

Labourers Working On Salal ... vs State Of Jammu And Kashmir on 25 April, 1984

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Bench: P.N. Bhagwati, R.B. Misra

JUDGMENT

P.N. Bhagwati, J.

1. This is one of those cases by way of public interest litigation where positive results have been achieved for the benefit of the workmen employed on the Salal Hydro Electric Project as a result of judicial intervention. It is not necessary to set out the history of this litigation because the facts giving rise to this litigation have been set out in detail in the interim judgment delivered by us on 2nd March 1983. Suffice it to state that this litigation was started on the basis of a letter addressed by the People's Union for Democratic Rights to Mr. Justice D.A. Desai enclosing a copy of the news item which appeared in the issue of Indian Express dated 26th August 1982 pointing out that a large number of workmen working on the Salal Hydro Electric Project were denied the benefit of various labour laws and were subjected to exploitation by the contractors to whom different portions of the work were entrusted by the Central Government. The letter was treated as a writ petition and by an order dated 10th September 1982, the Union of India and some other parties were directed to be shown as respondents to the writ petition and notice to show cause against the writ petition was issued to them. This Court also directed the Labour Commissioner, Jammu to visit the site of the Salal Hydro Electric Project and ascertain (i) whether there are any bonded labourers employed on this project and if so, to furnish their names; (ii) whether there are any migrant-workmen who have come from other States (iii) what are the conditions in which the workers are living and (iv) whether the labour laws enacted for their benefit are being observed and implemented. Pursuant to this order made by the Court, the Labour Commissioner, Jammu visited the site of the Salal Hydro Electric Project and made an interim report on 11th October 1982 and this was followed by a final report dated 15th October 1982. The writ petition thereafter came up for hearing on 3rd November 1982 and on that date, the Court directed that since the report of the Labour Commissioner, Jammu disclosed that the Salal Hydro Electric Project was being carried out by the Government of India, the Union of India in the Labour Ministry as also the Chief Labour Commissioner (Central) may also be added as respondents to the writ petition. The Court also directed that the Union of India and the Chief Labour Commissioner (Central) should file their affidavits within two weeks from the date of the order dealing with the various averments made in the two reports of the Labour Commissioner,

Jammu and particularly the final report made by him, since the final report disclosed prima facie that there were certain violations of labour laws committed by the Central Government and the contractors. The Court also directed that "the Union of India and the Chief Labour Commissioner (Central) shall ensure that hereafter minimum wage is paid directly by the Central Government or the contractors as the case may be, to the workmen employed by them without the intervention of any subcontractor or jamadar or khaddar and without any deduction whatsoever except such as may be authorised statutorily. The reference to sub-contractors in this order will be confined only to those sub-contractors who have not been licensed under the Contract Labour (Regulation and Abolition) Act 1956, because if any such sub-contractors have been licenced, they would fall within the definition of Contractors and would therefore be liable for payment of minimum wage directly to the workers without any deduction. The Union of India and the Chief Labour Commissioner (Central) will also, in the meanwhile, ensure that Sections 16 to 19 of the Contract Labour (Regulation and Abolition) Act 1956 read with the relevant rules made under that Act are complied with, as the same are mandatory and the Central Government is the appropriate authority to enforce the provisions of those sections". Pursuant to this order made by the Court, an affidavit dated 14th December 1982 was made by one H.S. Raju Deputy Secretary to the Government of India, in the Ministry of Labour and it was filed in Court on behalf of the Union of India. The Court thereafter heard the writ petition on merits in the light of the two reports made by the Labour Commissioner, Jammu and the affidavit filed by H.S. Raju on behalf of the Union of India and gave an interim judgment on 2nd March 1983. The Court pointed out in the interim judgment that the Salal Hydro Electric Project was a gigantic power project undertaken by the Government of India and it was entrusted by the Government of India to the National Hydro Electric Power Corporation for execution on agency basis. Certain portions of the work in connection with the project were being executed by the National Hydro Electric Power Corporation itself through workmen directly employed by it, while certain other portions of the work were entrusted to contractors, of whom principal four were Hindustan Construction Company Limited, Gammon India Limited, T.R. Gupta Private Limited and Asia Foundation Construction Company. The National Projects Construction Corporation Limited and M/s. S.C. Puri were also two other major contractors to whom portions of the work were entrusted, but their names were not mentioned to the Court at that time and hence they were not specifically referred to in the interim judgment. These various contractors were in their turn doing a part of the work entrusted to them through workmen directly employed by them while a part of the work had been allotted by them to sub-contractors described as "piece wagers". Now the Executive Engineers of the National Hydro Electric Power Corporation were licensed under the provisions of the Contract Labour (Regulation and Abolition) Act 1956 (hereinafter referred to as Contract Labour Act) and so were also the contractors to whom different portions of work had been entrusted for execution. But the sub-contractors or piece wagers to whom different portions of the work had been entrusted by the contractors did not hold any licence, though they fell within the definition of the word "Contractor" in Clause (c) of Section 2 of the Contract Labour Act. The Court therefore by its interim judgment directed the Central Government as the enforcing authority to take immediate steps for ensuring that the sub-contractors or piece wagers do not execute any portion of the project work without obtaining a licence under Section 12 Sub-section (1), and carry out their obligations under Sections 16 to 21 read with Rules 41 to 62 of the Contract Labour (Regulation and Abolition) Central Rules, 1971, (hereinafter referred to as the Contract Labour Central Rules). The Court pointed out in the interim judgment that though the National Hydro

