(1995) 05 CAL CK 0003

Calcutta High Court

Case No: F.M.A. No. 840 of 1995

The Indian Iron and Steel Co. Ltd.		APPELLANT
	Vs	
United Contract Workers'' Union (C.I.T.U.) Burnpur, Burdwan W.B. and Others		RESPONDENT

Date of Decision: May 5, 1995

Acts Referred:

- Constitution of India, 1950 - Article 226
- Contract Labour (Regulation and Abolition) Act, 1970 - Section 10, 30

Citation: 100 CWN 171

Hon'ble Judges: Vidya Nand, J; Prabir Kumar Majumdar, J

Bench: Division Bench

Advocate: Jayanta Sinha, for the Appellant; S.N. Roy and Abha Roy, for the Respondent

Final Decision: Allowed

Judgement

Prabir Kumar Majumdar, J.

This appeal arises from the judgment and order dated 1st March, 1994 passed by a learned Judge of this Court disposing of the writ application in Civil Order No. 13795(W) of 1990, filed by Contract Workers'' Union wherein the learned Judge directed the appellant company to absorb and regularise the members of the said Union on permanent basis within a period stipulated in the said order. There was a further direction for fixing the pay of the petitioners in the said writ petition in the appropriate scale of pay. According to the appellant there was a persistent dispute raised from time to time for absorption of all contract labours who were working in different contracts with the different contractors having obtained specific jobs from the appellant company. There was a Memorandum of Settlement signed by Joint Wage Negotiation Committee on 27th February, 1976 and another Memorandum of Settlement reached on 15th December, 1971 between the management of the

appellant company and four local unions. It was agreed to assess the number of jobs of permanent and perennial nature being done by the contract labours inside the works.

2. It is the further case of the appellant that accordingly, four lists were prepared in consultation with the unions in respect of different types of duties performed by contract labourers. Out of these lists, contract labourers numbering 1445 covered under List I were departmentalised in two phases. The remaining three lists pertain to contract jobs identified as perennial and permanent in nature; and contract jobs identified as regular and permanent but which are intermittent, fluctuating and non enduring, and further a list of non-perennial jobs''.

3. According to the appellant there was also another settlement reached between the parties on 12th July, 1989 and such settlement is still in force. It is also submitted on behalf of the appellant that writ petitioners did not refer to all relevant Memorandum of Settlement time to time reached between the parties.

4. The learned Advocate appearing for the appellant has submitted before us that in the scheme of the Act, i.e. Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as the said Act), elaborate procedure have been prescribed for identification of jobs of perennial nature being performed by contract laborer for an establishment. It is further submitted that such identification can only be done on effectual investigation by the statutorily prescribed authority, namely the "appropriate Government" within the meaning of the said Act. The learned Advocate appearing for the appellant has also submitted that upon such identification of some jobs of perennial nature, the power is conferred on the appropriate Government to abolish engagement of contract labourers for such jobs. The learned Counsel for the appellant further contended that in a writ proceedings such effectual investigation cannot be undertaken nor is it convenient to undertake such investigation. It is submitted by the learned Advocate for the appellant that the writ petitioners may approach the appropriate authority under the said Act regarding their grievance by resorting to the procedure u/s 10 of the said Act and this Court exercising jurisdiction under Article 226 of the Constitution is not the appropriate forum for undertaking the investigation or adjudicating upon the issues involving disputed facts. It is submitted on behalf of the appellant that the Court cannot grant a mandate, as has been done in the instant case, regarding absorption or regularisation.

5. The learned Counsel for the appellant has referred to certain decisions of the Supreme Court. In Standard Vacuum''s case reported in AIR 1990 SC 848, it has been, inter alia, laid down that perennial nature of job should be departmentalised. In the Standard Vacuum Refinery Company of India Ltd. v. Their Workmen &Anr., reported in AIR, 1960 SC 848, a dispute was raised by the workmen of the refinery company with respect to contract labour employed by the company. The workmen wanted that the contract system should be abolished and the workers under the

contractor should be treated as workers of the company, In this case it was the case of the company that there was no industrial dispute and it was not open to the workmen to raise a dispute as to whether the workmen should be treated as regular employee of the company. The Supreme Court observed that one should bear in mind that industrial adjudication generally does not encourage the employment of contract labour and Tribunal was right in directing that the contract system should be abolished and Tribunal had jurisdiction to say so.

