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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 10 March 2022**

\+ W.P.(C) 18013/2004 & CM APPL. 13574/2004

VIJAY KUMAR & ORS. ..... Petitioners

Through: Mr.Jasbir Singh Malik, Adv. for petitioners.

versus

UOI & ORS. ..... Respondents

Through: Mr.Rajesh Gogna, CGSC with Ms.Priya Singh, Mr.Rahul Verma and Mr.Akshat Gogna, Advs. for respondent.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA

YASHWANT VARMA, J. (ORAL)

1. The petitioners who were engaged as contractual labourers with the **Central Public Works Department**[1] have petitioned this Court seeking the following reliefs: -

> "(i) Issue Writ of Mandamus directing the Respondents to give effect to the Ministry of Labour Notification No. SO 813 (E) dated 31.07.2002 [Annexure P-3] for the purpose of regularization of the services of the Petitioners with all consequential benefits inclusive of regularization from back date.
>
> (ii) Issue a writ of mandamus directing the Respondent to grant the same pay-scale to the Petitioners, which is being granted to the counterparts employees in the CPWD."

2. The relief in essence is for their absorption in the respondent Department pursuant to the abolition of the contract labour system in CPWD in light of the notification issued on 31 July 2002 in terms of the

[1] CPWD

provisions made in Section 10(2) of the **Contract Labour [Regulation and Abolition] Act 1970**[2].

3. Before this Court, it is not disputed that all the petitioners were party to writ proceedings initiated before this Court and which culminated in a judgment rendered in their favour on 26 May 2000. It is also not disputed that they were working as contractual labourers in processes which find mention in the notification of 31 July 2002. It becomes relevant to note that the judgment of this Court rendered in favour of the present petitioners rested on the decision of the Supreme Court in **Air India Statutory Cop. v. ULU (United Labour Union)**[3]. The Court while proceeding to allow the writ petition held as under: -

> " I have given my considered thought to this aspect in the light of the legal position as well as factual matrix of these cases. There may be some force it is found that contract labour in respect of jobs/work/process undertaken by these contract workers in respect of the offices/establishments where they are working, needs to be abolished and notification u/s. 10 of the Act issued to this effect by the Central Government, these contract workers would suffer irreparable injury and it may become difficult for them to got the benefits of such notification abolishing contract labour system. Moreover, when the Committee is going ahead with the task then in the meantime it would also be not proper if the services of these contract workers are dispensed with and fresh contract labour is engaged in their place. Not only it would cause injustice to these contract workers, it may prove to be counter productive even for CPWD if ultimately notification abolishing contract labour system is, issued u/S. l0 of the Act by the Central Government because at that point of time CPWD would be confronted with a situation where not only the- present contract workers(discontinued in the meantime if not protected) but contract labour engaged in their place and working at that point of time would seek claim for absorption and regularisation with CPWD . That would be a worse situation for CPWD itself then the present situation where these contract workers are allowed to continue in

[2] CLRA
[3] 1997 SCC (L & S) 1344

the interregnum. Therefore, the least protection which these petitioners/contract workers require is that till the exercise u/s. l0 of the Act is in the arguments advanced by the respondents. However, it is not necessary to go into these arguments in detail again because of the subsequent developments which have taken place in this case and I am more influenced by these developments while directing the interim arrangement which should be made in the interregnum. After all it would be a question of few months only when the whole exercise has to be completed and decision is to be taken by the Central Government one way or the other. The position as of today is that the Board has already constituted a Committee to go into the question of abolition of contract labour deployed in different offices/establishments of CPWD in the schedule annexed to Resolution dated 30th March, 2000. Thus it is not a case where this Court or the Government has to decide whether there is a requirement for constitution of a Committee or not. Once a Committee is constituted which is to undertake the study of contract labour system in the jobs/work/process given in column 4 of Schedule annexed to Resolution dated 30th March, 2000 in respect of such offices/establishments maintained by CPWD, the Committee after undertaking this study would submit its report to the Board and based on such a report, Central Government as the "appropriate Government" would take decision as to whether, contract: labour system needs to be abolished or not. If services of these contract workers are dispensed with at this stage and ultimately on after issuance of Resolution dated 30th March, 2000, their services be not substituted with other contract workers. These writ petitions are accordingly disposed of with the following directions:-

1. The services of these contract workers shall not be substituted with other contract workers, i.e., if the respondent require to employ contract workers in the jobs assigned to these contract workers, then they will not replace the present contract workers with fresh contract workers.