Electric Power Corporation had provided canteens and rest rooms to its ' . workmen as required by Sections 16 and 17 of the Contract Labour Act and Rules 41 to 50 of the Contract Labour Central Rules, the contractors and piece wagers or sub-contractors had not provided such canteens and rest rooms in breach of their obligations under these provisions nor were adequate washing facilities provided at work sites, ; though there was clearly an obligation on the contractors as also on the piece-wagers or sub-contractors to do so under Clause (c) of Section 18 read with Rule 57. The Court, therefore, directed the Central Government "to take immediate steps for ensuring that canteens, rest rooms and washing facilities are provided by the 2 contractors and the piece-wagers or sub-contractors to the workmen employed by them in accordance with the requirements of Sections 16, 17 and 18 Clause (c) read with Rules 41 to 50 and 57". Since it appeared from the final report of the Labour Commissioner, Jammu that some minors were found to have been employed on the project 3 site, the Court directed that in compliance with the requirements of Article 24 of the Constitution no child below the age of 14 years should be allowed to be employed in the work of the project. It was also pointed out in the interim judgment that the Central Government should take care to see that necessary facilities for schooling 4 were provided to the children of construction workers, whenever any construction project was taken up which was likely to last for some time. The Court accepted the conclusion set out in the final report of the Labour Commissioner, Jammu that there was hardly any irregularity in so far as payment of wages to the workmen employed by the National Hydro Electric Power Corporation and the contractors was concerned but observed that the final report showed that in case of workmen employed by the piece-wagers or sub-contractors, payment of wages was made directly only to those workmen who were employed individually and to other workmen, like Oriya labourers who were employed in groups, wages were paid through khatedars and in this latter case, there were complaints of deductions by khatedars on account of advances made to the workmen, messing charges etc. The Court, therefore, proceeded to give a direction in the interim judgment that so far as the workmen employed by the piece-wagers or sub-contractors were concerned, wages should be paid to them directly without the intervention of any khatedars and without making any deductions except those authorised by, statute and such payment of wages should be made in the presence of an authorised representative of the Central Government or the National Hydro Electric Power Corporation. The Court also accepted the validity of the complaint made on behalf of the workmen that overtime wages earned by the workmen were not received by them in their entirety and almost 50% was taken away by khatears and that weekly off days with wages were also not being allowed to them by the piece-wagers or subcontractors. The Court, therefore, directed that close and searching inspections must be carried out by the Inspectorate staff with regular frequency and such inspections must be detailed and thorough, for then only it would be possible to ensure that every payment of wages, whether normal wages or overtime Wages, is made directly to the workmen without any deductions in the presence of an authorised representative of the Central Government or the National Hydro Electric Power Corporation. The Court pointed out that the final report of the Labour Commissioner, Jammu showed that the provisions of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979 (hereinafter referred to as Inter-State Migrant Workmen Act) were not being implemented at all and the workmen were denied many of the benefits and advantages provided under that Act even though it had come into force on 2nd October 1980 and the Rules made under that Act had also been brought into force with effect from the same date and consequently, the Court directed the Central Government to take immediate steps for enforcement

of the provisions of the Act and the Rules made under it in regard to Inter-State migrant workmen employed in the project work. These were the detailed directions given by the Court in its interim judgment for compliance by the various authorities.

