
(2014) 05 GAU CK 0007

Gauhati High Court

Case No: WP (C) No. 265 of 2007

Oil Man Management
Drilling Workers" Union

APPELLANT

Vs

The Management of Oil
India Limited

RESPONDENT

Date of Decision: May 29, 2014

Acts Referred:

- Contract Labour (Regulation and Abolition) Act, 1970 - Section 10(1)
- Industrial Disputes Act, 1947 - Section 10

Citation: (2014) 142 FLR 1091 : (2014) 3 GLT 203 : (2014) 4 LLJ 724 : (2014) LLR 819

Hon'ble Judges: Arup Kumar Goswami, J

Bench: Single Bench

Advocate: A. Dasgupta, Advocate for the Appellant; S.N. Sarma, Sr. Advocate for Respondent No. 1, Advocate for the Respondent

Judgement

Arup Kumar Goswami, J.

Heard Mr. A Dasgupta, learned counsel for the petitioner Union. Also heard Mr. SN Sarma, learned Senior Counsel appearing for respondent No. 1. There is no representation on behalf of the other respondents.

2. This writ petition is directed against the award dated 26.09.2005 passed by the learned Presiding Officer, Central Government Industrial Tribunal, Guwahati in reference Case No. 15 C of 1999, which was published on 08.12.2005.

3. The Central Government, in exercise of the powers conferred by clause (d) of subsection (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947, for short, the I.D. Act, vide order dated 08.06.1999, referred an industrial dispute between the employers in relation to the management of the Group General Manager, Oil India Ltd., M/S. Deltech (India) Pvt. Ltd. and their workmen in respect of the

matters specified in the Schedule to the said order.

4. The Schedule reads as under:

Whether the claim of the union (Contractual Workers" Union) for regularization of their service in Oil India Ltd. (Contract workers engaged through Oil India Registered contractors) is justified? If not, to what relief these contractual workers are entitled?

5. The reference was registered as Reference No. 15 C of 1999 in the Central Government Industrial Tribunal, Guwahati.

6. Oil India Limited raised a preliminary objection regarding maintainability of the reference before the learned Tribunal contending that contractual labours cannot raise an industrial dispute for regularisation unless notification u/s 10(1) of the Contract Labour (Regulation & Abolition) Act, 1970, for short, CLRA Act, is issued by the Appropriate Government.

7. The learned Tribunal declined to examine the preliminary objection and decided to proceed with the reference and this resulted in filing of a writ petition by Oil India Ltd. before this Court, which was registered as WP(C) No. 5740/2000.

8. A perusal of the judgment and order of this Court dated 01.08.2002 in the aforesaid writ petition would go to show that it was urged on behalf of the writ petitioner that contract labour has not been abolished in Oil India Ltd. and M/S. Deltech (India) Pvt. Ltd., who is the registered contractor, is the employer of the concerned workmen and as such there was no relationship of master and servant between Oil India Ltd. and workmen in question and as such the reference was not maintainable.

9. This Court held that jurisdiction to decide the reference would arise only if the Tribunal is of the view that it is a case of sham contract and the contract is a camouflage and therefore, it is necessary to have a finding regarding status of the contract. Accordingly, the matter was remanded back to the learned Tribunal to decide the preliminary objection giving liberty to the parties to adduce evidence and produce records with a further direction that Tribunal will proceed with the matter only after disposing of the preliminary objection.

10. After remand, by the impugned award dated 26.09.2005, preliminary objection raised by Oil India Ltd. was disposed of. Though not recorded in the order, the consequence of disposal of the preliminary issue being in the negative and being in favour of the Oil India Ltd., in essence, the reference was not maintainable.

11. Mr. Dasgupta, learned counsel for the petitioner submits that the Tribunal recorded a finding that the contract between Oil India Ltd. and M/S. Deltech (India) Pvt. Ltd. is a valid contract. However, the Tribunal, without any discussion on the evidence on record and without adverting to the arguments advanced, in a summary manner, recorded a finding

that the Union had failed to prove that the contract was not a camouflage or a sham contract.

12. It is submitted by Mr. Dasgupta that there can be many attributes and facets in respect of a sham contract and it cannot be put into a straight-jacket formula and each case has to be considered on the touch-stone of materials on record. He further submits that the learned Tribunal, because of its failure to examine the materials on record in the true perspective, has committed error apparent on the face of the record. He has submitted that the impugned award being an award of conclusion without any reasoning to support the conclusions, requires interference of this Court on this ground alone.

13. Mr. Sarma, learned Senior Counsel appearing for the respondent No. 1 has cited the judgment of the Apex Court in [Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc.](#), to highlight the consequence of issuance of prohibition notification u/s 10(1) of CLRA Act. With reference to the argument advanced by Mr. Dasgupta, it is submitted by him that it is not necessary that while recording a finding with regard to a preliminary issue there has to be an elaborate discussion and if the conclusion is plausible, finding need not be interfered by a writ Court. He has further submitted that in view of the fact that the learned Tribunal had summarised the issues raised by the parties while disposing of the preliminary objection raised by Oil India Ltd. and a conclusion had been recorded on that basis, it cannot be said to be a judgment without reasoning and therefore, no interference is warranted with the award in question.

