy of the Act is to abolish contract labour, wherever possible and practicable, and where it cannot be abolished altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provision of essential amenities. That is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act." D E

In the case of *B.H.E.L. Workers' Association* v. *Union of India,* AIR (1985) SC 409 = [1955] 1 SCC 630, it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under Section 10 of the Act. It is not for the Court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the Government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of *Mathura Refinery Mazdoor Sangh* v. *Indian Oil Corporation Ltd.,* [1991] 2 SCC 176, this Court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment, saying that, the contract labourers have not been found to F G H

A have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd., and the contract labourers concerned. Again in *Dena Nath* v. *National Fertilisers Ltd.*, [1992] 1 SCC 695, this Court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the workers employed by the contractor who is engaged by a B principal employer and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the appropriate Government, under Section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the Central Government or by any appropriate Government provide that upon C abolition of the contract labour, the labourers would be directly absorbed by the principal employer.

It is true that with the passage of time and purely with a view to safeguard the interests of workers, many principal employers while renew- D ing the contracts have been insisting that the contractor or the new contractor retains the old employees. In fact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a E right to regularisation in the empoloyment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case, is a question of fact and has to be established by the contract labourers on the basis of the requisite material. F It is not possible for High Court or this Court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions, only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the G contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the Court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the competent fora to adjudicate such disputes on the basis of the oral and documentary evidence H produced before them.

We would have also directed the petitioners herein to pursue the same remedy. But we are faced with different orders passed by this Court since 1986 when this writ application was entertained by this Court. On 19.12.1986, this court was informed that services of a number of labourers were to be terminated w.e.f. 1.1.1987 because the contract of the contractor concerned was to expire on 31.12.1986. This Court, however, directed that notwithstanding it, the labourers should be continued. On 21.4.1987 again a direction was given to the new contractor to continue the employment of the labourers who had been already working, taking into consideration the fact that they had picked up expertise and therefore would be more suited to the job. On 8.5.1987 yet another order was passed by this Court, directing the respondent to see that the new contractors employ those who have been retrenched with effect from 1.4.1987 and 1.5.1987. In that very order, it was said that in the event the contractors' jobs are taken over by the respondent, the respondent will not employ any other workers directly without giving preference to the persons who were working for more than three years. On 28.10.1987, this Court was informed that the State Government of Orissa which is the appropriate Government under the Contract Labour (Regulation and Abolition) Act, 1970, had appointed a Committee to enquire into the question whether the contract labour in the Steel Industry in the State of Orissa should be abolished. It appears to be an admitted position that because of the different interim orders passed by this Court, many contract labourers whose employment in normal course would have ceased, have continued with the respondent and directions have been given to the respondent to make payments to them from time to time. Such contract labour had been employed in 246 jobs in the Steel Plant. Out of them 104 jobs have been identified in which the contract labour has been abolished. But in 142 jobs the contract labour is being continued and the contract labourers, who might have ceased to be working with the respondent, are continuing by different interim orders passed by this Court. On 6.8.1992, the following order was passed by this Court :

> "Mr. Harish Salve learned counsel appearing for the respondent states that there are 879 workmen holding notified jobs with the Management. According to him the Management is prepared to give options to all of them either to accept voluntary retirement on the terms offered by the management or agree to be absorbed on the regular basis in the employment of the respondent-management. The offer made by Mr. Salve is fair and is acceptable to the

learned counsel for the petitioner. We, therefore, modify the interim orders passed by this Court till date to the extent that we permit the respondent-management to give the offered options to all the notified workmen".

We are informed that pursuant to the aforesaid order, several contract labourers have taken voluntary retirement. But majority of them are continuing. On behalf of the respondent, it was brought to our notice that a scheme of modernisation is in process of implementation, which may result in the reduction of the labour force and many of the workmen may have to be retrenched as a consequence. Hence taking all facts and circumstances of the case into consideration, we direct that :-

(i) All labourers, who had been initially engaged through contractors but have been continuously working with the respondent for the last 10 years on different jobs assigned to them in spite of the replacement and change of the contractors, shall be absorbed by the respondent, as their regular employees subject to being found medically fit and if they are below 58 years of age, which is the age of superannuation under the respondent.