2. In case of contract with a particular contractor who has engaged these petitioners/contract workers, comes to an end the said contract may be renewed and if that is not possible and the contract is given to some other contractor endeavour should be made to continue these contract workers with the new contractor. It would be without prejudice to the respective stand of the parties before the "appropriate Government" and their continuation would depend upon the decision taken by the Government to abolish or not to abolish the contract labour system.

3. Those directions shall not apply in those cases where the particular contract of maintenance etc. given by other establishment to the CPWD earlier has ceased to operate with the result that CPWD is not having the work/contract any longer. In those cases it would be open to the CPWD to disengage such contract workers as not required any longer in the absence of work/job/particular activity with the CPWD.

4. If the decision is taken to abolish the contract labour in particular job/work/process in any of the offices/establishments of CPWD (as per the terms of reference contained in Resolution dated 30th March, 2000), as per the judgment of the Supreme Court in Air India Statutory Corporation (supra) such contract workers would be entitled to be absorbed with CPWD and would be entitled to claim the benefit in terms of aforesaid judgment. In case the decision of the "appropriate Government" is not to abolish contract labour system in any of the works/jobs/process in any offices/establishments of CPWD the effect of that would be that contract labour system is permissible and in that eventuality CPWD shall have the right to deal with these contract workers in any manner it deems fit.

5. Such contract labours who are still working shall be paid their wages regularly as per the provisions of Section 2 of the Act and in those cases where the contractor fails to make payment of wages; it shall be the responsibility of the CPWD as principle employer to make payment of wages.

6. The exercise undertaken by the appropriate Government u/S 10 of the Act, starting with the formation of committee by Resolution dated 30th March, 2000 should be completed as expeditiously as possible and in case within a period of six months from today.

There shall be no order as to costs."

4. As is manifest from the parts of the judgment rendered inter partes and extracted above, the Court had framed a direction calling upon the respondents to firstly consider whether the engagement of contract labourers in respect of jobs and processes undertaken needs to be abolished in terms of the provisions made under the CLRA. It was further held that in

case it be found that there exists no justification for continuing the engagement of contract labourers and an appropriate notification under Section 10 of the CLRA comes to be issued, the contract workers would be entitled to be absorbed in their respective departments and would also be entitled to claim benefits in terms of the judgment of the Supreme Court in **Air India**.

5. Post that writ petition coming to be decided in favour of the writ petitioners here, the Ministry of Labour in the Union Government proceeded to issue a notification on 31 July 2002, abolishing the system of contract labourers in CPWD with respect to the works specified in the Schedule appended thereto. The aforesaid notification upon being published was also duly circulated by the Deputy Director of the CPWD to its various Divisions and Offices in terms of a communication of 27 December 2002. Since no further action was taken, the petitioners represented their case for the grant of the reliefs as framed by the Court while allowing the earlier writ petition. The stated failure on the part of the respondents to move in that respect, lead to the institution of the present writ petition.

6. Before this Court, it is not disputed that the judgment of the Supreme Court in **Air India** ultimately came to be prospectively overruled by a Constitution Bench in **Steel Authority of India v. National Union Waterfront works & Ors.**[4]. For the purposes of deciding the issue that falls for determination here, the Court deems it apposite to extract the following paragraphs from the decision of the Constitution Bench: -

> **"125.***The upshot of the above discussion is outlined thus*:

[4] (2001) 7 SCC 1

3) Neither Section 10 of the CLRA Act nor any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by the appropriate Government under sub-section (1) of Section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order absorption of the contract labour working in the establishment concerned.

(4) We overrule the judgment of this Court in *Air India case* [(1997) 9 SCC 377 : 1997 SCC (L&S) 1344] prospectively and declare that any direction issued by any industrial adjudicator/any court including the High Court, for absorption of contract labour following the judgment in *Air India case* [(1997) 9 SCC 377 : 1997 SCC (L&S) 1344] shall hold good and that the same shall not be set aside, altered or modified on the basis of this judgment in cases where such a direction has been given effect to and it has become final.

(5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labour in the establishment concerned subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.

(6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the establishment concerned has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

7. It is evident from the aforesaid observations as entered that while the decision in **Air India** was overruled, the Supreme Court proceeded to

invoke its powers of prospective overruling. However, while doing so, it significantly provided that any judgments or orders rendered by an industrial adjudicator or court in favour of contract labourers based on the dictum of **Air India** and pronounced prior to the date when judgment was delivered in **Steel Authority** would not be reopened, reviewed or modified. Undisputedly, the judgment rendered *inter partes* here was pronounced prior to the Constitution Bench rendering its decision in **Steel Authority**. The decision of the Court rendered on the earlier writ petition of the petitioners thus stands specifically saved by virtue of the declaration as made by the Constitution Bench. While learned counsel appearing for the Department would contend that the notification under Section 10 does not specifically refer to the decision of the Supreme Court in **Air India** and therefore it cannot be said that the petitioners would automatically be entitled to the extension of benefits as contemplated therein, the Court finds itself unable to sustain this submission for the following reasons.

