

PETITIONER:
MATHURA REFINERY MAZDOOR SANGH THROUGHITS SECRETARY

Vs.

RESPONDENT:
INDIAN OIL CORPORATION LTD., MATHURA REFINERYPROJECT, MATHUR

DATE OF JUDGMENT15/02/1991

BENCH:
PUNCHHI, M.M.
BENCH:
PUNCHHI, M.M.
SAIKIA, K.N. (J)

CITATION:
1991 SCR (1) 468 1991 SCC (2) 176
JT 1991 (1) 472 1991 SCALE (1)297

ACT:

Contract Labour (Regulation and Abolition) Act, 1971:
Mathura Refinery-Casual Labourers-Some Labourers forming Co-operative Societies and entering contracts with refinery while others working under contractors who have contracts with refinery-Claim for regularisation and parity with employees of refinery-Casual labourers held not employees of refinery and hence not entitled for absorption in refinery.

HEADNOTE:

The appellant-Union, representing about 900 casual labourers falling under the Contract Labour (Regulation and Abolition) Act, 1971 some of whom formed Co-operative societies and entered into contracts with the respondent-refinery while others worked for contractors who had contracts with the refinery, filed a writ petition in this court claiming parity in wages and service conditions with the regular workmen of the respondent-refinery. This Court disposed the petition by directing the Central Government to refer to the Industrial Tribunal for adjudication the questions whether the petitioners and some of the workmen whose services were terminated were employees of the refinery; whether their termination was justified and to what relief they were entitled to. The Government referred and the Tribunal decided the questions against the appellant-union by holding that the labourers were employees of the contractors and not of the refinery and their termination was justified. But the Tribunal gave certain directions by way of relief for consideration by the Advisory Board about the desirability of continuance of the contract system in the refinery, for providing minimum pay of scale of regular employees to the contract labour and giving them preference in the regular employment.

Against the award of the Industrial Tribunal, the Union filed an appeal in this Court praying for directions to the refinery to absorb and regularise the casual labourers in a phased manner.

Dismissing the appeal, this Court,

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HELD:The contract labourers are not, and have also not been found to be, having a direct connection with the Refinery, even though it is a State for the purpose of

enforcement of fundamental rights. The directions given by the Tribunal was the only relief which was due to the appellant union and its members. Hence the Tribunal has given to the appellant union the maximum which could be given in the facts and circumstances of the case. Therefore, the impugned Award of the Tribunal cannot be improved upon. [472E-F]

BHEL Workers Association, Hardwar and Ors. etc. v. Union of India and Ors., [1985] 1 SCC 630, referred to.

Dharwad Distt. P.W.D. Literate Daily Wage Employees Association and Ors. V. State Of Karnataka and Ors., [1990] 2 SCC 396, distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1430 of 1990.

From the Judgment and Order dated 21.10.1989 of the Central Government Industrial Tribunal, New Delhi in I.D. No. 40 of 1986.

N.B. Shetye and A.M. Khanwilkar for the Appellant.

Ashok H. Desai, R.P. Bhatt. P.H. Parekh and Mrs. Sumita Sharma for the Respondents.

The Judgment of the Court was delivered by

PUNCHHI, J. This appeal by special leave is directed against the Award of the Central Government Industrial Tribunal, New Delhi, in I.D. No. 40 of 1986 published in the Gazette of India, New Delhi dated 21.10-89.

The appellant is the Mathura Refinery Mazdoor Sangh (here-after referred to as 'Union'). The contesting respondent is the Indian Oil Corporation Ltd., Mathura Refinery Project, Mathura, U.P. (hereafter referred to as the 'Refinery'). The Union represents about 900 casual labourers working in the Refinery. These labourers are contract labourers coming under the Contract Labour (Regulation & Abolition) Act, 1971. The nature of their work has grouped them. Some of the labourers have formed themselves into cooperative societies and those societies have entered into labour contracts with

the Refinery. Other labourers are working under labour contractors who have contracts with the Refinery. Theirs is not a constant relationship with one contractor and these labourers keep shifting from one contractor to another. However it is claimed that these casual labourers, have been working in the Refinery for so many years in the past ranging between ten to fifteen years but they are denied wages and other benefits as also other beneficial service conditions enjoyed by workmen who are regular employees of the Refinery. Claiming that they had a right to be treated at par with regular employees, the Union filed Writ Petition No. 2876 of 1985 under Article 32 of the Constitution of India in this Court which was disposed of on January 16, 1986 by directing the Central Government to refer to the Industrial Tribunal for adjudication the following questions:

1. Whether, in law, the petitioners and the 48 workmen whose services have been terminated are employees of the Indian Oil Corporation, Mathura Refinery Project,

Mathura?

