

(1999) 08 CAL CK 0020

Calcutta High Court

Case No: Constitutional Writ Jurisdiction C.O. No. 6268 (W) of 1990

Indian Oil Township
Maintenance
Contractor Workers"
Union and Others

APPELLANT

Vs

Chairman, Indian Oil
Corporation Ltd.

RESPONDENT

Date of Decision: Aug. 2, 1999

Acts Referred:

- Constitution of India, 1950 - Article 12, 21, 226
- Contract Labour (Regulation and Abolition) Act, 1970 - Section 10, 10(1), 2

Citation: (1999) 2 CALLT 631 : (2000) 84 FLR 506

Hon'ble Judges: Pinaki Chandra Ghosh, J

Bench: Single Bench

Advocate: Mr. B.R. Ghoshal and Mr. Ashim Ghosh, Mr. Hirak Mitra, Mr. M.M. Das, Mr. A.K. Bera and Mr. S.S. Akhtar, for the Appellant; Mr. P.P. Jeanwala, Mr. T. Banerjee and Mr. N.K. Mehta, for the Respondent

Final Decision: Allowed

Judgement

P.C. Ghosh, J.

This is an application filed by the petitioner inter alia praying for :-

(a) A writ in the nature of Mandamus commanding the respondents to absorb the petitioners permanently in the regular establishment and to extend all service benefits as enjoyed by similarly circumstanced employed who are under the regular establishment of them;

(b) A writ in the nature of Mandamus commanding the respondents not to appoint any staff like the petitioners directly until and unless the petitioner are totally absorbed in the

regular establishment :

(c) A writ in the nature of Certiorari directing the respondents to transmit and certify to this Hon"ble Court all the records of the case had before them to be in this court dealt with so that conscionable Justice may be done to the petitioners in terms of prayers;

(d) A Rule NISI in terms of prayers (a), (b) and (c) above;

(e) An ad-interim order of injunction directing the respondents to maintain status quo as on date as regard the services of the petitioners and not to appoint any similar Incumbents from outside.

2. Subsequent to the filing of the writ application the petitioner filed a writ application to compel the Central Government to Issue a notification u/s 10 of the Contract Labour (Regulation & Abolition) Act, 1970. Such Affidavit is affirmed by one Bishnu Pada Jana on 23rd September, 1996.

3. The grievance of the writ petitioners f s that the petitioners have been doing works at the Haldia Township and elsewhere and the Central Government ought to have exercised its power u/s 10 of the said Act and should have directed abolition of employment of Contract Labour and direct absorption of the petitioners and members of the petitioner No, 1.

4. This application was filed in the year 1990 and some of the employees have already retired and they have been substituted by new persons and as placed by Mr. Mitra. appearing on behalf of the petitioner, some of the employees have taken voluntary retirement and in their place their living heirs have been appointed.

5. The instant writ application is filed by the petitioners inter alia for absorption of the petitioners in the establishment directly. The petitioners are serving their respective posts in the maintenance work in the entire Township of Indian Oil Corporation (hereinafter referred to as IOC) at Haldia. According to the petitioners, such appointments have been effected during 1972 and 1980.

6. The petitioner further stated that they have been serving the respondent Corporation without any break of service. The petitioners further stated that the petitioners are at par with the regular establishment staff although the services are taken from the petitioners through the contractors. These contractors are Invited year after year and as such though the contractors have been changed, the petitioners are still in service and serving the establishment. It is further stated that the management makes it clear that all the new appointee contractors would have to execute the job with the petitioners only. According to the petitioner, several discussions were held, but with the management of the IOC for absorption of the petitioners, but inspite of such discussions no steps have yet been taken.

7. According to the petitioner, the petitioners cannot be treated as casual employees Inasmuch as the petitioners are working for the regular establishment without any break since their appointment. According to the petitioner, the petitioners are legally entitled to be absorbed permanently in the regular establishment. It further stated that the petitioners are deprived from the actual payment and allowances which are in fact payable by the respondent IOC if the petitioner are absorbed permanently under the said Corporation. It is further submitted that the petitioners are directly linked and correlated hour to hour Job of the respondent establishment and one of perennial nature and the respondents are bound to regard the same on par with the employees of the same nature who are under the respondents directly in the regular establishment and the respondents are legally bound to absorb the petitioner in the regular establishment and to extend all the service facilities and benefits to the petitioners. It is further stated that the petitioners and the respondents IOC in fact have an employer and employee relationship between them and the respondents are statutory bound to abolish the contract system and to absorb the petitioners under the said establishment.

8. Mr. Mitra appearing on behalf of the petitioners submitted that from the record it is very clear that the IOC being the principal employer have all throughout exercised a tight control over the number of persons who had engaged by the so called contractor as well as the works that were to be rendered by the writ petitioners through the contractor and in fact the petitioners were appointed and the petitioners have been engaged by the principal employer through their contractors.

