

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF SEPTEMBER, 2024

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE G BASAVARAJA

WRIT APPEAL NO.1122 OF 2021 (L-RES)

BETWEEN:

- 1 . HINDUSTAN AERONAUTICS LIMITED
A GOVERNMENT OF INDIA UNDERTAKING
REPRESENTED BY THE
CHAIRMAN AND MANAGING DIRECTOR
NO.15/1, CUBBON ROAD
BENGALURU-560 001
NOW REPRESENTED BY GENERAL MANAGER
FACILITIES MANAGEMENT DIVISION
- 2 . HINDUSTAN AERONAUTICS LIMITED
FACILITIES MANAGEMENT DIVISION
REPRESENTED BY ITS GENERAL MANAGER
VIMANAPURA POST, BENGALURU-560 017
- 3 . HINDUSTAN AERONAUTICS LIMITED
BENGALURU COMPLEX
REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER
VIMANAPURA POST, BENGALURU-560 017
- 4 . HINDUSTAN AERONAUTICS LIMITED
DESIGN COMPLEX
REPRESENTED BY ITS DIRECTOR (ENGG. AND R & D)
VIMANAPURA POST, BENGALURU-560 017
- 5 . HINDUSTAN AERONAUTICS LIMITED
HELICOPTER COMPLEX
REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER
VIMANAPURA POST, BENGALURU-560 017

6 . THE CHIEF MANAGER (W)
FACILITES MANAGEMENT DIVISION
CONTRACT SECTION
HINDUSTAN AERONAUTICS LIMITED
VIMANAPURA POST, BENGALURU-560 017

...APPELLANTS

(BY SRI. PRADEEP S. SAWKAR, ADVOCATE)

AND:

HINDUSTAN AERONAUTICS CONTRACT
WORKERS ASSOCIATION
(A REGISTERED TRADE UNION
REGISTERED UNDER THE TRADE UNIONS ACT)
REPRESENTED BY ITS
OFFICIATING GENERAL SECRETARY
HAVING ITS OFFICE AT: NO.325/B
2ND FLOOR, NELLURUPURAM
THIPPASANDRA POST
BENGALURU-560 075

...RESPONDENT

(BY SMT. MAITREYI KRISHNAN, ADVOCATE)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT, 1961 PRAYING TO SET ASIDE THE ORDER DATED 04.08.2021 PASSED BY THE LEARNED SINGLE JUDGE IN W.P.No.10899/2019 INSOFAR AS THE RESTRICTIONS IMPOSED ON THE APPELLANT AT PARAS 3 AND 4 OF THE ORDER AND ALLOW THIS APPEAL AND CONSEQUENTLY DISMISS THE WRIT PETITION IN THE INTEREST OF JUSTICE AND EQUITY.

THIS WRIT APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 02.09.2024 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **ANU SIVARAMAN J.**, PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
and
HON'BLE MR. JUSTICE G BASAVARAJA

CAV JUDGMENT**(PER: HON'BLE MRS. JUSTICE ANU SIVARAMAN)**

This writ appeal is filed by appellants against the judgment of the learned Single Judge dated 04.08.2021 in W.P.No.10899/2019 (L-RES).

2. For the sake of convenience the parties are referred to as per the rankings in this writ appeal.

3. The appellants herein are the respondents and the respondent herein is the petitioner before the learned Single Judge. It is submitted by the learned counsel appearing for the appellants that the Hindustan Aeronautics Ltd., (HAL) is the largest Defence Public Sector Undertaking of the Country owned by Government of India, under the administrative control of the Department of Defence Production, Ministry of Defence. The company is involved in the Design, Manufacture, Repair and Overhaul of Fighter Aircraft, Trainer, Helicopters, Transport Aircraft, Aero-Engines, Avionics and System Equipment. Having regard to the temporary increase in work, the Divisions are obliged to engage contract labour in non-core activities which is

permissible under the Contract Labour (Regulation & Abolition) Act, 1970 (hereinafter referred to as the 'Act of 1970' for short). It is submitted that so long as there is no prohibition under Section 10 of the said Act, the contract labour can be continued.

4. It is further submitted that the contract labourers are under the control and supervision of the respective contractors and there is no master and servant relationship between the Hindustan Aeronautics Limited (HAL) and the contract labourers. The company engaged contract labourers through contractors after following the due procedure and complying with the requirements under the Act of 1970, in order to relieve the company from task of looking after the non-essential things and to concentrate only on its main activities, as and when required.

