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Indian Oil Corporation Ltd. Vs The Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Asansol, West Bengal and Others

Writ Petition No. 17508 (W) of 2004 with CAN No. 5104 of 2005/ and CAN No. 10516 of 2010

Court: Calcutta High Court

Date of Decision: Aug. 11, 2011

Acts Referred:
Companies Act, 1956 â€" Section 617

Citation: (2012) 132 FLR 718 : (2012) 3 LLJ 171 : (2012) LLR 148

Hon'ble Judges: Tapen Sen, J

Bench: Single Bench

Advocate: Arijit Choudhuri, Mr. Arunava Ghosh, Mr. Soumya Majumder Mr. S. Sil, Mr. A.K. Dhard and Mr. Raj Kumar Basu, for the Appellant; Tapas Kr. Adhikari, Advocate For Respondent No. 2 and Mr. Indranil Chakraborty and Mr. Goutam Misra, Advocates For Respondent No. 3 to 7, for the Respondent

Final Decision: Dismissed

Judgement

Tapen Sen, J.
The Petitioner is a Government Company registered under the provisions of section 617 of the Companies Act, 1956. It

has stated that it Is duly registered to engage Contractors under the provisions of the Contract Labour (Regulation & Abolition) Act, 1970 and for

purposes of maintaining security of its premises, It is required to engage Contractors sponsored by the Director General of Resettlement.

According to the Petitioner, engagement of Contractors for maintaining its security is not prohibited by the Contract Labour (Regulation &

Abolition) Act, 1970 (hereinafter referred to as the CLR Act).

2. It is the further case of the Petitioner that for security arrangements and for the staff colony, Deer Park, City Centre, Durgapur, it had engaged a

Contractor named ""Command Security Agency"" for the period 1.10.1998 to 30.9.2000 by a work Order dated 23.9.1998. Subsequently, the

said work Order was extended w.e.f. 1.10.2000 to 30.9.2002. Thereafter, a fresh work Order was issued on 30.10.2002 and this time it was

awarded to one ""M/s. Lock Jaw One"" w.e.f. 1.10.2002 to 30.9.2004. The said work is till continuing.

3. According to the further case of the Petitioner, ""M/s. Lock Jaw One"" was sponsored by the Director General of settlement and since it employs

less than 20 workmen, is not required obtain a licence under the C.L.R. Act.

4. The further case of the Petitioner is that the Respondent Nos. 3 to 7 are all employees of the said Contractor. In the year 2000, the Respondent

No. 3 (Kirti Bhusan Paul) filed a Writ Petition before this Court praying for an Order of absorption on the post of a Gunman. By an Order dated

19.8.2000, Hon''ble Mr. Justice Ranojlt Kumar Mitra directed the Petitioner to consider his Representation and grant him a hearing and dispose of

the matter, The Petitioner considered the matter but did not absorb the Respondent No. 3. The Respondent No. 3 did not move this Court but

thereafter, the Respondent No. 3 and some others are said to have died another Writ Petition where Petitioner was not made a party. By an Order

dated 9.10.2002, Hon''ble Mr. Justice P.K. Chattopadhyay directed the Assistant Labour Commissioner (Central) to dispose of a Representation

made by the Petitioner. Thereafter, the petitioner received a Notice of conciliation proceedings from the Assistant Labour Commissioner (Central)

dated 22.1.2003 on an alleged Industrial dispute between the Petitioner and the Respondent Nos. 3 to 7 regarding their regularisation In service.

The Petitioner attended the proceeding through its representative and also recorded its contentions in writing by a letter dated 11.2.2003

(Annexure-P/7). In the said written contentions, the Petitioners stated that they did not engage any security personnel In their premises and as per

the Government of India Directives, they are required to engage a security agency sponsored by the Director General of Resettlement which has its

own terms and conditions for deployment of security personnel. These security personnel are governed by the said terms and conditions including

wages and other facilities/allowances and therefore, extending similar wages/benefits as are applicable to their own employees to those security

personnel was not at all tenable, especially when, they were not even employees of the Corporation.