6. The learned Advocate for the appellant has also referred to another Supreme Court decision reported in Vegoils Private Limited Vs. The Workmen, where the Supreme Court held, inter alia, that a dispute regarding abolition of contract labour is not referable to an Industrial Tribunal and the Supreme Court observed that the identification of jobs of perennial nature and direction for abolition of contract labour require detailed actual investigation and the authority to deal with this is the authority prescribed by the Act, namely the "appropriate authority". Relying on this observation the learned Advocate appearing for the appellant contended that a Writ Court cannot go into such factual aspects and whether the jobs are perennial in nature or not can only be and should be investigated by the appropriate authority under the said Act The learned Advocate appearing for the appellant has also referred to another decision of the Supreme Court, reported in AIR SC 409, where Supreme Court held that the Court was not empowered to direct abolition of contract labour system and it was only the "appropriate Government" that could direct such abolition of the said Act.

7. The learned Counsel for the respondent workmen has submitted that the learned Trial Judge was fully justified in making the direction as has been made by the judgment and order of the learned Trial Judge. It has been contended on behalf of the respondent employees that the appellant has already processed the identification in respect of other employees and has taken necessary steps in the matter: It is, therefore, contended on behalf of the respondent workmen that in the instant case the writ petitioners should also have the same benefits as were made available to the other employees of other contractors working in the company. It is also their contention that quite, a umber of workmen have been continuously discharging duties for a considerable period of time at a stretch and they have been discharging their duties of perennial type. Therefore, they are entitled to be absorbed in the regular service of the appellant company.

8. The learned Advocate for the respondent workmen has also contended that there has been a notification already issued by the appropriate Government prohibiting employment of contract labour in some departments of the appellant company, namely, brick department and the benefit of the notification was granted to the workmen engaged in the work of cleaning and stacking and other allied jobs by excluding the workmen of the said department engaged in loading and unloading jobs. This notification was challenged and ultimately the matter went upto Supreme

Court. The Supreme Court in the decision reported in Sankar Mukherjee and Others Vs. Union of India (UOI) and Others, held that the said notification under challenge was discriminatory in nature. It is also contended that under the provisions of Section 30 of the said Act, the writ petitioners are entitled to the benefits as are receivable by the regular employees of the appellant company.

9. It appears that the main grievance of the writ petitioners is that they have been discharging their duties as contract labour in the appellant company for a considerable period of time like the other regular employees of the appellant company discharging similar duties. Therefore, since they are doing the nature of perennial job, they should be absorbed to the regular establishment of the appellant company. It appears that for the purpose of absorption of the contract labours, it has to be ascertained as to whether the workman concerned were on the jobs of perennial nature and considering the nature of the service rendered by the workmen concerned, it is to be decided by the appropriate authority in the manner as laid down in the said Act as to who are doing the job of perennial nature and what is the nature of such job and then only the workman can only be absorbed in the regular establishment after compliance with the procedure prescribed by the said Act. It, therefore, requires some factual investigation under the parameter of the said Act and if there is any dispute as to who should be regularised this dispute can only be gone into by the "appropriate Government" under the said Act.

10. Section 10 of the said Act is as'' follows :-

Section 10 :- Prohibition of employment of contract labour :

(1) Notwithstanding anything contained in this Act, 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.

(2) Before issuing any notification under sub-section (1) 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, such as -

(a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment;

(b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;

(c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;

(d) whether it is sufficient to employ considerable number of whole time workmen.

11. In the Explanation to Section 10 it appears that if question arise whether any processing other work is of perennial nature, the decision of the appropriate Government therein shall be final. Therefore, an enquiry has to be made as to whether the concerned workmen were doing some work of perennial nature and also whether they were discharging duties on the job for a considerable period of time and further it has to be established that they were working for the contractor, who was directed by the company to get certain work done by their employees. Therefore, there are certain stages of enquiry before any final decision is taken by the appropriate authority under the said Act. It cannot be an automatic consequence that upon abolition of contract labour the workmen employed by the contractor should be directly absorbed by the principal employer, namely, the company.

12. It appears to us that there cannot be any direction by the Court to regularise the service of the contractor''s employee by absorbing them into the service of the company until those factual investigation undertaken by the proper authority were complete. It also appears to us that it is not within the domain of the Court exercising jurisdiction under Article 226 of the Constitution to undertake such factual enquiries for that an authority has been empowered to undertake such enquiry by the Act and such authority has been empowered to go into all questions relating to contract labour.

