A NATIONAL THERMAL POWER CORPORATION LTD.

v.

KARRI POTHURAJU AND ORS.

AUGUST 13, 2003

B [S. RAJENDRA BABU AND DORAISWAMY RAJU, JJ.]

Industrial Laws:

C *Factories Act, 1948—Section 46—Regularisation of service—Statutory obligation on employer to provide and maintain canteen for benefit of employees of the unit—Canteen being run through contractor engaged from time to time—Out of 2300 employees 54 working in canteen—Workers of canteen claiming regularisation of service—Single judge rejecting the claim—However, Division Bench of High Court allowing the claim to those who are* D *fit to continue in employment—Justification of—Held: In view of the statutory obligation on employer to maintain canteen the order of Division Bench of High Court is justified.*

In view of the discharge of the statutory obligation under section 46 of the Factories Act, 1948 appellant-corporation, a Public Sector Undertaking E **started a canteen for the benefit of the employees of their unit, through a contractor. It was run through contractors engaged from time to time. At the relevant time, out of 2300 employees, about 54 persons were working in the canteen in various capacities. Respondent-workers filed writ petition seeking for a direction to the appellant to regularise their services with attendant** F **benefits. Single Judge of the High Court dismissed the writ petition. However, Division Bench allowed the appeal directing that the services of the workers who are fit to continue in employment be regularised. Hence the present appeal.**

Appellant contended that the Division Bench of High Court erred in G **reversing the decision of the Single Judge; and that the respondent-workers, engaged by the contractor in the canteen cannot claim to be part of the appellant's establishment and claim for regularisation of their services.**

Dismissing the appeal, the Court

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HELD: Appellant-corporation who had a statuary obligation under section 46 of the Factories Act, 1948 to run the canteen cannot contend that workers engaged in the canteen even though by contractor cannot claim to be part of appellant's establishment and claim for regularisation of their services. Also the Division Bench of High Court gave liberty to the appellant to consider the claims of the workers as to whether they satisfy the requirements and whether they are otherwise unfit for confirmations. Therefore, the challenge to the decision of the Division Bench of High Court cannot be countenanced, as either legitimate or valid one. [431-E, F]

Indian Petrochemicals Corporation Ltd. and Anr. **v.** *Shramik Sena and Ors.* **[1999] 6 SCC 439;** *Indian Overseas Bank* **v.** *I.O.B. Staff Canteen Workers' Union and Anr.,* **[2000] 4 SCC 245;** *Steel Authority of India Ltd. and Ors.* **v.** *National Union Waterfront Workers & Others* **[2001] 7 SCC 1;** *VST Industries Ltd.* **v.** *VST Industries Workers' Union and Anr.,* **[2001] 1 SCC 298 and** *The Saraspur Mills Co. Ltd.* **v.** *Ramanlal Chimanlal and Ors.,* **[1974] 3 SCC 66, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5990 of 1997.

From the Judgment and Order dated 27.11.96 of the Andhra Pradesh High Court in W.A. No. 385 of 1996.

V.R. Reddy, N.B. Shetye, Rajendra Dhawan, Ms. Meera Mathur and A.T.M. Sampath for the Appellant.

Hardev Singh, L. Nageswara Rao, Ms. Madhu Moolchandani, R. Santhanakrishnan, G. Ramakrishna Prasad, K.C. Sudarshan, Jayanth M. Raj, P.P. Singh and S. Udaya Kumar Sagar and T.G. Narayanan Nair for the Respondents.

The Judgment of the Court was delivered by

RAJENDRA BABU, J. The above appeal has been filed against the order dated 27.11.96 of a Division Bench of the Andhra Pradesh High Court in Writ Appeal No.385 of 1996, whereunder the Division Bench, while setting aside the order of the learned Single Judge in Writ Petition No.3793 of 1992, allowed the claims in the writ petition to the extent and subject to the conditions specified in the order. The appellant, National Thermal Power Corporation Ltd., Ramagundam Super Thermal Power Station, is a Public Sector Undertaking of the Government of India. It started a canteen in the

A year 1983 for the benefit of the employees of their unit, through a contractor and from that time onwards it was being run through contractors engaged from time to time. The total number of employees, at the relevant point of time, were said to be 2300 and about 54 persons were said to have been working in the canteen in various capacities - cooks, servers, cleaners etc. It is not in controversy that the appellant is a factory governed by the provisions of the Factories Act and Section 46 of the said Act, 1948 casts a mandatory duty and obligation on the appellant to provide and maintain a canteen for the benefit of all those serving in the unit. Concedingly, the appellant grants substantial subsidy and at one point of time, as found noticed in the order, it was to the tune of Rs.1',95,000. The respondents, at least many of them, were said to be working from the year 1983, though engaged by contractors. The Deputy Manager - Administration and his subordinates were said to supervise the working of the canteen in respect of preparation, service and maintenance, to ensure quality of service as well as that it was carried on beneficially to the workers. It is also claimed that the said authority issued identity cards also to the workers for entering the factory premises. Apparently, taking advantage of certain decisions of courts, including this Court, the respondent-workers moved the High Court by means of the Writ Petition filed under Article 226 of the Constitution of India seeking for a direction to the appellant to regularize their services with attendant benefits.

Appellants disputed the claim, contending that the canteen was run as a beneficial measure, to cater to the needs of workers in the unit, that contractors used to be engaged periodically - at times different contractors for different period, depending upon the successful offer made pursuant to invitation of tenders, that they have nothing to do with the total strength of workers engaged by such contractors, that they are neither workers relating to the manufacturing activities of the appellant-Undertaking or they perform any work incidental thereto or by any means could claim to be workers of the appellant within the meaning of the Industrial Disputes Act, 1947. The control, if at all, was said to be to ensure that there is no industrial unrest on account of the manner of running the canteen and proper food articles are made available hygienically and at the rates stipulated without sacrificing the quality of the food stuffs, eatables and beverages and such supervision cannot make them workers under the control of the appellant and that the relationship of Master and Servant and disciplinary control over them was also with their employer-contractor, at all times.