5. It is the further case of the Petitioner that thereafter, by a ""pretended"" reference dated 8.7.2003, the Respondent No. 2 ""pretended"" to refer a

so called"" industrial dispute ""alleged to exist"" between the Petitioners and its workmen before the Presiding Officer. Central Government Industrial

Tribunal-cum-Labour Court for adjudication on the following issue:

Whether the action of the Management of Indian Oil Corporation Ltd. Durgapur Divisional Office in denying regularisation of services to Shri K.B.

Paul, Gunman and four others (list enclosed) in IOCL is legal and justified ? if not, to what relief the workmen are entitled? (Para-phrased by this

Court)

6. The concerned workmen in the said Reference are the Respondent Nos. 3 to 7 herein and who, according to the Petitioner, are all employees

of ""M/s. Lock Jaw One"". The said Respondents were never and are not the employees of the Petitioner. The Petitioner has further stated that it

has 2229 workmen in the Eastern Region alone who are represented by the Indian Oil Employees (Eastern Branch) and the Indian Oil Sramik

Union. None of the workmen of the Petitioner nor any Trade Union of such workmen has espoused the ""pretended"" dispute and no copy has been

sent to any Trade Union as is invariably done when a dispute is espoused by the Central Body of the workmen. It is the further case of the

Petitioner that on or about 17th June 2004, it received a Notice dated 8.6.2004 from the Respondent No. I asking it to submit its written

statement along with a list of documents and witnesses by the 25th June 2004. They then came to learn that the Respondent Nos. 3 to 7 had

already filed a written statement. A copy of the same is marked Annexure P/10 to this Writ Petition.

7. According to the Petitioners, the written statement filed by the Respondent Nos. 3 to 7 goes to show that they were employees of ""M/s.

Command Security Personnel Agency"" and not of the Petitioners. They have also submitted that no workmen of the Petitioner has espoused the

dispute, ""pretendedly"" referred.

Based on the aforementioned set of facts, the Petitioner has filed this Writ Petition praying, inter alia, for the issuance of a writ of Mandamus

commanding upon the Respondent Nos. 1 and 2 to forbear from giving effect to the ""pretended"" Order of reference dated 8.7.2003 and from

acting in terms 1 hereof. They have also made other consequential prayers In the Writ Petition.

8. An Affidavit-in-opposition has been filed by Shri K.B. Paul (Respondent No. 3) who has stated that he has also been duly authorised by the

Respondent Nos. 4 to 7 to affirm the said Affidavit. It has been stated in Para 4 that the Respondent Nos. 3 to 7 were all appointed in the year

1991 through the Purbanchal ex-Servicemen Welfare Association as licensed Gunman and Security Guards in the Indian Oil Corporation and

posted at their Durgapur Staff Quarters. They have relied upon Annexure-01. They have also stated that as many as 44 security staff had been

recruited by Indian Oil Corporation Ltd. through contractors from time to time and were performing their jobs in Indian Oil Corporation at

Durgapur. It is their further case that for purposes of maintaining security, the Petitioners were engaged for years together and therefore, their job is

perennial In nature. They have also submitted that security Is being provided by them since Inception of the other quarters and it is not a make-shift

arrangement, those hosts ought to have been created but due to Illegal policies of exploitation, they have been denied regular posts in the Indian Oil

Corporation. Regular posts carry higher salary structures and terminal benefits as well as other benefits which are being enjoyed by the regular staff

who are duly appointed by Indian Oil Corporation. They have further denied at para-5 that they were engaged through the ""Command Security

Agency"" on 1.10.1998 to 30.9.2000. They have stated that actually, their appointments were made in the year 1991 and this fact has been

suppressed. They have also submitted that 44 workmen are engaged through Contractors. They have also stated that though the Contractors have

changed from time to time, the workmen have remained the same which clearly points out to the fact that the award of contracts are ""sham"" and a

camouflage"" and that the principal employer, being the Petitioner, retains control over them. They have also submitted that the usage of the word

pretended"" is illegal and that the reference was made properly and it is a valid reference and therefore there is no cause in interference by this

Court. They have further stated that the Contractors namely ""M/s. Lock Jaw One"" or ""Command Security Agency or ""Security Management

Services"" or ""Purbanchal ex-Servicemen Welfare Association"" never recruited them as their own staff but had actually recruited them for purposes

of employment in M/s. Indian Oil Corporation. These Contractors are mere name lenders for their employment and in fact, it is M/s. Indian Oil

Corporation who are real employers and the action of the said Corporation in not absorbing them is illegal exploitation of workmen who are paid

less and who have no security in the services but who have dedicated their lives for the principal employer namely, M/s. Indian Oil Corporation.