(ii) While absorbing them as regular employees their *inter se* seniority shall be determined department/job wise on the basis of their continuous employment.

(iii) They will not be entitled to the difference in their contractual and regular wages till the date of their absorption. After absorption as regular employees, they shall be paid wages, allowances etc. at par with their counter part, working as regular employees with the respondent. If in respect of any group of contract labourers, no rate of wages or emoluments have been fixed by the respondent because those jobs had not been performed by the regular employees of the respondent in the past, the contract labourers so absorbed for performing the said jobs, shall be paid at the minimum rate payable to the unskilled workmen, doing other similar job.

(iv) After absorption, the contract labourers will be governed exclusively by the terms and conditions prescribed by the

respondent for its own employees irrespective of any existing contract or agreement between the respondent and the contractors. No claim shall be made by the contractors against the respondent for premature termination of their contracts in respect of the contract labourers. A

(v) The benefit of absorption shall not be extended to contract labourers who in terms of this Court's order referred to above have taken voluntary retirement on payment of the retrenchment compensation. B

(vi) The respondent shall be at liberty to retrench workmen so absorbed, in accordance with law. This order shall not be pleaded as a bar to such retrenchment. C

(vii) If there is any dispute in respect of the identification of the contract labourers to be absorbed as directed above, such dispute shall be decided by the Chief Labour Commissioner (Centrral), on material, produced before him by the parties concerned. D

(viii) This direction shall be operative only in respect of 142 jobs out of 246 jobs, in view of the fact that contract labour has already been abolished in 104 jobs. E

(ix) This order does not relate to the persons who have already been absorbed.

(x) The persons, who had been retrenched, but in terms of the directions of this Court, have been taken back, shall also be entitled to the benefit of this Order. If there is any dispute in respect of the identity of such persons, that shall also be decided by the Chief Labour Commissioner (Central). F

(xi) For the purpose of calculating the payment of retrenchment benefit, in the event of their retrenchment, hereafter, the 10 years period aforesaid shall be counted, in respect such retrenched persons, although they are absorbed after the passing of this Order. G

(xii) This Order shall be complied with by the respondent within H

A four months from today.

The Writ Application is allowed accordingly. But in the facts and circumstances of the case, there shall be no order as to costs.

Writ Petition (C) No. 1403 of 1989.

B

N.P. SINGH. J : This writ application has been filed on behalf of the petitioner-Rourkella Mazdoor Sabha, for a direction to the respondents to implement the provisions of the Contract Labour (Abolition and Regulation) Act, 1976 and to implement the agreement entered into between the C petitioner and the respondents on 30.05.1987. No such grievance can be entertained in an application under Article 32 of the Constitution. Petitioner, if so advised, pursue the remedy in accordance with the provisions of the Industrial Disputes Act. So for as, the direction to treat the workmen as regular employees of the respondents is concerned, we have already issued directions in Writ Petition (C) No. 617 of 1986. No D separate direction is required to be given in this writ application. This writ application is dsisposed of accordingly.

Writ Petition (C) No. 1126 of 1989.

E **N.P. SINGH. J :** This writ application has been filed on behalf of the petitioner- United Mines Mazdoor Union and others for a direction to the respondent-Steel Authority of India Ltd. to treat the members of the petitioner-Union as regular employees of the said respondent and to pay them the rate of wages and other statutory benefits as admissible to regular employees working under the said respondent. The workers in question F had been employed as contract labourers initially through the contractors. We have already issued directions in Writ Petition (C) No. 617 of 1986 to the respondent-Steel Authority of India. No separate direction is required to be given in this writ application which is accordingly disposed of.

R.R. W.P. No. 617/86 is allowed.
W.P. Nos. 1403/87 & 1126/89 as disposed of.