

GAHC010132202020

2024:GAU-AS:10148

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3871/2020

JATIN RAJKONWAR AND 6 ORS.
S/O LT PHUKAN RAJKONWAR, R/O KACHUPATHAR, P.O. MORAN JAN VIA
SEPON, P.S. SEPON, DIST- SIVASAGAR

2: ASHWINI BORTHAKUR
S/O LT. TULSHI NATH BORTHAKUR
R/O BORPATRADOL
KALOOGAON
P.O. KALOOGAON
P.S. JOYSGAR
DIST- SIVASAGAR

3: MD. SYED ABDUR RAHMAN
S/O LT. NAZERU RAHAMAN
R/O RJUUNGURI VIA SIVASAGAR
P.S. AND DIST- SIVASAGAR

4: NILAMONI DUTTA
S/O LT. HIMADHAR DUTTA
R/O BORPATRADOL KALOOGAON
P.O. KALOOGAON
P.S. JOYSAGAR
DIST- SIVASAGAR

5: BHABANI GOGOI
S/O LT. PURNA KANTA GOGOI
R/O KATAKI PAPONG
P.O. PATSAKU
P.S. MORANHAT
DIST- SIVASAGAR

6: ANIL CHANDRA BORAH
S/O LT. TIPESWAR BORAH
R/O DHULIAPAR

P.O. DHULIAPAR
P.S. SIVASAGAR
DIST- SIVASAGAR

7: RANJANN BORAH
S/O LT. BHUBAN CHANDRA BORAH
R/O RUDRASAGAR
P.O. RUDRASAGAR
SIVASAGAR
P.O. AND P.S. JOYSAGAR
DIST- SIVASAGA

VERSUS

UNION OF INDIA AND 2 ORS.
REP. BY SECRETARY MINISTRY OF PETROLEUM, ONGC, NEW DELHI

2:OIL AND NATURAL GAS CORPORATION LTD
REP. BY REGIONAL DIRECTOR OIL AND NATURAL GAS CORPORATION
LTD.
NAZIRA
ASSAM
SIVASAGAR

3:GENERAL MANAGER
DIRECTOR OIL AND NATURAL GAS CORPORATION LTD.
ERBC
CENTRAL STORE
SIVASAGAR

4:RESP. NO. 4 ISSTRUCK OUT
AS PER ORDER DATED 06.10.2020

Advocate for the Petitioner : MR. A D GUPTA, MR A DASGUPTA,0,0,MS. B DAS

Advocate for the Respondent : ASSTT.S.G.I., MS T J SAHEWALLA, (R-2,R-3),MR M SAHEWALLA, (R-2,R-3),MR H K SARMA, (R-2,R-3),MR G N SAHEWALLA, (R-2,R-3),MR. A K DUTTA

BEFORE

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

For the petitioners : Mr. A. Dasgupta, Sr. Adv.

Ms. B. Das . Advocate

For the respondent nos.2 & 3 : Mr. G. N. Sahewalla, Sr.Adv.

Mr. M. Sahewalla, Advocate.

Date of hearing : 30.09.2024

Date of Judgment : 04.10.2024

JUDGMENT AND ORDER (CAV)

Heard Mr. A. Dasgupta, learned senior counsel, assisted by Ms. B. Das, learned counsel for the six writ petitioners and Mr. G. N. Sahewalla, learned senior counsel, assisted by Mr. M. Sahewalla, learned counsel for the respondent Nos. 2 & 3.

2. The petitioners have put to challenge the award dated 11.07.2019 passed by the Central Government Industrial Tribunal -cum- Labour Court, Guwahati in Reference Case No. 3/2016, wherein the learned Tribunal has dismissed the claim of the petitioners to be reinstated into service and regularized, on the ground that there was no employer-employee relationship between the petitioners and the respondent Nos. 2 & 3, i.e. ONGC.

3. The case of the petitioners is that the petitioners were engaged directly as Contract Labourers by the ONGC in the year 1985-1986 and later on they were engaged on contract basis through a contractor, i.e. Mr. T.R. Phukan. The engagement of the petitioners on contract basis with Mr. T. R. Phukan, on a later date, was only a paper/sham engagement, which sought to camouflage the fact that the direct engagement between the petitioners and the ONGC still remained. The petitioners were thereafter disengaged by the ONGC in the year 1995/1996.

4. The petitioners' case is that as they were directly engaged by the ONGC in the year 1985 till their disengagement, their services should be reinstated and regularized with the ONGC.