13. We do not, however, wish to lay down this proposition that the Court in a proceeding under Article 226 of the Constitution cannot direct regularisation of absorption in any case. If the Court, however, finds that some investigation has been undertaken by the appropriate authority towards proper regularisation or absorption of the regular service of the company and out of such investigation some firm conclusion has been taken favorably by the concerned authority regarding the claim of the workmen concerning regularisation and absorption, the Court, in such a case, can direct the company to regularise or absorb the concerned workman into the regular service of the company. In such a case further factual investigation as to the disputed facts may not be necessary.

14. It appears from the judgment that the learned Judge has referred to the relevant Memorandum of Settlement as also other agreements entered into between the parties from time to time and the learned Judge has come to the conclusion that the members of the Contractors'' Union, the writ petitioners had been working for more than a decade as contract labours in various departments under the principal employer, i.e. the appellant company. Tripartite settlements have been arrived at from time to time and pursuant thereto a large number of workmen have been absorbed in regular employment. It has also been noted by the learned Judge that the Government has abolished the contract labour. Therefore, there should be direction for absorption and regularisation as has been given by the Supreme Court

in similar other cases. The learned Judge has also observed that Section 10 of the Act dealt with abolition while the rest of the Act dealt mainly with the regularisation. The dominant idea of Section 10 of the Act was to find out, whether the concerned workmen were on the perennial nature of work in the establishment of the Government.

15. The learned Judge has also referred to Clause 6.4 of the Tripartite settlement where the company agreed in principle that the company shall absorb all the contract labours who were engaged at that point of time in the regular establishment.

16. Clause 6.4 is as follows :-

6.4 : Abolition of contract labour :-

(i) It is agreed in principle that the company shall not employ labour on jobs of permanent and perennial nature. The progress of implementation of this clause will be reviewed from time to time by the parties;

(ii) The company shall assess the number of jobs of a perennial nature now being done by contractors'' labour and arrange to fill up from those contractors'' men who are already employed on such jobs according to the suitability and rules applicable in the company. The abolition of contractors'' labour in such jobs will be under a phased programme and every endeavour will be made to complete the work within a period of six months. Unions will be kept informed from time to time about the progress made in this connections.

(iii) In consideration of the low wages of the contractors'' workmen it is suggested that all concerned should try their best to raise the wage rates of this category of workmen in the interest of industrial peace and social justice.

17. It appears that the company shall assess the number of jobs of a permanent or perennial nature now being done by the contract labours and arrange to fill up from the contractors'' men, who were already employees on such jobs, according to the suitability and the rules applicable to the company, the abolition of contract labours in such jobs would be under phased programme.

18. It is true that the company had been assessing the number of jobs of permanent and perennial nature being done by the contractors'' labours and accordingly, the list was prepared in consultation with the unions in respect of different types of duties performed by the contractors'' labours.

19. We have already indicated that whether the job is of perennial or not, it requires factual investigation under the parameter of the said Act and if there is any dispute as to such investigation then it should be gone into by the appropriate Government being the prescribed authority under the said Act.

20. We therefore, in the facts of the case do not uphold the learned Judge''s direction as to regularisation and absorption within the time stipulated in the judgment. It is not in dispute that such process of regularisation has been undertaken by the company and quite a number of employees had been regularised or absorbed in the regular service of the company after assessment of the nature of work rendered by the contractors labours. Therefore, the company should go on making similar investigation or assessment with regard to the present writ petitioners and the company should make an endeavour to take steps for regularisation or absorption of such writ petitioners satisfying the test as prescribed by the Act If it is found that the concerned workmen were rendering service for a considerable period of time and rendering service of perennial nature, satisfying the test of such permanency in the context of the said Act, then there is no reason why the writ petitioners satisfying those test should not be absorbed, may not be at a time, but in a phased manner.

21. We, therefore, set aside the judgment and order in Civil Order No. 13795 (W) of 1990. The writ application is dismissed. The appeal is, therefore, allowed. There will be no order as to costs. Mr. S.N. Ray, learned Counsel appearing for the respondents prays for stay of operation of the judgment and order. The prayer is refused.

Vidya Nand, J.

I agree