

India Tourism Development Corporation ... vs Ashok Hotel Mazdoor Janta Union on 30 July, 2020

Author: Prathiba M. Singh

Bench: Prathiba M. Singh

\$~5

*

+

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 2638/2018

INDIA TOURISM DEVELOPMENT CORPORATION
LIMITED

Through: Mr. Ravi Sikri, S
Ms. Sumitra Choud
(M:8800556098)

versus

ASHOK HOTEL MAZD00R JANTA UNION Respondent

Through: Mr. A. P. Dhamija, Mr
and Ms. Tanya Shar
(M:9810633614)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% 30.07.2020

1. This hearing has been done by video conferencing. CM APPL. 17091/2020(for exemption)
2. Allowed, subject to all just exceptions. Application is disposed of. W.P.(C) 2638/2018 & CM APPL. 17090/2020
3. CM APPL. 17090/2020 has been filed on behalf of the Respondent - employees praying for appropriate directions in respect of the recent notice dated 13th July, 2020 issued by the contractor U.P.N.L., Delhi, in effect informing all the employees that the contract between ITDC and the contractor is expiring on 1st August, 2020 and the employees can contract with any other establishment after 1st August, 2020.
4. The background of this petition is that an award dated 31 st August, 2017 was passed by the Central Government Industrial Tribunal which directed the Petitioner to regularise the services of the Respondent-

employees who were retained through the contractor and who were working at the Ashok Hotel. The operative portion of the award reads as under:

"29 The reference in the present case has been received from the government to the effect whether non-regularization of the service of the claimants herein by the management of Ashok Hotel is just and fair. The Id. A/R for the workmen has also relied upon various judgments so as to show that claimants herein are in the employment of management of Ashok Hotel. In view of above discussion, it is held that claimants are not employees of M/s Total Quality Security & Surveillance Systems Private Limited who has neither been examined nor any contract/agreement has been proved by the management. Resultantly, both these issues are decided in favour of claimants and against the management.

30. The result of the above discussion is that claimants herein cannot be said to be in the employment of contractor and they are held to be employees of the management. As a sequel to this, it is further held that claimants are entitled to be considered for regularization as per the policy/rule or regulations applicable to their regular counter parts, who are performing the similar job."

5. ITDC had challenged the said award dated 31st August, 2017. Notice was issued on 20th March, 2018, however, there is no stay which has been granted against the award of the Industrial Tribunal. Mr. A. P. Dhamija, Id. counsel appearing for the Respondent-employees submits that since there is no stay, ITDC is bound to regularise these employees and in any event, they cannot be terminated by the notice issued on behalf of the contractor.

6. On behalf of ITDC, Mr. Ravi Sikri, Id. Senior counsel submits that there were several writ petitions filed by employees wherein directions were issued by a Id. Single Judge of this Court directing the regularisation of all the employees and framing of the regularisation policy. The said judgment of the Id. Single Judge was challenged before the Division Bench in LPA 199/2013 titled Management of Ashok Hotel (ITDC) v. Their Workmen & Anr. wherein a stay order has been passed against the framing of the regularisation policy. However, he fairly submits that the employees are continuing to work with ITDC.

7. A perusal of the notice dated 13th July, 2020 and award dated 31st August, 2017 shows that there is a complete mismatch between the two. The contractor is continuing to proceed on the basis that the employees are employees of the contractor and not of ITDC, however, the award had clearly declared that the employees are the employees of ITDC. Owing to the submission that there is an LPA pending and the regularisation policy of ITDC has been stayed, at this stage, this Court is of the opinion that the employees are entitled to limited interim relief to the extent that if any new contractor is engaged by ITDC the services of the Respondent-employees shall not be terminated. The Respondent-employees would be allowed to perform the same duties as they are currently performing. Ordered accordingly. The new contractor shall be notified by ITDC of today's order in order to ensure compliance.

8. Let a reply to this application be filed within four weeks. Rejoinder be filed within two weeks thereafter.

9. List on 7th October, 2020.

PRATHIBA M. SINGH, J.

JULY 30, 2020 dj/T