14. I have considered the submissions of the learned counsel for the parties and have also perused the materials available on record.

15. The consequences of a notification u/s 10(1) CLRA Act as has been held in Steel Authority of India (Supra) are that (i) contract labour working in the establishment concerned at the time of issue of notification will cease to function; (ii) the contract of principal employer with the contractor with regard to the contract labour comes to an end; (iii) no contract labour can be employed by the principal employer in any process, operation or other work in the establishment to which the notification relates at any time thereafter; (iv) the contract labour is not rendered unemployed as is generally assumed but continues in the employment of the contractor as the notification does not serve the relationship of master and servant between the contractor and the contract labour; (v) the contractor can utilise the services of the contract labour in any other establishment in respect of which no notification u/s 10(1) has been issued where all the benefits under the CLRA Act which were being enjoined by it, will be available and lastly; vi) if a contractor intends to retrench his contract labour, he can do so only in conformity with the provisions of the ID Act.

16. Admittedly, there is no notification issued u/s 10(1) of the CLRA Act in respect of the work for which the members of the petitioner Union were engaged.

17. The preliminary issue raised by the Management was: Whether the contract labours can raise an industrial dispute for regularization unless a notification u/s 10(1) of the CLRA Act has been issued by the Appropriate Government?

18. The Tribunal disposed of the preliminary issues as follows:

Being situated thus, let me examine as to whether the contract between the Principal Employer and M/s. Deltech India Pvt. Ltd. was a mere ruse/camouflage or genuine one. The workmen's union in its written statement in para 2 has admitted that the members of this union are contract labourers and there are 67 workers in this union.

Since, the union itself admits that they are contract labours, this fact need not any proof as admitted facts need not be proved by the opposite party.

Though the learned counsel for the union vehemently argued that the contract was camouflage or sham one, no attempt whatsoever, was made by the union to prove it. The mere fact that the management approved the engagement of some of the workmen by the contractor or that the management supervised the drilling works performed by the Workmen engaged by the contractor, it cannot be said that the workmen worked directly under the management. The Clause 7. II, 7. II.1 and 7. II.2 of the contract (Ext. A) clearly stipulate that the company shall have the authority to supervise all the activities of the contractor performed as per terms of the contract.

This being the position, mere supervision of the works of the workmen does not create any relationship between the company and the workmen. Nor can it be said that the contract in question was a sham or camouflage. The company has the moral and legal obligation to supervise the works of the workmen while they are engaged drilling rigs as the equipments used for drilling are the properties of the company and if those equipments which cost several hundred crores of rupees, are mishandled by the workmen, the equipments may be damaged causing huge loss to the company. Hence, the company has its obligation to supervise the drilling works. In order to establish that there has been a relationship of employer and employee between the company and the workmen it must be shown that they were directly engaged by the company and they were directly paid by the company. Not only that, it must be proved that the company maintained a roll of the workmen and granted them leave and other benefits admissible to such employees. Nothing has been proved. It is not suffice to say that the contract was not genuine but camouflage. The Preliminary issue is answered in the negative.

19. After remand by this Court, the Union examined one witness and the management of Oil India Ltd. had also examined one witness. On behalf of the Union, 33 documents were examined and on behalf of the management of Oil India Ltd., 7 documents were examined.

20. A perusal of the extract aforesaid of the award of the learned Tribunal demonstrates that there was no discussion of the evidence adduced by the parties and the documents

examined and only conclusion has been arrived at that the contract was genuine and not a camouflage. Though it is recorded that counsel for the union vehemently argued, there is no indication on what count such vehement argument was advanced.

21. It may not always be necessary that a judgment or award has to be exhaustive, yet essential reasoning with reference to the materials on record cannot be short-circuited. In the instant case, the learned Tribunal did not discuss the evidence at all. In absence of any discussion on the evidence on record, it is not possible for this Court to record a finding either way as to whether the finding recorded by the learned Tribunal is correct or not.

22. In that view of the matter, I am inclined to accept the submission of Mr. Dasgupta, learned counsel for the petitioner that this is a fit case where the impugned award has to be set aside. I am conscious of the fact that the reference is pending from the year 1999 and early resolution is called for. But for the reasons assigned, there is no option for this Court but to take recourse to a remand for a fresh consideration.

23. Accordingly, the impugned award dated 26.09.2005 is set aside and quashed with a further direction to the Central Government Industrial Tribunal, Guwahati to hear the parties and to pass a judgment in accordance with law on the basis of the materials already on record within a period of 3 months from the date of appearance of the parties or their counsel.

24. The parties to the proceeding, either themselves or through their counsel, will appear before the learned Tribunal on 16.07.2014 to take further orders from the learned Tribunal.

25. Registry is directed to send the records to the learned Central Government Industrial Tribunal, Guwahati by a special messenger so as to reach the Tribunal on or before 20.06.2014.