CONTRACT LABOUR : LIABILITY OF PRINCIPAL EMPLOYER

THE CONTRACT Labour (Regulation and Abolition) Act 1970 was passed to prevent the exploitation of contract labour and also to introduce better conditions of work. The Act provides for abolition of contract labour wherever possible and practicable and regulation of their employment where it cannot be abolished altogether.[1] It is, thus, clear that the Act does not contemplate the total abolition of the contract labour system.

With the phenomenal growth in the industrial sector, a lot of changes have taken place in the employment sphere. At one time the establishment being the employer, all persons working there were the employees of such employer. This is no more the case today. Many of the employers including central and state governments, now get their work done through contractors who employ workers as contract labour. These contract labourers have no direct relationship with the principal employer for whom they work. Many of these contractors exploit the labourers engaged by them in various ways including by payment of low wages.

In *Gujarat Electricity Board* v. *Hind Mazdoor Sabha*[2] the Supreme Court had expressed its dismay over the continued use of contract labour by the public sector undertakings even where workmen could be employed by them directly. The court observed:[3]

> The only ostensible purpose in engaging the contract labour instead of the direct employees is the monetary advantage by reducing the expenditure. Apart from the fact that it is *an unfair labour practice*, it is also an economically short-sighted and unsound policy, both from the point of view of the undertaking concerned and the country as a whole.

The attitude adopted by the undertakings, according to the court, was inconsistent with the need to reduce unemployment and the government policy declared from time to time, to give jobs to the unemployed. Besides, it was also against the mandate of the directive principles containted in articles 38, 39, 41, 42, 43 and 47 of the Constitution.

The important question to be decided as framed by the apex court in *Hindustan Steelworks Construction Ltd.* v. *Commissioner of Labour*[4] was whether "the appellant who is the principal employer is liable to pay to the contract labour any amount which constitutes the difference between the wages payable to the contract labour supplied by the contractor and the wages paid by the appellant to its own employees doing similar work."[5]

The facts of the case were that the appellant, a government company was a registered employer under section 7 of the Act and respondent 4, private company, was a licensed contractor under section 12. Under an agreement entered into

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1. See *Gammon India Ltd.* v. *Union of India*, (1974) 1 SCC 596.
2. (1995) 5 SCC 27.
3. *Id.* at 74 (Emphasis added).
4. (1996) 10 SCC 599.
5. *Id.* at 605.

between the two, the latter agreed to supply to the former security guards, shift incharge and security sergeants on specified terms and conditions. Although the appellant paid the agreed remuneration of the workers, the contractor paid to the workers at a much lower rate.

On an inspection visit by the assistant commissioner of labour, it was found that there was a difference between the wages paid by the appellant to its own employees and the wages paid to the contract labour supplied by the fourth respondent who were doing similar work. He, therefore, filed a complaint with the Commissioner of Labour, Andhra Pradesh, who is the final authority to decide such issues under proviso to rule 25 (*v*) (*a*) of the A.P. Contract Labour (Regulation and Abolition) Rules 1971. Rule 25 provides that every licence granted under section 12 of the Act shall be in Form VI and shall be subject to the conditions specified.

Rule 25(*v*) (*a*) reads as under:

> In cases where the workmen employed by the contractor perform the same or similar kind of work as the workmen directly employed by the principal employer of the establishment, the wage rates, holidays, hours of work and other conditions of service of the workmen of the contractor shall be the same as applicable to the workmen directly employed by the principal employer of the establishment on the same or similar kind of work:
>
> Provided that in the case of any disagreement with regard to the type of work, the same shall be decided by the Commissioner of Labour, Andhra Pradesh, whose decision shall be final.

The commissioner after due investigation held that the appellant was the principal employer and the fourth respondent was the contractor and that there was similarity of work between the workers of the appellant and the workers supplied by respondent 4. Accordingly, he held that rule 25(*v*)(*a*) applied.

On appeal the single judge of the Andhra Pradesh High Court agreed with the views taken by the Labour Commissioner. In second appeal, the division bench of the High Court examined the legality of the agreement itself entered into between the appellant and the fourth respondent, the contractor, and found it to be *ultra vires* the Constitution. It held that the appellant corporation being an instrumentality of the state under article 12 of the Constitution could not enter into an agreement counter to the constitutional mandate of equal pay for equal work and opposed to public policy with the contractor and, therefore, was liable to pay equal wages to the watch and ward staff supplied by the contractor on par with such staff directly employed by the appellant despite the agreement to pay less wages. The court directed the contractor to pay the contract labour supplied by it the amounts retained by it towards administration and supervisory charges and to the appellant corporation to pay the remaining difference of wages as required under section 21(4) of the Act. The present appeal to the apex court by the corporation was against these directions.