8. The Court while deciding the earlier writ petition had taken due notice of the fact that a Committee had already been constituted by CPWD itself to consider whether circumstances warranted the abolition of the contract labour system. The Court further pertinently observed that in case a decision is ultimately arrived at to abolish the system of engagement of contract labourers *"as per the decision of the Supreme Court in Air India Statutory Corporation…."* the petitioners would be entitled to claim absorption and other benefits as envisaged in that judgment. It is relevant to note that the notification under Section 10 came to be promulgated pursuant to the directions issued by this Court itself. It therefore cannot possibly be

contended that the issuance of the notification was not guided by the principles enunciated by the Supreme Court in **Air India**. The mere fact that the actual notification did not specifically allude to that decision would clearly neither be relevant nor significant when viewed in the backdrop of the sequence of events which preceded its publication.

9. Additionally, learned counsel for the respondent would contend that while the writ petition did come to be allowed by the Court on 26 May 2000, the notification under Section 10 came to be promulgated only on 31 July 2002 and thus evidently after 30 August 2001 when the judgment in **Steel Authority** came to be pronounced. In view of the aforesaid, it was submitted that the plea of regularization or absorption cannot be countenanced. This submission, in the considered view of the Court, is clearly misconceived since the Constitution Bench in **Steel Authority** had specifically saved adjudications or decisions made in favour of contractual labourers prior to the judgment in **Air India** coming to be prospectively overruled. The rights and benefits which stood conferred on contract labourers prior to **Steel Authority** in terms of decisions rendered by an industrial adjudicator or court were not made dependent upon the issuance of a notification under Section 10 of the CLRA.

10. Regard must be had to the fact that in **Steel Authority**, the Constitution Bench principally found itself unable to uphold the reasoning assigned in **Air India** that the issuance of a notification under Section 10 of the CLRA would result in the contract labourers being automatically absorbed by the principal employer. The Constitution Bench clearly held that even if a notification were to be issued abolishing the engagement of

contract labour, it would still be incumbent for the workmen to establish that their engagement in the establishment was based upon a contract which was a mere ruse or a camouflage to create an artificial screen between them and the effective control of the principal employer which otherwise existed in fact. Further, the Constitution Bench held that this question would have to be examined by the industrial adjudicator and a direction to absorb would be contingent upon the contract being found to be a mere ploy or subterfuge adopted by the principal employer to avoid its liability towards this category of employees. It was on these material aspects that the Constitution Bench found itself unable to accept the dictum laid down in **Air India**. However, it undisputedly took note of the admitted fact that relief had been accorded to numerous contract labourers predicated upon the judgment of **Air India**. It was this circumstance that led the Constitution Bench to invoke its powers of prospective overruling. The Court also notes that the issuance of the notification under Section 10 in the present case was preceded and based upon the findings of the Committee which had been constituted. Neither the recommendations of that Committee nor the notification ultimately prohibiting the engagement of contract labourers by CPWD, has been ever questioned or assailed by the respondents.

11. Learned counsel lastly submitted that since the issue of abolition remained inchoate till the Union Government ultimately published the notification under Section 10, the petitioners would not be entitled to the protection extended in terms of paragraph 125(4) of **Steel Authority**. The Court finds itself unable to countenance this submission since the right of

the petitioners to seek absorption was made contingent by the judgment of this Court solely upon the issuance of the notification under Section 10. This Court in unambiguous terms provided that the petitioners would be absorbed with the CPWD once a notification under Section 10 of the CLRA comes to be issued. The rights of the petitioner to this extent clearly stood crystallized. It becomes pertinent to note that this was a direction based solely on the principles propounded in **Air India**. To the aforesaid extent the judgment was final and conclusive. It would thus clearly fall within the ambit of paragraph 125(4).

12. Accordingly, and in view of the above, the instant writ petition shall stand allowed. The respondents are consequently directed to proceed in accordance with the directions framed by this Court and set forth in Direction 4 of the judgment dated 26 May 2000. The respondents shall also consider the grant of further consequential reliefs in terms of that judgment.

13. Pending application shall stand disposed of.

YASHWANT VARMA, J.

MARCH 10, 2022*/bh*