5. As the prayer of the petitioners was not being considered by the ONGC, the 22 persons including the 6 petitioners approached this Court by way of Civil Rule No. 3366/1995. This Court passed an order dated 12.09.1997 directing the Assistant Labour Commissioner (Central), Guwahati, to cause an enquiry and submit a report on the status of the petitioners. Accordingly, enquiry was held and a report dated 05.01.1998 was made, which was to the effect that some of the 22 workmen worked in two spells. Firstly under direct payment system till December, 1986 from the ONGC and w.e.f. January, 1987 to March, 1996 under the ONGC contractor, Mr. T.R. Phukan. Further, the job profile of the workmen was for loading, unloading and handling, which appeared to be perennial nature of job. Some of them were also performing the work of typists. This Court, vide order dated 24.08.1998, held that as it was not possible for the Court to make an order for regularization of the concerned workmen as regular employees of the ONGC, the better course would be for the petitioners to approach the ONGC to examine the matter in the context of the correct factual position made in the official records. This observation of this Court in the order dated 24.08.1998, had been made due to the fact that the ONGC had denied the stand taken by the writ petitioners that they were appointed directly as contract labourers by the ONGC. Further, the ONGC stand was that they were in fact engaged by the contractor of the ONGC, i.e. Mr. T. R. Phukan, for supplying labour.

6. This Court in its order dated 24.08.1998 passed in Civil Rule No. 3366/1995

held that the ONGC, being a Public Undertaking, was supposed to do things in keeping with the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as '1970 Act') and as desired by the learned counsel for the petitioners, the matter was left to the better discretion of the ONGC authorities to pass appropriate orders, after examining as to which of the petitioners could be given the status of an employee of the ONGC. This Court further held that in case the petitioners still felt aggrieved, they may approach the Labour Court for appropriate relief in accordance with law.

7. The petitioners thereafter approached the ONGC in pursuance to the order dated 24.08.1998 passed in Civil Rule No. 3366/1995. As no decision was forthcoming in favour of the petitioners, the petitioners approached the Central Labour Commissioner, Guwahati with a prayer for raising an industrial dispute against the ONGC, regarding the petitioners' claim for reinstatement and regularization. A conciliation proceeding was held and as nothing came out of it, the matter was referred to the Central Government for making a reference. The Central Government thereafter referred the matter to the State Industrial Tribunal, Guwahati with the following issue to be decided:-

“Whether the services of the workmen (list enclosed) working directly under ONGC management in the 1st phase of service and later engaged on contract basis can be reinstated and regularised? If so, what relief they are entitled?”

8. The industrial dispute raised by the petitioners had been referred to the State Industrial Tribunal, Guwahati, in view of the fact that at the relevant point of time, no Central Industrial Tribunal had been established at Guwahati.

9. The reference case was registered as Reference No.8(C)/2020 before the State Industrial Tribunal, Guwahati which passed it's Award dated 31.12.2005, wherein it partly allowed the reference in favour of three out of 22 workmen.

10. Being aggrieved by the Award dated 31.12.2005 passed by the State Industrial Tribunal, Guwahati, in Reference No.8(C)/2000, the ONGC and the petitioners put the same to challenge, vide WP(C) 5446/2006 and WP(C) 2139/2008 respectively. Both the above writ petitions i.e. WP(C) 5446/2006 and WP(C) 2139/2008 were disposed of vide a common order dated 04.09.2015 by this Court, by holding that a perverse Award was given by the learned Industrial Tribunal, since relevant evidence was ignored to deny relief and inference was drawn on the basis of inconclusive and inadequate materials. The case was remanded back to the learned Tribunal for a fresh decision, by taking into account the existing evidence and allowing fresh evidence to be adduced by the parties, if required.

11. The case was thereafter remanded to the Central Government Industrial Tribunal cum Labour Court, Guwahati in pursuance to the common order passed in WP(C) 5446/2006 and WP(C) 2139/2008, in view of the fact that the Central Government Industrial Tribunal had by then been established in Guwahati. The matter when remanded the Central Tribunal was also given a fresh number, i.e Reference Case No.03/2016. In Reference Case No.03/2016, fresh evidence was taken by the writ petitioners and the Reference Case No.03/2016 was disposed of vide Award dated 11.07.2019, by dismissing the petitioners' claim for reinstatement into service and regularization, on the ground that the petitioners/workmen failed to prove the employer-employee relation between the ONGC and the workmen within the meaning of the Industrial Disputes Act,

1947. Being aggrieved, the writ petitioners have preferred the present writ petition.

12. The petitioners' counsel submits that the petitioners had been directly engaged as labourers by the ONGC in between the year 1985-1986, i.e. even before the contractor Mr. T.R. Phukan was registered as a licence contractor under Section 12 of the 1970 Act.