9. He further submitted that in fact the terms and conditions of the employee of the contractor is clearly and rigorously controlled by the Principal Employer, IOC Limited. Such existence of control would appear from the fact :--

(a) The number of workman:

(b) Place of work:

(c) The nature of work.

and it would further re-evident that the workmen were required to obtain satisfaction certificate from the Engineer Concerned of the Corporation and they were to attend to the complaints that were received from different persons kept in the office of the Estate Officer, IOL township.

10. In addition to the above the principal employer maintained the Provident fund, gratuity and other matters relating to the terms and service condition of the benefits which were allowed or allowable to the writ petitioner which shows the control of the said principal employer, i.e. IOL

11. He further submitted that the Administrative Training Institute, Hospital, School, and other places are engaged round the clock through the Estate officer of the IOL All these

places are Instantly and directly connected with the industry, trade and business of IOC Limited.

12. Mr. Mitra appearing on behalf of the petitioner, further submitted that the law regarding the Contract Labour after the Judgment delivered by the Hon"ble Supreme Court reported in [Air India Statutory Corporation, etc. Vs. United Labour Union and others \[overruled\]](#), it has undergone a radical change. In the said judgment it is submitted that the act which has been enacted is for the purpose of social welfare and further to the general Interest of the community of workmen. It is for the purpose of achieve a public purpose and to abolish the contract labour when it is found to be of perennial nature. He further submitted that when the appropriate Government finds that the employment is of perennial nature etc. contract system stand abolished, thereby it intended that if the workmen were performing the duties of the post which were found to be of perennial nature on par with regular service, their service would be also regularised.

13. He further submitted that the work of the petitioners are of perennial nature which have never been disputed by the IOC and further all the contractors have changed but the petitioners have remained there to do their Jobs. He further drew my attention to paragraph-10 of the Affidavit-In-Opposition filed by the IOC affirmed on 26th July, 1990 and submitted that the said fact have not been disputed in the said affidavit. He further submitted that the extent of difference of emoluments between the regular employees of IOC Limited and the writ petitioner who are discharging the same functions have been clearly brought out in annexure to the affidavit of Bishnu Pada Jana affirmed on 23rd July, 1997 and he drew my attention to the same.

14. He further submitted that the Contract Labour (Regulation & Abolition) Act, 1970 is a piece of social legislation for the welfare of the labourers and it should be liberally construed. He relied upon a Judgment reported in 1977 Labour Industrial Cases 1037 [Lionel Edwards Limited & others v. Labour Enforcement Officer & others).

He further submitted that the establishment defines in section 2(e) of the Acts is of two parts-one is of any office or department of the Government or a local authority or, secondly any place where any Industry, trade, business, manufacture or occupation is carried on. He further submitted that the IOC Limited is a "State" within the meaning of Article 12 of the Constitution, and the Government has to be liberally construed and as such should Include any place owned or occupied by IOC. The Estate Office, the Hospital, administrative training building, school, they are Inseparably connected with the business and functioning of the IOC Limited and those are maintained by the writ petitioners on being engaged by the contractor at the direction of the IOC He further relied upon a judgment reported in [Gujarat Electricity Board, Thermal Power Station, Ukai Vs. Hind Mazdoor Sabha and Others](#), and submitted that the Supreme Court has held that the only ostensible purpose in engaging the contract labour Instead of the direct employees is the monetary advantage by reducing the expenditure. Apart from the fact that it is an unfair labour practice. He also submitted that the Supreme Court has held that

it is also an economically short sighted and unsound policy, both from the point of view of the undertaking concerned and the country as a whole. The economic growth should not be measured only in terms of production and profits. It has to be gauged primarily in terms of employment and earnings of the people. Man has to be the focal point of the development. The attitude adopted by the undertakings is Inconsistent with the need to reduce unemployment and the Government policy declared from time to time, to give jobs to the unemployed. He further submitted that the respondent IOL in their affidavit has admitted that the petitioners Union from time to time requested the IOC, who absorbed the employees petitioners of the respective contractors in its own establishment. He also stated that although the petitioners have taken steps he drew my attention to annexure-C to the affidavit-in-opposition affirmed on July 26, 1990 by Debashish Chowdhury and he states that the contract labour engaged by the IOC through their contractors and further did not Issue any such mandatory direction to absorb the petitioners. He further submitted that six of the writ petitioners at Serial Nos. 4, 89, 138, 146, 163 and 168 died-in-harness, and in their places their legal heirs have been appointed in the category of died-in-harness. He has stated that 18 of 171 petitioners have taken voluntary retirement and they are engaged in their place.

