

HIMMAT SINGH AND ORS.
v.
I.C.I. INDIA LTD. AND ORS.
(Civil Appeal No. 7066 of 2001)

JANUARY 31, 2008

[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

Labour laws:

Principles of estoppel, waiver and acquiescence – Applicability of, to industrial adjudication – Definite stand by employees that they were working under contractors – Contradictory and inconsistent plea that they were also workmen of the principal employer – Permissibility of – Held: Raising such a mutually destructive plea is impermissible in law – Common law principles of estoppel, waiver and acquiescence are applicable in an industrial adjudication – Uttar Pradesh Contract Labour (Regularisation and Abolition) Rules, 1975 – Rule 25(v)(a) – Contract Labour (Regulation and Abolition) Act, 1970 – Uttar Pradesh Industrial Disputes Act, 1947.

The Indian Explosive Limited, engaged in manufacture of urea, was covered under the Contract Labour (Regulation and Abolition) Act, 1970. It had many licenced contractor. These licenced contractors engaged many persons to the work contracted with them. The Workers Union filed an application under Rule 25(v)(a) of the U.P. Contract Labour (Regularisation and Abolition) Rules, 1975. This was for the relief that the different persons working under the different licensed contractors were doing work similar to the work assigned to the workmen of the company and were entitled to the similar conditions of service. Proceedings were initiated. The Labour Commissioner allowed the application so far as persons engaged by the Contractor-R and one more

A licensed contractor were concerned but for rest of the persons application was dismissed. This order of the Labour Commissioner was upheld by the High Court. During pendency of the proceedings under Rule 25, disputes were raised by the Union for the benefit of the workmen engaged by the Contractor-R. The dispute was whether 61 labourers should be declared permanent and if so, then from which date and with what other particulars. The State Government referred this industrial dispute to the Labour Court under the Uttar Pradesh Industrial Disputes Act, 1947. The Labour Court recorded finding in negative as well as in positive form. These findings were that these workmen were not appointed by the principal employer, that they were not working as helper to the fitters, that they were not paid by the company and were not given work order by contractor-R. The Labour Court further held that the workmen were engaged in a contract for intermittent work and themselves claimed to be workmen of the contractor-R in proceedings under Rule 25 and got benefit under the same. On the basis of these findings, the Labour Court decided the dispute against workmen and held that they were not entitled to become permanent with the company.

In appeal to this Court, the appellant contended that the High Court's approach is hyper technical and the benefits intended by various beneficial statutes have not been kept in view.

Dismissing the appeal, the Court

HELD: The workmen whether before the Labour Court or in writ proceedings were represented by the same union. A trade union registered under the Trade Unions Act is entitled to espouse the cause of the workmen. A definite stand was taken by the employees that they had been working under the contractors. It would, thus, not lie in their mouth to take a contradictory and inconsistent

plea that they were also the workmen of the principal employer. To raise such a mutually destructive plea is impermissible in law. Such mutually destructive plea, should not be allowed to be raised even in an industrial adjudication. Common law principles of estoppel, waiver and acquiescence are applicable in an industrial adjudication. [Para 10] [239-F, G; 240-A, B]

Steel Authority of India Ltd. v. Union of India & Ors.
2006(12) SCC 233 – relied on.

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 7066 of 2001.

From the final Judgment and Order dated 17.10.1999 of the High Court of Judicature at Allahabad in C.M.W.P. No. 59/1993.

P.K. Jain for the Appellants.

U.A. Rana, Abhishek Rao, M/s. Gagrat & Co., R.S. Suri, Shrish Kr. Misra; Garvesh Kabra and Ajay K. Agrawal for the Respondents.

The Judgment of the Court was delivered by

Dr. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the order passed by a learned Single Judge of the Allahabad High Court dismissing the writ petitions filed by the appellants. Challenge before the High Court was to the order passed by the Presiding Labour Court (II) U.P. Kanpur in Adjudication case-Arbitration dispute No. 164 of 1989.