13. The petitioners' counsel submits that the ONGC had already been registered under Section 7 of the 1970 Act, when the petitioners had been engaged by the ONGC. As the contractor did not have a contractor's licence, in terms of Section 12 of the 1970 Act during the years 1985 – 1988, the subsequent engagement of the petitioners as contract labourers under the contractor was only a sham/veil to camouflage the fact that the petitioners were employees of the ONGC.

14. The petitioners' counsel submits that prior to the order dated 24.08.1998 passed in Civil Rule No.3366/1995, this Court had passed an interim order directing the Central Assistant Labour Commissioner, Guwahati to conduct an inquiry and make a report with regard to the status of the workmen/petitioners. The report of the Central Assistant Labour Commissioner, Guwahati was exhibited as Exhibit-F in Reference Case No.03/2016, which stated that some of the 22 workmen worked in two spells. Firstly under direct payment system till December, 1986 from the ONGC and w.e.f. January, 1987 to March, 1996 under the ONGC contractor, Mr. T.R. Phukan. Further, the job profile of the workmen was for loading, unloading and handling, which appeared to be perennial nature of job.

15. The petitioners' counsel further submits that in terms of the Notification dated 08.01.1994 issued by the Government of India in exercise of the powers conferred under Section 10 of the 1970 Act, the works/jobs prohibited to be performed by the Manpower Contractor and his labourers under the ONGC, also included the work of storekeeper. He however submits that the writ petitioners/workmen work was to assist the storekeeper, which was akin to doing the job of a storekeeper. He accordingly submits that as the profile of work done by the workmen reflects upon the work profile of the contractor, the contractor could not engage contract labourers for doing the job relating to the store which was supervised by the storekeeper. The petitioners' counsel submits that in view of the reasons stated above, the petitioners would have to be considered to be workmen engaged by the ONGC and their services should be reinstated and regularized.

16. Mr. A. Dasgupta also relied upon the judgments of the Supreme Court in the case of ***Hussainbhai, Calicut vs. Alath Factory Thezhilali Union, Kozhikode***, reported in ***(1978) 4 SCC 257*** and ***Steel Authority of India Ltd. and Others vs. National Union Waterfront Workers and Others***, reported in ***(2001) 7 SCC 1*** in support of his submission that when a group of workers produce goods or services for the business of another, i.e. the employer, the presence of intermediate contractors with whom the workers would have immediate or direct relationship is of no consequence, if the lifting of the veil discerns the naked truth that the real employer is the management and not the immediate contractor. He has also relied upon the judgment of the Supreme Court in the case of ***Gujarat Electricity Board, Thermal Power Station, Ukai, Gujarat vs. Hind Mozdoor Sabha and Others***, reported in ***(1995) 5 SCC 27***, wherein it has been held that if a contract is a sham or not

genuine, the workmen of the so called contractor can raise an industrial dispute for declaring that they were always the employees of the principal employer and for claiming the appropriate service conditions. He has also relied upon the judgment of the Supreme Court in the case of **Secretary, H.S.E.B. Vs. Suresh**, reported in **(1999) 3 SCC 601**, wherein the Supreme Court has made an observation that once the Board was not a principal employer and the so called contractor Kashmira Singh was not a licenced contractor under the 1970 Act, the inevitable conclusion that had to be reached was to the effect that the so called contract system was a mere camouflage.

17. Mr. G.N. Sahewalla, learned Senior Counsel appearing for the respondent nos.2 & 3, on the other hand submits that the Notification dated 08.01.1994 which has been made in exercise of Section 10 of the 1970 Act, prohibiting a contractor from doing the duties of a storekeeper is not applicable to the case in hand, inasmuch as, the petitioners have not been working as storekeepers or doing the work of a storekeeper. He further submits that the jurisdiction of a High Court while considering a challenge made to an Award by the Industrial Tribunal is extremely limited. In this regard, he has relied upon the judgments of the Supreme Court in the case of **Krushna Narayan Wanjari vs. Jai Bharti Shikshan Sanstha, Hinganghat, through its Secretary and Another**, reported in **(2018) 12 SCC 620** and **Bharat Heavy Electricals Limited vs. Mahendra Prasad Jakhmola and Others**, reported in **(2019) 13 SCC 82**, wherein it has been held that unless the approach of the Industrial Tribunal was wholly perverse in the sense that the Tribunal had acted on no evidence, the High Court under Article 226/227 would not be justified in interfering with the Award, inasmuch as, the High Court was not a Court of First Appeal, to re-appreciate the evidence.