The learned Single Judge was not prepared to accept the claim of the workers and was of the view that the workers in the canteens run by Railways and LIC stand on a different footing and there can be no comparison of the workers in the canteen under consideration with those in the other institutions. The writ petition, therefore, came to be dismissed and the workers were constrained to file an appeal. The Division Bench, while allowing the appeal, made the same subject to the following directions:

> "Learned counsel for the first respondent has, however, urged before us that while affirming the judgment of the Bombay High Court as above, the Supreme Court has given some directions and in the instant case for the obvious reasons of the existence of the canteen in the hands of the contractors ever since the establishment of the canteen, the Court should issue similar directions as issued by the Supreme Court in the said case. While we do not have much information as to the type of the employees the canteen is having and whether there are any employees in the canteen who do not qualify within the minimum and the maximum age limits prescribed under the policy of the first respondent or that they do not fit in the minimum medical standards of minimum service period, it is not possible, therefore, to specify, in the same terms as the Supreme Court has done, in the instant case, but to observe generally that a person who has crossed the age limit or a person who is below the age of employment can obviously be not regularized or treated as employee of first respondent. Similarly, a person who is not medically fit cannot claim employment and if has so worked alright, but cannot by virtue of such employment claim the benefits of the employees of the first respondent. It would be advisable in such circumstances that the first respondent corrects its mistakes and allows the cases of all the employees and treats all those who are not unfit to continue in the employment of first respondent as its employees."

Hence, this appeal.

The learned Senior Counsel appearing on behalf of the appellant placed strong reliance upon the decisions reported in *Indian Petrochemicals Corporation Ltd. and Anr.* v. *Shramik Sena and Ors.*, [1999] 6 SCC 439 and other related decisions to contend that the Division Bench went wrong in reversing the decision of the learned Single Judge and that the respondent-workers, who are indisputedly the workers in the canteen engaged by the

A contractor, cannot claim to be part of the appellants establishment and claim for regularisation in the services of the appellant-Undertaking and consequently the order under challenge is liable to be set aside. Per contra, learned Senior Counsel appearing for the respondent-workers placed reliance upon the decisions reported in *Indian Overseas Bank* v. *I.O.B. Staff Canteen Workers' Union and Anr.*, [2000] 4 SCC 245 as well as *Steel Authority of India Ltd. and* B *Ors.* v. *National Union Waterfront Workers and Ors.*, [2001] 7 SCC 1 and in *VST Industries Ltd.* v. *VST Industries Workers' Union and Anr.*, [2001] 1 SCC 298] to contend that the decision of the Division Bench does not require any interference in this appeal. Reliance was also placed on an earlier decision of this Court in *The Saraspur Mills Co. Ltd.* v. *Ramanlal Chimanlal and Ors.*, C [1974] 3 SCC 66 for sustaining the decision of the High Court under-challenge.

We have carefully considered the submissions of the learned counsel appearing on either side. In [1974] 3 SCC 66 (supra), this Court held that where there is a statutory liability on the company concerned to run a canteen in the factory, then even though the canteen was run by a Co-operative Society, D the employees working in the canteen would be covered by the definition of the word "employed" envisaged in Section 3(13) of the Bombay Industrial Relations Act. In (2001) 1 SCC 298 (supra) dealing with the claim of workers of a canteen run through a private contractor in pursuance of the obligation of the industrial establishment under Section 46 of the Factories Act, 1948, this Court upheld the claim of workers for being treated as the workers of the E company itself. In [2001] 7 SCC 1 (supra), a Constitution Bench of this Court considered the claims of contract labourers engaged by a contractor for absorption in the establishment of the principal employer on issuance of the abolition notification under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 and the rules made thereunder. This Court, while F adverting to the position of law in force, has observed as follows:

> "106. We have gone through the decisions of this Court in VST Industries case, G.B. Pant University case and M. Aslam case. All of them relate to statutory liability to maintain the canteen by the principal employer in the factory/establishment. That is why in those cases, as G in Saraspur Mills case the contract labour working in the canteen were treated as workers of the principal employer. These cases stand on a different footing and it is not possible to deduce from them the broad principle of law that on the contract labour system being abolished under sub-section (1) of Section 10 of the CLRA Act the contract H labour working in the establishment of the principal employer have to

be absorbed as regular employees of the establishment. A

107. An analysis of the cases, discussed above, shows that they fall in three classes: (i) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the industrial adjudicator/court ordered abolition of contract labour or because the appropriate Government B issued notification under Section 10(1) of the CLRA Act, no automatic absorption of the contract labour working in the establishment was ordered; (ii) where the contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer were held, in fact and in C reality, the employees of the principal employer himself. Indeed, such cases do not relate to abolition of contract labour but present instances wherein the Court pierced the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited; (iii) where in discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer D availed the services of a contractor the courts have held that the contract labour would indeed be the employees of the principal employer."

Consequently, we consider it to be too late in the day for the appellant, which had an obligation under the Factories Act, 1948 to run the canteen to E contend to the contrary. So far as the case on hand is concerned, the Division Bench has chosen to leave liberty to the appellant to consider the claims of the workers as to whether they satisfy the requirements and whether they are otherwise unfit for confirmations. In the light of all these, we are unable to countenance the challenge to the decision of the High Court, as either legitimate F or valid one. The appeal, therefore, fails and shall stand dismissed. No costs.

N.J. Appeals dismissed.