2. The Central Government immediately, with a view to securing compliance with the various directions given by the Court in the interim judgment, issued a Circular dated 22nd March 1983 to all the Engineers-In-Charge of the project who were principal employers as also to all the contractors and sub-conductors or piece-wages directing immediate compliance with the following directions:

1. That no child below the age of 14 years is employed by any contractor/sub-contractor on any work place in the Project. In case any child labourer is engaged by any contractor/sub-contractor immediate orders for their disengagement should be issued forthwith and a report furnished to the undersigned.

2. That every workmen employed by the contractor/sub-contractor should be given a compulsory weekly off with wages and a compliance report is furnished forthwith.

3. That all the contract labour employed by your contractor/subcontractors (Piece Wagers) should be paid their wages @ Rs. 10/-per day in presence of the authorised representative nominated by you to witness and verify the payments. Any payment, not made in presence of such a representative and not certified by him will not be reckoned as an authentic payment.

4. Ordinarily no workmen employed by the contractor/sub-contractors be put to work on over time, but in case of exigencies for working on over time, the workman should be paid at the rate of double the ordinary rate of wages, in presence of your authorised representatives.

5. The Engineer-in-Charge (Principal Employers) and the representative nominated by them for witnessing the payments should ensure the payment of wages on account of over time put in by the workmen engaged by the contractors/sub-contractors in time and in full directly to the concerned workmen without any unauthorised deduction whatsoever.

6. The Engineer-in-Charge (Principal Employers) should immediately direct the contractors/sub-contractors to supplement the existing number of latrines & urinals by constructing additional seats wherever required and to provide sufficient number of rest rooms so as to meet the requirement of Section 17 and 18 of the Contract Labour (R & A) Act 1970. In case the contractors/subcontractors fail to provide the same within one week, the Engineer-in-Charge (Principal Employers) should take immediate steps to provide the same in accordance with Section 20 of the Contract Labour (R & A) Act, 1970 and recover the amount so incurred from the contractors/sub-contractors.

7. That all the facilities provided under Section 16 of the Inter-State Migrant Workmen Act, 1979 are provided to the Contract/Inter-State Migrant Workmen as already instructed vide this office No. P & A/P-IV/100(CL)/82/58176-236 dated 2.12.1982.

8. That every inter-State migrant workmen is paid displacement allowance at the time of his recruitment and the journey fare in accordance with Section 14 & 15 of the Inter-State Migrant Workmen Act, 1979.

The Central Government also addressed a letter dated 22nd March 1983 instructing the Manager of the National Hydro Electric Power Corporation to ensure that the above directions were carried out by the National Hydro Electric Power Corporation and the contractors and sub-contractors or piece-wagers. This letter pointed out that the Engineers-in-Charge of the National Hydro Electric Power Corporation were already registered under the Contract Labour Act and pursuant to the directions given by the Court in its interim judgment, they had made applications for registration as principal employers under the Inter-State Migrant Workmen Act and so far as the contractors were concerned, they held licence under Section 12 Sub-section (1) of the Contract Labour Act, and had also applied for licence under Section 8 of the Inter-State Migrant Workmen Act but since the sub-contractors or piece wagers were without any licence under Section 12 Sub-section (1) of the Contract Labour Act and Section 8 of the Inter-State Migrant Workmen Act, they were directed to immediately proceed to apply for such licence before 31st March 1983. The Central Government pointed out that the National Hydro Electric Power Corporation as also Hindustan Construction Company Limited and Gammon India Limited had already provided canteen facilities at work places and these canteen facilities were available not only for the workmen employed by them but also for the workmen employed by the contractors and the sub-contractors or piece wagers. But even so the Central Government instructed the other contractors as also sub-contractors or piece wagers to provide additional canteens. The Central Government also stated in this letter that the contractors had already been directed by the respective principal employers to provide rest room facilities by 30th April 1983. So far as drinking water facilities were concerned, it was pointed out by the Central Government in this letter that arrangements for sufficient supply of drinking water had already been made at work places "both by the project authorities as well as by the main contractors". The Central Government observed in this letter that a few latrines and urinals had already been provided by the major contractors for the use of the workmen employed by them but there was scope for providing additional latrines and urinals and the contractors had accordingly been instructed to increase the number of existing latrines and urinals. This letter reiterated that the Engineers-in-Charge had already issued instructions to the contractors and the sub-contractors or piece wagers to provide all the facilities stipulated under the Contract Labour Act "with a warning that in the event of their failure the same shall be provided at their cost by the principal employers themselves". The Central Government also pointed out in this letter that instructions had already been issued to the contractors and the sub-contractors or piece wagers that wages must be paid directly to the workmen in the presence of an authorised representative of the Central Government or the National Hydro Electric Power Corporation and if that was not done, the amount of the wages would be deducted from the amount payable by the National Hydro Electric Power Corporation to the contractors and the sub-contractors or piece wagers and so also in regard to overtime wages

