

PETITIONER:
UNION OF INDIA & ORS.

Vs.

RESPONDENT:
SUBIR MUKHARJI & ORS.

DATE OF JUDGMENT: 29/04/1998

BENCH:
G.T. NANAVATI, S.P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:
THE 29TH DAY OF APRIL, 1998

Present:

Hon'ble Mr. Justice G.T. Nanavati
Hon'ble Mr. Justice S.P. Kurdukar

N.N. Goswami, Sr. Adv., Ms. Smitha Inna and Ms. Sushma Suri,
Advs. with him for the appellants.

T.C. Ray, Sr. Adv., Rajesh Srivastava, Ujjwal Banerjee, S.K.
Bandhopadhyay, P.Varghese and H.K. Puri, Advs. with him for
the Respondents.

J U D G M E N T

The following Judgment of the Court was delivered:
S.P. KURDUKAR, J.

This appeal by Special Leave is filed by the appellants challenging the correctness of the judgment and order dated 13.3.1997 passed in O.A. No. 1045 of 1995 by the Central Administrative Tribunal (for short 'CAT') Calcutta.

(2) The respondents who are 20 in number filed D.A. NO. 1045 of 1995 before the Central Administrative Tribunal. Calcutta alleging inter alia that they have been working as labourers since 1988 till date continuously and uninterruptedly in the printing press of the Eastern Railway at Calcutta. They were engaged as labourers through a contractor viz., M/s. Bandel Handling Porters Cooperative Society Ltd. Several labourers were also engaged by different organizations/labour contractors for doing the work on several development projects undertaken by the Eastern Railway on Contract basis. the contracts were entered into between the said co-operative societies and the authorities of the Eastern Railway. The respondents have been performing their duties and the functions to the satisfaction of the appellants and no complaint of whatsoever nature was made against their work. They were initially paid daily wages @ Rs. 14/- per day which came to be enhanced to Rs. 31/- per day. it is then alleged that since they have been working for all these years uninterruptedly and continuously. They are entitled to be absorbed and regularised in Group D category in terms of the Rules and Regulations framed by the Railway Authorities. Respondents further averred that by reason of continuous and uninterrupted

service for all these years. They have acquired the temporary status and they are entitled to be absorbed in Group D in the Pay scale attached thereto. It is then alleged that the Contract Labour (Regulation and Abolition) Act and Rules were enacted in the year 1971 for the purpose of ameliorating the grievances of the contract labourers who have been engaged by the contractors. In the instant case though these respondents discharge their duties and functions under the principal employer through the agency of the said society but the principal employer, namely, the Eastern Railway is now denying the legitimate right to them for being absorbed and regularized in the Railway services. The respondents have annexed with their D.A. various documents which indicate their service record. They have also referred to various correspondence ensured between the Railway Authority and the said society. The respondents, therefore, prayed that suitable directions be issued to the appellants to absorb and regularize the services of these respondents in Group D in the pay-scale attached thereto and the appellants be restrained from terminating the services of any of these respondents.

(3) The appellant Nos. 1 to 5 have filed their reply denying the claim made by the respondents. According to them they were employees of the society and they are not in any way liable either to absorb and/or regularize them in Group D. They are also not entitled to claim the pay-scale of Group D employees. The CAT on appraisal or evidence on record by its order dated 13.3.1997 held the claims set up by the respondents and issued the following directions:-

"The application is, therefore, disposed of with a direction upon the respondents to absorb the petitioners as regular Group D employees or such of them who may be required to do the quantum of work which may be available on a pre-natal basis. If they are otherwise found fit, their pay or wages being fixed at the minimum of the appropriate scale, provided they are still working as contract labourers. This exercise shall be completed within 8 weeks from the date of communication of this order."

It is this order which is the subject matter of challenge in this appeal.

(4) Mr. V.N. Goswami, Learned Senior Counsel appearing in support of this appeal urged that the respondents being the employees of the society, the appellants are not their employees of the society, the appellants are not their employers. Notwithstanding the fact that the work allotted to the society was carried out by the respondents who were labourers of the said employee between them. He also drew our attention to some of the clauses of the agreement dated 22.11.1994 entered into between the said society and the CMM (BI), Eastern Railway, Calcutta. He, therefore, urged that the respondents have no right whatsoever to seek direction for absorption and regularisation as Group D employees of the Eastern Railway. During the course of arguments he urged that the CAT has no jurisdiction to entertain O.A. No. 1045 of 1995 filed by the respondents.

(5) The Learned counsel for the respondents supported the order and urged that in the facts and circumstances of the case the directions contained in the order dated 13.3.1997

are quite fair and do not call for any interference in exercise of the jurisdiction under Article 136 of the Constitution.

(6) We heard learned counsel for the parties as great length and perused the pleadings of the parties and documents on record. In our opinion the affidavit in reply filed on behalf of appellant Nos.1 and 5 is as vague as it could be. There is no specific denial to the averments in the O.A. filed by the respondents that they have been working continuously and uninterruptedly since 1985, that the nature of work which they have been doing is of perennial nature.

(7) Mr. Goswami, Strongly relied upon the judgment of this court in Civil Appeal No. 1350 of 1986 Biswanath Sana & Ors. vs. Union of India & Ors. with other connected civil appeals and Special leave petitions rendered on April 3, 1997.

(8) We have gone through this judgment and it appears to us that in the case of Biswanath Sana (Supra) the contract labourers were requisitioned intermittently by the authority of the Eastern Railway as and when there was work and on such requisition the labour contractor used to supply the labourers. Moreover the said order appears to be consent order as it clear:-

" since the contractor's labour cannot be considered as employed by the Railways. The Eastern Railways however, in the affidavit filed on its behalf by Shri B. Maji, Chief Mechanical Engineer (planning) Eastern Railways, Calcutta dated 13th April 1993 has offered, on humanitarian grounds, that the contractor's labourers can form their co-operative societies and participate in handling and other contracts issued by the Railways from time to time. The appellants/petitioners state that they will accept the scheme. it is directed accordingly".

It is in these circumstances this held that the CAT has no jurisdiction to entertain the application filed on behalf of the Railway Contractor's labourers.

(9) There is a distinguishing feature in the case before us. In the present case admittedly the respondents who were labourers of M/s Bandel Handling Porters Co-Operative Society Ltd., were given the work under agreement No.3/489/BI/CONTRACT/HANDLING/NH/94 dated 22.11.94. Therefore, there was already a society of which the respondents happened to be members and being the members and M/S Bandel handling Porters Cooperative Society Ltd., the contractor supplied them for doing the work of Eastern Railways. As indicted earlier there is no denial on the part of the appellant Nos. 1 to 5 that the work which respondents have been doing is of perennial nature. Even otherwise the directions issued by the CAT in the order dated 13.3.1997 have given enough discretion to the Eastern Railways to absorb them as regular Group D employees bearing in mind the quantum of work available on perennial basis and subject to their fitness. In our opinion the directions contained in the order dated 13.3.1997 passed by the CAT are quite fair in the facts and circumstances of the case and it is for this reason we are not inclined to interfere with the impugned order in exercise of our jurisdiction under Article

136 of the Constitution.

(10) This order is being passed in the peculiar facts and circumstances of the case and leaving the question of law open.

(11) For the aforesaid conclusions we do not find any reason to interfere with the order dated 13.3.1997 passed in D.A. NO. 1045 of 1997 by the CAT. We accordingly dismiss this appeal but however there will be no order as to costs.

JUDIS