5. The respondent - Union had approached this Court filing the Writ Petition challenging Annexure-Q, which was the Revised Comprehensive Service Contract on the ground that it is illegal, void and violative of Articles 14, 21, 23, 39, 42 and 43 of the Constitution of India and the

provisions of the Act of 1970 and the various memorandum of Settlements. The learned Single Judge considered Annexure 'Q' and found that it is only an internal correspondence between the officers in respect of conversion of existing contract to comprehensive service contract and that the Writ Petition is premature. The Writ Petition was disposed of reserving liberty to the official respondents to finalise Annexure 'Q' in a manner known to law after which it would be communicated to the petitioner - Union. The respondents were directed not to proceed pursuant to Annexures 'R1 and R2' till decision is taken pursuant to Annexure 'Q'. However, it was further directed that the official respondents would issue preliminary notification pursuant to Annexure 'Q' while inviting objections from likely to be affected persons, consider the objections and proceed to take a final decision.

6. The learned counsel appearing for the appellants submits that there is no provision under the Act of 1970 requiring any consultation with the Labourers engaged by the contractors in the matter of entering into a contract

where such contract is permitted. It is submitted that only obligation on the principal employer is to ensure due payment of wages as provided under Section 21(4) of the Act of 1970. It is submitted that there is no right in the contract labour being encouraged through the contractor to be heard before a contract is finalised or entered into.

7. It is contended by the learned counsel appearing for the appellants that by virtue of Section 20 of the Act of 1970, if contractor fails to carry out his obligation, the principal employer is responsible to provide amenities at cost of the contractor and by virtue of section 21 of the said Act, the obligation for payment of wages of labourers is on the contractor. If contractor fails to pay the wages, the principal employer is liable to pay the agreed wages and recover the same from the contractor. Apart from this, there is no direct relationship between the employer and the labour engaged by the contractor. The learned counsel further contends that the appellants are changing the manner in which the work is executed and not the employment of the contract labour and there is no master

and servant relationship between the management and the Union.

8. The learned counsel appearing for the appellants has relied on the following judgments:-

- ***Hindustan Steelworks Construction Limited v. The Commissioner of Labour and others*** reported in **1996 (7) JT S.C. 592;**
- ***Bharat Heavy Electricals Limited v. Mahendra Prasad Jakhmola and others*** reported in **(2019) 13 SCC 82;**
- ***Steel Authority of India Limited and others v. National Union Waterfront Workers and others*** reported in **(2001) 7 SCC 1;**

9. It is submitted by the learned counsel appearing for the respondent that the Comprehensive Service Contract at Annexure-Q dated 15.02.2019, is illegal and violative of Articles of the Constitution of India and the provisions of Act of 1970 and the Memorandum of Settlement does not protect the interest of Contract labour for coverage under ESI Act, Provident Fund Act.

10. It is further contended that the need for labour being an admitted fact, the appellants cannot be heard to contend that the persons, who are continuously being engaged by the contractors to carry out the work in the appellants-organization have no right to be heard in the manner of their engagement, since any steps taken pursuant to Annexure 'Q' will obviously affect their rights and living conditions. It is submitted that there is a permanent contract labour arrangement as has been held by this Court in its judgment in Writ Petitions No.49823 to 49837/2014 (S-REG) and that there are binding settlements entered into between the parties, which will be affected by finalization of Annexure 'Q'. It is submitted that no proposition was laid down by the judgment and it is only in the facts of the instant case that the contract labour, whose rights will undoubtedly be affected by the Comprehensive Labour Contract as suggested in Annexure 'Q' that they have been directed to be heard before finalization.

11. It is contended by the learned counsel appearing for the respondent relying on the decision of the Hon'ble

Apex Court in ***National Textile Workers Union v. P.R. Ramakrishnan and Others*** reported in **1983(3) SCC 105**, that even though statute does not provide the workers right to be heard, but according to the principles of natural justice, the workers should be given an opportunity of being heard. After hearing the workers, the appellants may decide to proceed with Annexure 'Q' but they cannot be turned away at the very threshold.

12. The learned counsel appearing for the respondent has relied on the following judgments:-

- ***Sankar Mukherjee and others v. Union of India and others*** reported in **1990 (Supp) SCC 668;**
- ***Bhilwara Dugdh Utpadak Sahakari Samiti Limited v. Vinod Kumar Sharma Dead by LR's and others*** reported in **(2011) 15 SCC 209;**
- ***H.D. Singh v. Reserve Bank of India and others*** reported in **(1985) 4 SCC 201;**
- ***Workmen of the Food Corporation of India v. Food Corporation of India*** reported in **(1985) 2 SCC 136;**

- ***Basti Sugar Mills Limited v. Ram Ujagar and others*** reported in ***AIR 1964 SC 355***;
- ***Hussainbhai, Calicut v. The Alath Factory Thozhilali Union, Kozhikode and others*** reported in ***(1978) 4 SCC 257***;
- ***Harjinder Singh v. Punjab State Warehousing Corporation*** reported in ***(2010) 3 SCC 192***;
- ***Manish Gupta and another v. President, Jan Bhagidari Samiti and others*** reported in ***2022 SCC OnLine SC 485***; and
- ***Preeti Bhandage and others v. State of Karnataka and others*** in ***W.A. No. 2578/2019 (S-REG)*** decided on ***04.03.2021***.