which must be paid at double the rate of ordinary wages. Now formerly wages were being paid to the workmen at the rate of Rs. 9/- per day but as a result of a suggestion made by the Court at an earlier stage of these proceedings the daily rate of wages was increased from Rs. 9/- to Rs. 10/- with effect from 1st December 1982 and this fact was also recited in the letter addressed by the Central Government. The Central Government also reiterated that instructions had already been issued prohibiting employment of children below the age of 14 years and the Engineers-in-Charge as also the contractors and the sub-contractors or piece wagers had been directed to provide to the workmen compulsory weekly off day with wages. The annexures to the letter gave particulars of the Oriya Dadan labour employed directly by the contractors as also by the sub-contractors or piece wagers as on 21st March 1983 and these annexures showed that 156 Oriya Dadan workmen were employed by the major contractors while 1130 Oriya Dadan workmen were employed by the sub-contractors or piece wagers. The annexures also gave particulars of the non-Oriya workmen employed by the contractors as well as the sub-contractors or piece wagers as on 21st March 1983 and these particulars showed that 1124 Bihari workmen and 2004 other workmen were so employed. The Manager of the National Hydro Electric Power Corporation in his turn issued a letter dated 23rd March 1983 passing on these directions to the contractors instructing them to take immediate action within a period of 7 days. These directions were substantially carried out by the contractors and they intimated to their respective principal employers that their subcontractors or piece wagers had already applied for licence under Section 12 Sub-section (1) of the Contract Labour Act and those sub-contractors or piece wagers to whom the provisions of the Inter-State Migrant Workmen Act were attracted had also applied for licence Under-Section 8 of that Act and that so far as the other amenities and facilities required to be provided under these two statutes were concerned, they were by and large provided and some deficiencies in providing these welfare amenities were being set right. What may be termed as compliance reports were submitted by the Hindustan Construction Company Limited, Asia Foundation and Construction Company, National Projects Construction Corporation Limited and M/S S.C. Puri and they were annexed to an application filed in Court by the National Hydro Electric Power Corporation for being added as a respondent to the writ petition. The National Hydro Electric Power Corporation pointed out in the application that immediately after the interim judgment of the Court, an internal committee was constituted for ensuring compliance with the various directions given by the Court in so far as they related to the National Hydro Electric Power Corporation and this committee "visited the Salal Hydro Electric Project and after detailed discussions at the level of the General Manager with the various contractors and officers of the project etc. detailed instructions were issued for ensuring compliance with the directions" given by the Court. The application also gave in a tabulated form a statement showing compliance with the various directions given by the Court supported by copies of the various documents to which we have just referred. It is not necessary to set out in detail the facts showing compliance with the various directions given by the Court in its interim judgment, but suffice it to state that it is clear from the documents and statements produced by the National Hydro Electric Power Corporation that these directions have been substantially complied with by the National Hydro Electric Power Corporation as also by the contractors and sub-contractors or piece wagers.

3. The writ petition thereafter came up for hearing on 6th May, 1983 alongwith the application of the National Hydro Electric Power Corporation for being impleaded as a respondent to the writ