2. The following question was sent to the Labour Court for decision under Section 4(iv) of the U.P. State Industrial Disputes Act, 1947 (in short the 'State Act):

"Whether 61 labourers mentioned in the Appendix should be declared permanent? If so, then from which date and with what other particulars?"

3. The Labour Court held that 61 labourers connected with

A the case do not possess the right to be declared permanent under the employer- respondent No. 1. So far as the question to be made permanent under the contractor, it was found that they did not want to be declared permanent under the contractor.

B 4. Challenge in the writ petition revolved around the question as to the effect of the Contract Labour (Regulation and Abolition) Act, 1970 (in short the "Act"). In the background of the definition of the word "employer" as in clause IV of Section 2(i)(iv) of the State Act, The Indian Explosive Limited is a manufacturer of Urea and is covered under the Act. It is registered under C Chapter III of the same Act and has many licensed contractor including one Abdul Rehman (hereinafter referred to as the 'Contractor'). These licensed contractors engaged many persons to do the work contracted with them. Fertilizer Workers Union (hereinafter referred to as the 'Union') filed an application D under Rule 25 (v)(a) of the U.P. Contract Labour (Regularisation and Abolition) Rules, 1975 (in short the "Rules") framed under the Act before the Labour Commissioner.

E 5. This was for the relief that the different persons working under the different licensed contractors are doing work similar to the work assigned to the workmen of the company and should have similar conditions of service regarding wages, holidays etc. Proceedings were initiated. In the proceedings under Rule F 25 of the Rules, the Labour Commissioner by his order dated 15.12.1984 allowed the application so far as persons engaged by the Contractor Rehman and one more licensed contractor but for rest of the persons application for the Union was dismissed. The order of the Labour Commissioner was upheld by the High Court. During pendency of the proceedings, under G Rule 25 disputes were raised by the Union which is the subject matter of consideration for the benefit of the workmen engaged by the Contractor-Rehman. As noted above, the Labour Court rejected the application.

H 6. Mr. P.K. Jain, learned counsel for the appellants submitted that the High Court's approach is hyper technical and

the benefits intended by various beneficial Statutes have not been kept in view. A

7. Learned counsel for the respondents on the other hand supported the judgment.

8. A few observations made by the High Court which are relevant need to be noted. It was held by the High Court as follows: B

“The labour court has held that the petitioners were not working as helpers to the fitters; they were not paid by the company; and were engaged on contract for intermittent work i.e. they did not have regular or permanent work. The work that the petitioners do may be similar to the work of the workman of the company, but they are not doing the work that is ordinary part of the industry. This is for reason that they- C

- did not have permanent work; D
- were engaged in intermittent work and
- themselves claimed to be workmen of the contractor Rehman in proceedings under Rule 25 of the Labour Contract Act and got benefit under the same.” E

9. Similarly, the Labour Court noted that contractor Rehman had applied to the administration for licence under the State Contract Labour Act and considering the nature of the contract licence has been granted to him. F

10. In *Steel Authority of India Ltd. v. Union of India & Ors.* [2006(12) SC 233] it was inter-alia held as follows:

“The workmen whether before the Labour Court or in writ proceedings were represented by the same union. A trade union registered under the Trade Unions Act is entitled to espouse the cause of the workmen. A definite stand was taken by the employees that they had been working under the contractors. It would, thus, in our opinion, not lie in their mouth to take a contradictory and inconsistent plea that H

- A they were also the workmen of the principal employer. To raise such a mutually destructive plea is impermissible in law. Such mutually destructive plea, in our opinion, should not be allowed to be raised even in an industrial adjudication. Common law principles of estoppel, waiver and acquiescence are applicable in an industrial adjudication.”
- B

- C 11. In view of the factual position highlighted above and the ratio of the decision in *Steel Authority's* case (supra), the inevitable result is that the appeal is sans merit, deserves dismissal, which we direct with no order as to costs.

D.G.

Appeal dismissed.