

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9634 of 2005

To

SPECIAL CIVIL APPLICATION No. 9636 of 2005

with

Special Civil Application No. 11639 to 11652 of 2005.

with

Special Civil Application No. 11472 to 11523 of 2005

with

Special Civil Application No. 11667 to 11678 of 2005.

For Approval and Signature:

HON'BLE MR JUSTICE MR SHAH

=====

- | | |
|---|---|
| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ? |
| 2 | To be referred to the Reporter or not ? |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ? |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? |
| 5 | Whether it is to be circulated to the civil judge ? |

=====

PRESIDENT, GUJARAT MAZDOOR PANCHAYAT - Petitioner(s)

Versus

GROUP GENERAL MANAGER O N G C LTD &3 - Respondent(s)

=====

Appearance :

MRS SANGEETA N PAHWA for Petitioner No(s).: 1.

NOTICE SERVED BY DS for Respondent No(s).: 1,2.

MR RR MARSHALL for Respondent No(s).: 1.

MR SAMIR J DAVE for Respondent No(s).: 3.

=====

CORAM :HON'BLE MR JUSTICE MR SHAH

Date : 30/06/2005

ORAL JUDGMENT

Rule. Mr. RR Marshall, learned advocate for respondent No.1 and Shri Samir J Dave, for respondent No.3, learned Additional Central Government Standing Counsel waive service of Rule. In all these petitions, the respective petitioners workmen have prayed for an appropriate writ, order or direction directing the respondent No.1, the Group General Manager, ONGC, to not to terminate their services till the dispute raised by their union Gujarat Mazdoor Panchayat is referred to the appropriate court and the appropriate court decides interim application which may be preferred by their union.

2. It is the case of the petitioners that they are working in respondent No.1 through respondent No.2 contractor and the work which is performed by them is a permanent work of respondent No.1 ONGC in the premises of ONGC and that they are actually workers of ONGC but to avoid liability under various labour laws workers are appointed under the Contract Act. It is also the further case of the petitioners that the contract is sham and bogus and therefore they have raised a demand inter alia praying that they should be considered as permanent workers of respondent ONGC and they should be paid wages and other benefits by respondent No.1 ONGC considering them as permanent workers of respondent No.1. It is the case of petitioners that conciliation proceedings are pending with respondent No.3 and during the pendency of such proceedings they are apprehending that they will not be continued and therefore they have preferred the present Special Civil Applications with the aforesaid prayers.

3. Mrs. Pahwa, learned advocate appearing on behalf of the petitioners has submitted and requested that till appropriate Government takes a decision to make a Reference an appropriate order be passed restraining the respondent No.1 ONGC not to terminate the services of the workers, otherwise once they are terminated it will be difficult for the respondent workmen to get any substantive relief. She has relied upon the judgment of the learned Single Judge of this Court in the case of **Food Corporation of India Workers' Union Vs. Food Corporation of India**, reported in 2001(1) GLH Page 90. Relying upon the said judgment she has submitted that in that case while relegating the workers to invoke machinery under the Industrial Disputes Act as well as Contract Labour (Regulation and Abolition) Act, 1970, this Court has protected and has directed the respondents not to terminate their services till the court has granted the interim relief and has continued the same for a period of one month from the date on which the appropriate Government takes a decision and communicate to the concerned petitioner union, and therefore it is requested to grant the same relief.

3.1. So far as the judgment relied upon by the learned advocate appearing for the petitioners in the case of **Food Corporation of India Workers' Union (supra)** is concerned, it is required to be noted that there the ad-interim relief was granted with consent as there was a consensus between the parties and therefore the said judgment will not be helpful to the petitioners.