2. Whether the termination of the services of 48 workmen was justified? and

3. To what relief are the workmen entitled?"

Status quo was ordered to be maintained and the services of the workmen were ordered not to be terminated. At that time, the services of 48 workmen alone were involved but as is evident the adjudication of the Tribunal would have affected others too.

Pursuant to the order of this Court, the Central Government referred and the Industrial Tribunal decided the above referred questions holding that the workmen were not employees of the Refinery and were rather the employees of the contractors. With regard to the termination of the services of the workmen and to what relief they were entitled, the Tribunal, after answering the questions against the Union and in favour of the Refinery, suggested the following steps in the interest of Industrial harmony:

(i) Though the Union should have pressed their demand for abolition of the contract labour system in the Refinery to the Central Advisory Board constituted under the Act, and even though it had been pursuing its remedies before this Court and the Tribunal, suggestions were made to the Refinery to approach

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the Advisory Board to make a study with regard to the desirability of continuance of the contract labour system in the Refinery.

(ii) Till the Central Advisory Board makes its recommendations and the action is taken, the management of the Refinery to ensure that the contract labour is paid at least the minimum of the pay scale of its regular employees performing the same or similar duties as the workmen of the contract labour and further that the workmen among the contract labour who have put in 5 years or more of work at the Mathura Refinery shall be continued to be employed in the same work even if there is a change in the contractor and such workmen shall not be terminated except as a punishment inflicted by way of disciplinary action for misconduct, etc., voluntary retirement or retirement on reaching the age of superannuation (which may be taken as the superannuation age for the I.O.C. employees) or on ground of continuous ill-health.

(iii) Refinery to give preference to those workmen in its employment by waiving the requirement of age and other qualifications wherever possible and it may also consider the creation of a benevolent fund for the contract labour wherein it may make a lumpsum contribution initially and then make equivalent or even more contribution to match the contribution made by the workmen of the contract labour.

Having suggested these, the Tribunal has clarified that these ameliorative steps, if taken by the Refinery, shall not be taken to mean that the contract labour has become the direct employees of the Refinery.

Learned counsel for the appellant says that though the above suggestions, which have the colour of directions, are in accord with the decision of this Court in 13HEL workers Association, Hardwar and Others etc. v. Union of India and Others, [1985] 1 SCC 630 yet they fall short of

the expectancies of the Union and in particular to the wide sweep of the principles laid down by this Court in Dharwad Distt P.W.D. Literate Daily Wage Employees Association and Others v. State of Karnataka and Others, [1990] 2 SCC 396 and prayed for directions such as those given to the State of Karnataka in the Dharwad's case (supra).

The argument of the learned counsel has barely to be noted and

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rejected. The Tribunal has given to the appellant-Union the maximum which could be given in the facts and circumstances of the case. In Dharwad's case (supra), the State of Karnataka had itself come out with a scheme to absorb the casual workers in regular government service in a phased manner and though it did not satisfy all concerned, yet it was given a workable final shape. This Court observed as follows:

"Though the, scheme so finalised is not the ideal one but it is the obligation of the court to individualise justice to suit a given situation in a set of facts that are placed before it. Under the scheme of the Constitution the purse remains in the hands of the executive. The legislature of the State controls the Consolidated Fund out of which the expenditure to be incurred, in giving effect to the scheme, will have to be met. The flow into the Consolidated Fund depends upon the policy of taxation depending perhaps on the capacity of the payer. Therefore, unduly burdening the State for implementing the constitutional obligation forth with would create problems which the State may not be able to handle. Therefore, the directions have been made with judicious restraint."

Those casual workers were under the employment of the State and the State came out with a scheme for phased absorption and a graded financial responsibility. In the instant case before us, the contract labourers are not, and have also not been found to be, having a direct connection with the Refinery, even though it is a State for the purpose of enforcement of fundamental rights. The suggestions/directions given by the Tribunal, appear to us to be the only relief which was due to the appellant and its members in the given situation and circumstances. Therefore, the impugned Award of the Tribunal cannot be improved upon.

Finding no merit in the appeal, we dismiss the same. No costs.

T.N.A.

Appeal dismissed.

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