petition. The Court after hearing the parties made an order on the same day directing that the National Hydro Electric Power Corporation should be added as a respondent of the writ petition and that the National Hydro Electric Power Corporation should file an affidavit on or before 18th July, 1983 stating as to what further steps they had taken and were proposing to take "for the purpose of effective implementation of the labour laws". Kulbhushan Raina, Assistant Manager (Personnel) Salal Hydro Electricity Project thereafter in pursuance of the order made by the Court, filed a further affidavit on 10th July, 1983 stating that pass-books printed in the prescribed manner had been supplied to the contractors and the sub-contractors or piece wagers for issuing the same to individual inter-State Migrant workmen as required by Sub-section (6) of Section 12 of the Inter-State-Migrant Workmen Act and that so far as the 6 major contractors were concerned, two of them namely M/s. Asia Foundation and Construction Company and M/s. S.C. Puri had already completed their work and wound up their establishment and out of the remaining four major contractors, T.R. Gupta Private Limited and National Projects Construction Corporation Limited had confirmed payment of displacement allowance to the inter-State migrant workmen but the other two major contractors, namely, Hindustan Construction Company Limited and Gammon India Limited had raised doubts about the applicability of the Inter-State Migrant Workmen Act to the workmen employed by them since according to them the workmen employed by them including the Oriya workmen were engaged through the local employment exchange and were not brought front their home States as contemplated in that Act. But even so, stated these two contractors, they had instructed their sub-contractors or piece wagers to apply for licence Under-Section 8 of the Inter State Migrant Workmen Act and they were paying to their workmen travelling expenses and journey allowance. Kulbhushan Raina stated in his affidavit that despite this contention raised by Hindustan Construction Company Limited and Gammon India Limited, the National Hydro Power Corporation had deducted Rs. 10000/- and Rs. 50000/-respectively from payments due to Hindustan Construction Company Limited and Gammon India Limited to cover payments in respect of displacement allowance. It was also pointed out by Kulbhushan Raina on oath that all Engineers-in-Charge as also all contractors and sub-contractors or piece wagers had obtained "registration certificates -licences under the Contract Labour Act as well as under the Interstate Migrant Workmen Act" and that all facilities required to be given to workmen under these two statutes were being provided to them. Kulbhushan Raina also averred in his affidavit that over-time wager at double the rate of ordinary wages were being regularly paid by the contractors and the sub-contractors or piece wagers in the presence of authorised representative of the principal employers as well in the presence of the Central Labour Enforcement officers and he further added in paragraph 8 of the affidavit:

8. All the contractors and sub-contractors have confirmed that they have now provided rest-rooms for the use of their respective contract labour in accordance with the directions/orders given by the Management of Principal employers. Sufficient number of latrines/urinals, washing and bathing points and clean workers colonies have been provided at various work sites by contractors as confirmed by Principal employers. In addition to canteens provided by the contractors at different work places, the management of principal employer has also provided canteen facilities open for all workmen categories also at projects where the food on subsidised rates on non profit no loss basis and a full breakfast costs only Rs. 1.25 and a full meal

costs only Rs. 2/-. Canteens are opened by the Management and are open for every body whether a workmen or an officer of the project.

Kulbhushan Raina also thereafter filed a further affidavit on 3rd October, 1983 enclosing a chart showing compliance with the various directions given by the Court in its interim judgment. He also filed alongwith his affidavit a number of affidavits made by contractors such as National Projects Construction Corporation Limited, Gammon India Limited, Hindustan Construction Company Limited and T.R. Gupta Private Limited and their sub-contractors or piece wagers. These affidavits alongwith the affidavit of Kulbhushan Raina clearly show that the various directions given by the Court in its interim judgment have been complied with and that the provisions of the Contract Labour Act, Inter-State Migrant Workmen Act and the Minimum Wages Act are being observed by the National Hydro Electric Power Corporation as also by the contractors and the sub-contractors or piece wagers employed by them. We may point out that on an application made by the petitioner we directed Gammon India Limited and M/s. Gopi Nath Samanta a firm working as sub-contractors or piece wagers to inform the Court as to whether wages were being paid by them to the workmen at the same rate at which they were being paid by the principal employers, namely, National Hydro Electric Power Corporation and accordingly, R.D. Chopra on behalf of Gammon India Limited and Gopi Nath Samanta filed affidavits slating that they were complying with the provisions of the labour laws and were paying wages to (he workmen at the prescribed minimum rate of Rs. 10 per day.

4. We are satisfied on the material placed before us that the National Hydro Electric Power Corporation as also the contractors and the sub-contractors or piece wagers are now complying with the provisions of the Contract Labour Act, Inter-State Migrant Workmen Act and the Minimum Wages Act and the welfare amenities required to be provided under these statutes are being made available to the workmen employed on the Salal Hydro Electric Project. But even so, we would direct the Central Government to tighten up its inspection machinery and to ensure that close and detailed inspections are carried out by fairly senior inspection staff at frequent intervals, because unless there is constant vigilant scrutiny, the observance of labour laws which the Court has been able to secure as a result of its judicial intervention, may again become slack and the construction workers who constitute by and large an unorganised sector of the labour force may not be able to bring such non-observance of labour laws to the notice of the Court.

5. The writ petition will therefore stand disposed of in terms of this judgment. We are indeed grateful to Mr. Govind Mukhoty for the valuable assistance which he has rendered to us in this case. We want to express our sense of appreciation of the sincerity and thoroughness with which he has argued this case before us on behalf of the poor unorganised construction workers. We would in the circumstances direct the Government of India to pay to Mr. Govind Mukhoty a sum of Rs. 5,000/- by way of costs of the writ petition.