18. The learned Senior Counsel for the respondent nos.2 & 3 further submits that the Supreme Court in the case of ***Balwant Rai Saluja And Another vs. AIR India Limited and Others***, reported in ***(2014) 9 SCC 407*** has indicated the relevant factors to be taken into consideration to establish an employer-employee relationship, which are as follows :

- (i) who appoints the workers;
- (ii) who pays the salary/remuneration;
- (iii) who has the authority to dismiss;
- (iv) who can take disciplinary action;
- (v) whether there is continuity of service; and

(vi) extent of control and supervision i.e. whether there exists complete control and supervision.

The learned counsel submits that none of the above factors is applicable/attracted to the petitioners case.

19. The learned Senior Counsel for the respondent nos.2 & 3 further submits that though the contractor Mr. T.R. Phukan had been given his contractor's licence in terms of Section 12 of the 1970 Act in the year 1989, the fact remains that the contractor had been the manpower supplier from 1985, without the ONGC knowing that the Manpower Contractor did not have a contractor's licence in the year 1985-1986. He submits that the only consequence of the contractor Mr. T.R. Phukan not having a licence at the relevant time under the 1970 Act

would at best attract the penal provisions of Section 23 & 25 of the 1970 Act and the same would not amount to making the ONGC the employer of the writ petitioners/workmen. In respect of this, he has relied upon the judgment of the Supreme Court in the case of ***Dena Nath and Others vs. National Fertilizers Ltd. and Others***, reported in ***(1992) 1 SCC 695***. He further submits that the evidence adduced by the workmen shows that no appointment letters or salary slip issued by the ONGC had ever been issued to the writ petitioners to prove that they were directly engaged by the ONGC. He also submits that the issuance of a gate pass to the petitioners does not prove that they were directly engaged by the ONGC, as each and every person who enters the ONGC complex is required to have a gate pass. Further, they were working for the ONGC on the basis of the manpower supplied by the contractor. He accordingly submits that as there is no infirmity with the impugned Award, the writ petition should be dismissed.

20. I have heard the learned counsels for the parties.

21. The examination of the Management witnesses shows that the petitioners were engaged to execute certain works namely, lifting, shifting, cleaning, stocking, preservation of materials in go-down and opening of boxes for inspection. The issue to be decided is as to whether the learned Tribunal was justified in dismissing the case of the writ petitioners in respect of their prayer to be reinstated and regularized under the ONGC. The case of the petitioners as stated earlier is that they were initially directly engaged as contract labourers by the ONGC in the year 1985-86 and they were thereafter taken on contract basis through a contractor, i.e., one Mr. T.R. Phukan, who was registered under the

1970 Act, only in the year 1989. Thus, the petitioners were to be considered as workmen under the ONGC.

22. The above fact regarding the manpower contractor Mr. T.R. Phukan having been registered under the 1970 Act only in the year 1989 is an admitted fact. However, it is the case of the ONGC that they had never directly engaged the petitioners at any point of time and that they were employed thorough the labour contractor Mr. T.R. Phukan, as they did not know that Mr. T.R. Phukan did not have a contractor's licence at the relevant point of time. The report dated 05.01.1998 submitted by the Assistant Labour Commissioner (Central), Guwahati was to the effect that the job profile of the workmen was for loading, unloading and handling materials, which appeared to be perennial in nature. It is this report dated 05.01.1998 that the petitioners are relying upon to substantiate their claim that they were directly engaged by the ONGC in the year 1985-86 and as such, they should be treated as workmen, whose services have to be regularized under the ONGC. However, the said Assistant Labour Commissioner, who made the report was not examined before the learned Tribunal. Further, the contractor Mr. T.R. Phukan was examined as MW No.2 and he stated that the petitioners were engaged under him from 1987-1995. He also proved the payment register which was Ext.-12, showing that he used to pay the wages of the petitioners.