They have also stated that the allegation of there being no employer-employee relationship is an allegation of fact which can be resolved by the

Industrial Adjudicator and therefore, the High Court should not enter into disputed questions of fact. They have made other statements but they are

really In the nature of arguments In support of the reference and therefore, every incidental submission and/or statement need not be repeated.

9. An Affidavit-in-reply has been filed by the Petitioners who have stated that the documents brought on record by the Respondents to the effect

that the Respondent No. 3 was appointed through ""Purbanchal ex-Servicemen Welfare Association"" in 1991 is contrary to the statements made in

Annexure-01 of the said Affidavit-in-opposition because the said document shows and gives details of service of the respondents from 12.6.1992

and therefore, this cannot be relied upon. It is also contrary to the allegations contained in Para-2 of the written statement filed by the Industrial

Tribunal being Annexure-P/10. They have further repeated that the Respondents are all employees of the Contractors and were never their

employees and therefore, they do not have any right to a Post under the Petitioner. They have also attempted to justify their stand taken in the Writ

Petition.

10. Mr. Arijit Chowdhuri, learned Senior Counsel appearing for the Petitioner has submitted that the reference itself is bad because the concerned

workmen are all admittedly employees of a Contractor. He submits that this fact would be evident from the various statements made in the written

statements of the Respondents themselves (Annexure-P/10) in which they have stated in Para-2 that they were temporarily absorbed as Security

guards by ""Command Security Agency"" under Indian Oil Corporation, Durgapur. In Para-3 of the said written statement, they have further stated

that since appointment by the ""Command Security Agency"", they have been serving the Indian Oil Corporation in its City centre, Durgapur and

rendering services continuously from 1.10.1993 and 1.1.1998 till date uninterruptedly and without any break of service. Learned Counsel relies

upon a letter dated 5.10.1998 brought on record at page 53 of the Writ Petition to show that the Proprietor of ""Command Security Agency"" had

appointed the Respondent No. 3 (Kirti Bhusan Paul). He has further submitted that since the Respondent Nos. 3 to 7 are not their employees,

therefore, there cannot be an industrial dispute at their instance and at best, it can be a claim by a complete stranger without any right attached to

them for claiming employment and therefore this cannot be an Industrial Dispute.

11. The basic contention of the learned Counsel appearing for the Petitioner is that since the private Respondents are not workmen of the

Petitioner, therefore the Industrial Adjudicator has no authority to proceed with the matter. Whether a person is an employee or not, Is a question

of fact which can best be decided by evidence. A Writ Court cannot enter Into the domain of facts for purposes of ousting the jurisdiction of the

Industrial Adjudicator. This Court therefore Is not inclined to interfere at this stage but directs the Respondent No. 1 to take up the issue as to

whether these Private Respondents are employees of the Petitioner at the very outset and only then, to proceed with the matter provided he comes

to a finding that they are employees of the Petitioner. If however, he comes to a finding that they are not the employees of the Petitioner, then of

course, he will not proceed with the reference.

With the aforesaid Observations and Directions, this Writ Petition stands dismissed. As a consequence, both the Interlocutory Applications being

CAN 5104 of 2005 and CAN 10516 of 2010 stand dismissed.

Upon appropriate Application(s) being made, urgent Photostat Certified copy of this Judgment, may be given/issued ""expeditiously subject to usual

terms and conditions.

11th August, 2011.

S.8.

A.F.R7N.A.F.R.

Letter:

After the aforesaid Judgment was delivered in Court, learned Counsel for the Petitioner submitted that the interim Order granted earlier should be

vacated. However. Mr. Indranil Chakraborty, learned Counsel for the Respondent Nos. 3 to 7 pointed out that if the interim Order is vacated, the

Petitioner would remove the workmen from the quarters in question. However, since this Court has dismissed the Writ Petition as also the

Interlocutory Applications", the question of any interim Order subsisting even thereafter, does not arise. The parties will however be at liberty to

pray for interim Order before the Industrial Adjudicator.