13. We have considered the contentions advanced.

The statement of objects and reasons of the Act of 1970, reads as follows:-

"STATEMENT OF OBJECTS AND REASONS

The system of employment of contract labour lends itself to various abuses. The question of its abolition has been under the consideration of Government for a long time. In the Second Five Year Plan, the Planning Commission made certain recommendations, namely, undertaking of studies to ascertain the extent of the problem of contract labour, progressive abolition of the system and improvement of service conditions of contract labour where the abolition was not possible. The matter was discussed at various meetings of Tripartite Committees at which the State Governments were also

represented and the general consensus of opinion was that the system should be abolished wherever possible and practicable and that in cases where this system could not be abolished altogether, the working conditions of contract labour should be regulated so as to ensure payment of wages and provision of essential amenities.

2. The proposed Bill aims at the abolition of contract labour in respect of such categories as may be notified by the appropriate Government in the light of certain criteria that have been laid down, and at regulating the service conditions of contract labour where abolition is not possible. The Bill provides for the setting up of Advisory Boards of a tripartite character, representing various interests, to advise the Central and State Governments in administering the legislation and registration of establishments and contractors. Under the Scheme of the Bill, the provision and maintenance of certain basic welfare amenities for contract labour, like drinking water and first-aid facilities, and in certain cases rest-rooms and canteens, have been made obligatory. Provisions have also been made to guard against defaults in the matter of wage payment."

14. Section 10 provides for the appropriate Government after consultation with the Central Board or the State Board to prohibit by notification, employment of contract labour in any process, operation or other work in any establishment, where contract labour is not prohibited by Notification. Contractors are liable to be licensed under Chapter IV, where such contract labour is engaged. Chapter V provides for the facilities to be made available by the establishment.

15. Section 20 provides that if any amenity required to be provided under Sections 16, 17, 18 or 19 for the benefit of contract labour is not provided by the contractor, such amenity shall be provided by the principal employer and may be recovered from the contractor.

16. Section 21 further provides that in case the contractor fails to make payment of wages as per the contract within the time provided then the principal employer shall be liable to make payment of wages and recover the same from the contractor.

17. On a reading of the provisions of the Act of 1970, it is clear that contract labour can be engaged only under the strict conditions as provided under the Act. In the circumstances, the contention of the appellants that there is no employer - employee relationship between the principal employer and the workmen engaged by the contractor cannot be extended to mean that there is absolutely no jural relationship between them. In the instant case, it is the specific case of the employees concerned that the nature of the work is perennial and that many of the workmen

employed through contractors have been engaged continuously for several years.

18. The judgment of the learned Single Judge does not lay down any proposition that the contract labourers are entitled to be heard while drawing up a contract. It is only on considering the facts and circumstances of the case in question and the contentions raised; it is ordered that the contract labourers shall also be heard before Annexure 'Q' is finalized. While it is true that there is no provision in the Act enabling the consideration of the contentions of the contract labourers before drawing up of a contract, it is equally true that nothing precludes the hearing of the representatives of the contract labourers before a comprehensive change in the nature of the contract is entered into by the appellants, who are admittedly an instrumentality of the State under Article 12 of the Constitution of India.

19. Having considered the contentions advanced on either side, we are not inclined to hold that the direction issued by the learned Single Judge for a consideration of the objections of the contract labourers is so perverse as to

require interference in an intra-court appeal under the Karnataka High Court Act, 1961. However, considering the contentions advanced, the direction issued by the learned Single Judge will be modified to the extent that an authorized representative of the contract labourers or an authorized representative of the respondent - Union shall be put on notice and heard before finalizing Annexure 'Q'

20. Accordingly, the writ appeal stands ***disposed of.***
All other contentions of the parties are left open.

Pending I.A.No.1/2023 for additional documents, is hereby disposed of.

**Sd/-
(ANU SIVARAMAN)
JUDGE**

**Sd/-
(G BASAVARAJA)
JUDGE**

cp*