4. On the other hand, Shri Marshall, learned advocate appearing on behalf of respondent No.1 ONGC has opposed the present Special Civil Application and for grant of any interim relief and/or continuation of any interim relief. It is submitted that the questions whether the petitioners are employees of respondent workmen or not, the contract is sham or bogus and/or camouflage are yet to be decided and unless and until the same are finally adjudicated upon and decided it cannot be said that the petitioners are workers and/or employees of respondent No.1 ONGC and therefore no relief as sought for in the present Special Civil Application can be granted restraining respondent No.1 from terminating the services of the petitioners as as on today they are the employees of the contractor. It is also further submitted that directing the respondent No.1 not to terminate their services would mean that even if the contractor is changed it will be directing the new

contractor to absorb the petitioners and when even new contractor is not a party the same cannot bind such new contractor. It is also further submitted that in case on appreciation of evidence and adjudication if it is ultimately held that the petitioners are employees of respondent No.1 ONGC and that the contract is sham and bogus appropriate relief can be granted by the Labour/Industrial Court and the petitioners can be compensated, however till then the petitioners cannot be construed to be employees of the respondent No.1 and if interim relief as prayed for is granted it would be indirectly treating the petitioners as employees of respondent No.1 ONGC and therefore it is requested to dismiss the present Special Civil Applications.

5. Shri Samir Dave, learned Additional Central Standing Counsel appearing on behalf of Assistant Labour Commissioner submitted that an appropriate order be passed directing the respondent No.3 to complete the conciliation subject to cooperation by both the parties.

6. Heard the learned advocates appearing on behalf of the parties. It is the case of the petitioners that they are employees of respondent No.1 through contractors meaning thereby they are appointed by the contractors by alleging inter alia that the contract is sham and bogus and the same is with a view to avoid liability under various labour laws and in fact as they are actually workers of respondent No.1 ONGC they approached the Conciliation Officer, i.e., respondent No.1. Ultimately on submission of Failure Report and making a Reference by the appropriate authority which is made on appreciation of evidence, and in an adjudication the Industrial Tribunal/Labour Court has to hold whether the contract is sham or bogus and/or camouflage and that the petitioners are employees of respondent No.1 ONGC. Unless and until the same is done, it cannot be said that the petitioners are employees of respondent No.1. Under the circumstances, no order can be passed restraining the respondent No.1 from terminating the services of the petitioners, as, as on today, it cannot be said that they are employees of respondent No.1 ONGC. As stated above, the question whether the petitioners are employees of respondent No.1 or not is yet to be decided in a Reference by the competent Tribunal under the provisions of The Industrial Disputes Act, 1947 and or The Contract Labour (Regulation and Abolition) Act, 1970. In

the facts and circumstances, the prayer restraining the respondent No.1 from terminating the services of the petitioners cannot be granted. Grant of such relief would be tantamounting to prima facie holding at present that the petitioners are employees of the respondent No.1 ONGC. Mr. Marshall, learned advocate is right in his submission that in the meantime suppose if the contract is to be changed, and if interim relief is granted, then it would compel the new contractor to absorb the petitioners and in absence of such new contractor no direction can be given on such new contract to employ them. The learned Single Judge of this Court in the case of Gujarat Mazdoor Panchayat Vs. Conciliation Officer and Ors., - 2002 (2) GLH Page 253 has refused to grant such a relief as it will indirectly direct such new contract to absorb the workmen. Under the circumstances, the prayer of the petitioners, to direct the respondent No.1 not to terminate their services till the dispute is referred to an appropriate Court and the appropriate court decides interim application, cannot be granted.

7. It appears from the record that the conciliation proceedings are pending with the respondent No.3, and considering the provisions of Section 10 of the I.D. Act, 1947, the Conciliation Officer has to complete the conciliation Proceedings as early as possible, and in case if the dispute is not settled, has to submit a Failure Report to the appropriate Government. Shri Samir Dave, learned Assistant Labour Commissioner, respondent No.3 has submitted that as there is no cooperation by either of the parties as they are asking for time the conciliation proceedings are not concluded. Be that it may, in the facts and circumstances of the case, the respondent No.3 is directed to complete the conciliation proceedings as early as possible within the period of one month from the date of receipt of this order, subject to cooperation by both the parties. Both the sides are directed not to ask for adjournments unnecessarily. If ultimately there is no settlement arrived at, then the respondent No.3 is directed to submit the Failure Report within the period of 15 days from the completion of conciliation proceedings and forward it to the appropriate authority. On receipt of such Failure Report, the appropriate Government is directed to take an appropriate decision with regard to referring the dispute to the appropriate Tribunal/Court as early as possible and preferably within the period of two months from the date of receipt of such Failure Report.

8. With these observations and directions, all the petitions are dismissed. Rule is discharged. Ad-interim relief, granted earlier, stands vacated forthwith.

[M.R. Shah, J.]

rmr.