To decide the issue the Supreme Court looked at what constituted wages and who was responsible for paying the same. It found that 'wages' under the Act had the same meaning assigned to it under section 2(*vi*) of the Payment of Wages Act, 1936,[6] and the responsibility for payment of wages under section 21 of the Contract Labour Act was on the contractor.[7]

According to the court, it was only in cases where the contractor failed to make payment of wages that the principal employer would be liable to pay in full or the unpaid balance due, as the case may be, and recover the same from the contractor. The condition contained in rule 25(*v*)(*a*) that the contractor shall not pay to the contract labour in his employment wages which are lower than the wages paid by the principal employer to his own workers which do the same or similar kind of work was only a condition of the contractor's licence. There was no provision under those rules which made the principal employer liable for payment if the contractor contravened that condition. For the breach of the conditions of his licence the contractor alone would be responsible.[8] The court further held that section 21(4) would have no application to such situations where the contractor might have paid the wages but had not complied with the condition imposed by rule 25(*v*)(*a*). The definition of wages did not cover any additional amount found payable under rule 25(*v*)(*a*) if the principal employer had its own workers doing similar work. If the principal employer did not have any employees doing similar work this question would not have arisen. Significantly, the contract labour employed by the contractor are not a party to this litigation. The dispute is between the contractor and the principal employer. Therefore, the court is not called upon to pronounce on the rights of the contract labour employed by the contractor to recover these amounts. The appellant corporation, who is the principal employer, therefore, is not liable to pay this additional amount under section 21(4), but would be liable to pay to the contract labour the difference between the wages contracted for under its agreement with the contractor and the

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6. Wages mean "all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such emplyment, and includes - (a) any remuneration payable under any award or settlement between the parties or order of a court."

7. Section 21. Responsibility for payment of wages - (1) A contractor shall be responsible for payment of wages to each worker emplyed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed.

(2) Every principal employer shall nominate a representative duly authorised by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.

(3) It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorised representative of the principal employer.

(4) In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

8. *Supra* note 4 at 606.

lesser wages actually paid by him to the workers, and recover the same from the contractor.[9]

Mercifully, there was no order as to costs.

It is a disturbing judgment. The casual approach of the court to the gross exploitation of the contract labour is something unbelievable. Rarely does a case of this nature reach the apex court for adjudication. Since it had reached it, the court should have seized the opportunity to do justice to the contract labour. It should not have so easily let the principal employer off the hook. The reason behind the enactment of the contract labour Act was to end the exploitation of these vulnerable section of workers by regulating their working conditions with a view to progressively eliminating the system altogether. Rules, though crafted by the executive, are for furtherance of the aims and objectives of the Act. The condition in the rules governing issuance of licence that "in cases where the workmen employed by the contractor perform the same or similar type of work as the workmen directly employed by the principal employer, the wage rates, holidays, hours of work and other conditions of service of the workmen of the contractor shall be the same as applicable to the workmen directly employed by the principal employer of the establishment on the same or similar kind of work", is a mandatory condition incorporated purposely therein to specifically discourage the engaging of contract labour. The reason why the principal employers are tempted to engage contract labour is to reduce their financial liability. The contractors are there in the business of supplying contract labour to make money. It is the poor workers who are caught in the middle and are being squeezed by both. It was an opportunity for the court to have seen through this ploy and sham of a contract. The court by completely exonerating the principal employer of all liability, has done a disservice to the cause of contract labour and has encouraged their further exploitation by the employers.

In a similar case on child labour, *M.C. Mehta* v. *State of Tamil Nadu*[10] decided by the Supreme Court (R.N.Misra and M.H.Kania JJ.) allowed children to work in a hazardous process like the match works despite the prohibition stipulated by the Child Labour (Prohibition and Regulation) Act 1986. The reasons given are strange:[11]

> The provision of Art. 45 in the Directive Principles of State Policy has still remained a far cry and though according to this provision all children up to the age of 14 years are supposed to be in school, economic necessity forces grown up children to seek employment. *Children can, therefore, be employed in the process of packing*, but packing should be done in an area away from the place of manufacture to avoid exposure to accident.... We take note of the fact that *tender hands of the young workers are more suited to sorting out the manufactured product and process it for the purposes of packing.*

9. *Ibid.*
10. AIR 1991 SC 417.
11. *Id.* at 418-19 (Emphasis added).

A study conducted by the V.V.Giri National Institute of Labour has reported that fire accidents are very common in match factories and several children were found with burn scars on their hands, thighs and legs. Though fire accidents in the process of packing is quite common, employers justify the employment of children in packing and other processing in the packing premises under the umbrella of this Supreme Court judgment.[12]

Coming back to the instant case the observation of the court that "if the principal employer did not have any employees doing similar work this question would not have arisen" is naive as it only states the obvious. Undoubtedly, it was only because the principal employer had employees doing similar work, the whole question came to be raised, at the first instance. Otherwise, there was no issue at all. Then again "significantly, the contract labour employed by the contractor are not a party to this litigation. The dispute is between the contractor and the principal employer. Therefore, the court is not called upon to pronounce on the rights of the contract labour employed by the contractor to recover these amounts" show, it is submitted, the non-application of mind by the court. Under section 26 of the Act it is the inspector and not the workers who can file a complaint for any violations of the provisions of the Act or the rules made thereunder. In the instant case the complaint was filed by the assistant labour commissioner who is the inspecting authority. And the whole proceedings were in the name of the Commissioner of Labour who is the enforcement authority under the Act. Under such circumstances the question of workers being a party to the litigation does not arise at all. The court should have travelled beyond section 21 to at least section 25, dealing with offences by companies and section 26 dealing with cognisance of offences before deciding the issue at hand. It is, therefore, submitted that it is a judgment which needs reconsideration.

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12. See, Helen R. Sekar, "Child Labour (Prohibition and Regulation) Act, 1986: A Critique", *Awards Digest*, vol. xviii, no. 3-6 p. 35 at 38 (1992).

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