15. He further submitted that the scale of pay and/or salary of the petitioners and their counterparts i.e. the persons those who have already been appointed on regular basis by IOC Limited in their establishment to discharge the self-same duly and or function are getting much higher pay than that of the petitioners who are engaged by the principal employer through the contractors. In support of his submission he drew my attention to the salary sheets of the counterparts of the petitioners being annexed to the application.

16. He further submitted that the Contract Labour Act is a piece of social legislation and in the Judgment reported in [Air India Statutory Corporation, etc. Vs. United Labour Union and others \[overruled\]](#), the Supreme Court has elaborately discussed about the main Intends and objects of the said Act and also laid down the process by which the said Act shall have to be Implemented in the case of the establishment where perennial type of works are being done by the contract labours who are engaged by the contractors at the Instance of the principal employer.

17. Mr. Mitra further relied upon an unreported judgment delivered by His Lordship Satyabrata Sinha, J. In the case of Haldia Refinery Canteen Employees Union, Haldia Oil Refinery v. General Manager, Haldia Refinery of Indian Oil Corporation Ltd. on 24th August, 1998 where by His Lordship had held that there is no doubt that the respondents are bound to regularise and absorb the services of the canteen workmen who have been working for a number of years and had made an order accordingly.

18. Mr. Jeanwala appearing on behalf of the respondents have submitted that originally neither IOC nor the Union of India was made a party. When the respondents took such point the petitioners subsequently the applications for amendment were made to add IOC and the State of West Bengal and the Union of India was added as party He further

submitted that the contract labour could not be abolished by a court in a writ application but could only be abolished by the appropriate Government making an order u/s 10 of the Contract Labour (Regulation & Abolition) Act, 1970 prohibiting the employment of contract labour in particular process. In the present case there has been no such prohibition. Hence an order was passed directing the Government of India which is the appropriate Government to consider the case of the petitioner in accordance with the law the question whether contract labour should be abolished in the process maintaining the Township and after having given all parties an opportunity to discuss in the matter and to file a report before this court. Even such order was not made without hearing them, no steps have been taken by the Central Government.

19. According to Mr. Jeanwala, the appropriate Government, i.e. the Central Government herein, has no power u/s 10 of the said Act to prohibit the employment of contract labour in any process, operation or other work in any township. He further submitted that for the purpose of this Act the word "establishment" has been defined in section 2(e) of the said Act and he submitted that a person hired through a contractor to do work in the establishment is deemed to be employed as a contract labour and similarly if he is employed in connection with the work of an establishment, but the notion of an establishment as a place is controlled by the Act.

20. He further submitted that a Township is not a place where any Industrial or business activity is carried on. Township is nothing but for the purpose of providing accommodation in its officers or other employees and as such it will have to be taken as the property owner and as such he further submitted that the activities resulting from the owning or leasing of house property are activities that under not an ordinary owner of a house property. In support of his contention he relied on a judgment reported in [Gammon India Ltd. and Others Vs. Union of India \(UOI\) and Others](#), . He also drew my attention to paragraph-19 of the said judgment which is set out hereinbelow :-

"The expression "work of an establishment" means the work site where the construction work of the establishment is carried on by the petitioners by employing contract labour. Every Clause of a statute is to be construed with reference to the context and other provisions of the Act to make a consistent and harmonious meaning of the statute relating to the subject-matter. The interpretation of the words will be by looking at the context, the collection of the words and the object of the words relating to the matters. The words are not to be viewed detached from the context of the statute. The words are to be viewed in relation to the whole context. The definitions of contractor, workman, contract labour, establishment, principal employer all indicate the work of an establishment means the work site of the establishment where a building is constructed for the establishment. The construction is thus the work of the establishment ..."

21. He further submitted that applying the principles of the said Judgment to the case of IOC it is clear that the work site of the factory etc. where IOC carries on its trade, business or undertaking is the work site of the establishment and it is only work carried on

at that work site or for the benefit of that work site that falls within the provisions of the Act.

22. He also relied upon a Judgment reported in [Bharat Petroleum Corpn. Ltd. Vs. Mumbai Shramik Sangha and Others](#), , where the Supreme Court held that whether the restricted scope attributed to section 10 of the said Act given in the case of Gammon India Ltd. (supra) was correct or not needed to be decided independently by a Constitution Bench and the matter was referred for such purpose.