23. The learned Tribunal in the impugned Award has also held that if the Acquittance Roll for payment of wages, Ext.-18 was looked at, it would appear that the names of the workers as well as their wages and the signature of the contractor were there. It was also countersigned by the ONGC officials. The learned Tribunal also held that there was no evidence to show that the

petitioners were directly appointed by the ONGC. No appointment letter was produced and that mere issuance of a certificate by an officer of the establishment could not make the workers direct casual workers under the ONGC.

24. In the case of *Balwant Rai Saluja (supra)*, the Supreme Court has indicated the 6 relevant factors to be taken into consideration to establish an employer-employee relationship. On a perusal of the evidence recorded and the fact that there is nothing to show that the ONGC had appointed the petitioners or paid their salary, it cannot be said that the employer-employee relationship was proved in terms of the above judgment, especially when the same is juxtaposed with the evidence given by the contractor Mr. T.R. Phukan.

25. The stand of the writ petitioners that the subsequent engagement of the petitioners as contractual labourers under the registered contractor Mr. T.R. Phukan was only a sham and a camouflage to hide the fact that they were engaged by the ONGC, does not appear to be sustainable, as it was the contract labourer who had disengaged the petitioners service. With regard to the contention of the petitioners' counsel that in terms of the notification dated 08.01.1994 issued by the Government of India under Section 10 of the 1970 Act, that certain categories of jobs were prohibited to be executed through contract labourers, one of them being the work of a Store Keeper and as such, could not have been done by the petitioners/workmen, there is no evidence adduced by any of the parties to the effect that the petitioners were doing the job of a Store Keeper so as to attract Section 10 of the 1970 Act. Their job was only to lift, shift, clean, stock and preserve materials in the godowns, besides opening boxes for inspection. There was nothing done by the petitioners with

regard to keeping of accounts or maintaining registers for store keeping purposes. As such, the work of the petitioners was not in violation of the notification dated 08.01.1994 and the question of their absorption does not arise. As such, the fact situation in the case of **Secretary, H.S.E.B. Vs. Suresh**, reported in **(1999) 3 SCC 601** is not similar to the facts of this case, as the workmen working under the contractor Kashmira Singh in the above case, were doing prohibited works as provided in the Government notification.

26. With regard to the contention of the petitioners' counsel that the contractor having been registered under the 1970 Act only in 1989, the petitioners would have to be considered to be the employees of the ONGC, the Supreme Court in the case of **Dena Nath and Others (supra)**, has held that the only consequence provided in the 1970 Act, where either the principal employer or the labour contractor violates the provision of Sections 9 & 12 of the 1970 Act, is that the same would attract the penal provisions under Sections 23 & 25 of the 1970 Act. The Supreme Court further held in Para 22 of the said judgment as follows:-

“We are thus of the firm view that in proceedings under Article 226 of the Constitution merely because contractor or the employer had violated any provision of the Act or the rules, the Court could not issue any mandamus for deeming the contract labour as having become the employees of the principal employer.”

27. In the present case, the evidence adduced clearly shows that the writ petitioners have been employed for the purpose of lifting, shifting, cleaning, stocking, preservation of materials in go-down and opening of boxes for inspection. There is nothing to show that the contract between the contract

labourer and the writ petitioners is a sham arrangement/ engagement, inasmuch as, the registered contractor had engaged the petitioners on contract basis and had paid them their salaries. He was also the one who had disengaged the services of the petitioners.

28. In the case of *Krushna Narayan Wanjari(supra)*, the Supreme Court held that unless the approach of the learned Industrial Tribunal is wholly perverse in the sense that the Tribunal acted on no evidence, the High Court under Article 226 and 227 is not justified in interfering with the award, as it is not a Court of first appeal to re-appreciate the evidence.

29. On considering the fact that the petitioners have not been able to show any document showing that they had been engaged by the ONGC or that they were getting paid by the ONGC or that their services were terminated by the ONGC, this Court is of the view that the petitioners have not been able to show that there was any employer-employee relationship between the petitioners and the ONGC in terms of the judgment of the Supreme Court in the case of *Balwant Rai Saluja(supra)* on the basis of the evidence adduced before the learned Tribunal. Consequently, this Court does not find any ground to interfere with the impugned award dated 11.07.2019 passed by the Central Government Industrial Tribunal -cum- Labour Court, Guwahati in Reference Case No. 3/2016.

30. The writ petition is accordingly dismissed.

31. Send back the LCR.

JUDGE

Comparing Assistant