23. Mr. Jeanwala further submitted that it is clear from the fact that the Bench makes its difference on the basis of Gammon India's case as it stands the Central Government would have no such power, otherwise it would not have found it necessary to make the reference in order to decide the case. He further submitted that the Judgment of His Lordship Satyabrata Sinha. J. In respect of Canteen Workers have no application to the present case. He further submitted that the judgment given by His Lordship is distinguishable on the ground that the Canteen workers were not entitled to be absorbed unless two conditions were fulfilled :-- first, the Institution must be under a legal obligation, statutory or contractual or other, to run a canteen and secondly, it must exercise control over the persons employed in the canteen, directing them not only on what work to do but also how to do it. As these conditions were not fulfilled in a later case reported In [Employers in relation to the Management of Reserve Bank of India Vs. Their Workmen](#), , in the RBI Case, the employees' claim failed.

He further relied upon a Judgment reported in [Air India Statutory Corporation, etc. Vs. United Labour Union and others \[overruled\]](#), and submitted that the writ court should not direct the policy of contract by an order u/s 10 of the said Act by the appropriate Government prohibiting the employee of contract labour in a particular process.

25. In the circumstance he submitted that this application must be dismissed.

26. In reply to the arguments made by Mr. Jeanwala Mr. Mitra appearing on behalf of the petitioners submitted that the factual basis of the arguments does not exist inasmuch as the point sought to be raised by the IOC Limited at this stage has never been mentioned in any of the numerous affidavits filed by them. The contention that the word "establishment" as defined in section 2(e) of the Act does not cover the township cannot be accepted particularly because IOC Limited has obtained licence under the Act.

27. He further submitted that although the court has passed an order directing the Central Government to take necessary steps in the matter and to file a report, no steps have yet been taken although time was granted on number of occasions, but no steps have been taken by the Central Government.

28. Mr. Ghosal appearing on behalf of the Central Government submitted that on number of occasions have taken time to file an application. Such time was granted from time to time till date, no steps have been taken.

29. He also submitted that he has already taken steps and the order passed by this court earlier has been sent to the authorities concerned but he has not yet received any report or instruction therefore

I have conceded the Judgments reported In

(i) 1985 Lab. IC 732 (Food Corporation of India Workers" Union v. Food Corporation on of India and others),

(ii) [Gujarat Electricity Board, Thermal Power Station, Ukai Vs. Hind Mazdoor Sabha and Others,](#)

(iii) [Air India Statutory Corporation, etc. Vs. United Labour Union and others \[overruled\],](#) ,

(iv) [State of Bihar and others Vs. Shyam Yadav and others etc.](#)

(v) [Sankar Mukherjee and Others Vs. Union of India \(UOI\) and Others,](#) ,

(vi) [Catering Cleaners of Southern Railway Vs. Union of India \(UOI\) and Another,](#) ,

(vii) [Gopal Krishnaji Ketkar Vs. Mahomed Haji Latif and Others,](#) .

(viii) [K. Krishnamacharyulu and Others Vs. Sri Venkateswara Hindu College of Engineering and Another,](#)

(ix) [State of Haryana Vs. Surinder Kumar and others,](#) .

(x) 1995 (2) SCC 152 (National Federation of Railway Porters, Vendors and Bearers v. Union of India and others),

(xi) [Satyadhyan Ghosal and Others Vs. Sm. Deorajin Debi and Another,](#) ,

(xii) [R.K. Panda and Others Vs. Steel Authority of India and Others,](#) .

30. Mr. Ghosal appearing on behalf of the Central Government admits the fact that the time was granted, but no steps have yet been taken by the Central Government and he further submitted that he does not want any further time in the matter and the court shall proceed with the matter in this circumstances.

31. After considering the facts and circumstances of this case as it appears to me that the petitioners are working to maintain the township of the IOC and in fact are working under supervision of the Estate Officer and the performance of such work is only for maintaining the said township. The work allotted to the petitioners is through the Estate Officer of the IOC The performance report is also looked after by the IOC or on Us behalf and I do not have any hesitation to hold that the petitioners are directly linked and correlated hour to hour Job of the respondent establishment and such Job is perennial nature. It further

appears from the facts of this case that although the contractors have been changed from time to time by the IOC but the petitioners were not changed and/or working under the said contractors on the basis of the agreement between the contractors and the IOC and I do not have any hesitation to hold that the works have been allotted to the petitioners only to get monetary benefit by the said Company and as such I do not have any hesitation to hold that the said contractors are merely the agents of the Company and at the Instance of the Company petitioners are working and in fact has spent their lives for so many years which is my opinion attracts the policy which has been laid down by the Hon"ble Supreme Court of India and I direct the Central Government to Issue the notice Immediately to the said IOC Limited u/s 10(1) of the said Act and further upon receipt of the said notice the respondents shall take necessary steps to absorb the petitioners within a period of 6(six) weeks.

For the reasons stated hereinabove, this application succeeds, however, no order as to costs.

Later on

Stay of operation of this order as prayed for on behalf of the IOC is granted for two weeks.

Xerox certified copy of this order, if applied for, be handed over to the parties with utmost expedition.

32. Application succeeds