

Sandeep Manderna vs Union Of India & Anr on 16 April, 2021

Author: V. Kameswar Rao

Bench: V. Kameswar Rao

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 4765/2021, CM No. 14706/2021
SANDEEP MANDERNA

..... Petitioner

Through: Mr.Vinay Kumar Garg, Sr. Adv. with
Mr. Parv Garg & Mr. Sanjay Kumar
Visen, Advs.

versus

UNION OF INDIA & ANR.

..... Respondent

Through: Ms. Mrinalini Sen Gupta, Adv. with
Ms. Nihaarika Jauhari, Adv. for
R-1/UOI
Mr. Sushil K. Pandey, Sr. Panel
Counsel with Mr. Rahul Mourya &
Ms. Sweety Singh Chauhan, Adv.
Mr. Animesh Kumar, Mr. Nishant
Kumar, Mr. Ambuj Dixit,
Ms. Utkarsha Sharma & Ms. Shweta
Singh, Adv. for R-4

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
ORDER

% 16.04.2021 This matter is being heard through Video-Conferencing.

1. This petition has been filed by the petitioner with the following prayers:-

"In the premises of the above, it is respectfully prayed that this Hon ble High Court may be pleased:-

(i) To quash and set aside orders of disengagement dated 0103.2021 (Annexure P-1 (colly) which are non-est, illegal, bad in law and void ab initio in the eyes of law, as the Petitioner is the employee of the Respondent No.2 herein and accordingly quash and set aside the same; and

(ii) To declare the Petitioner is the employee of the Respondent No.2, which is under the Respondent No.1; and

(iii) To direct the Respondents to re-instate the Petitioner with all consequential benefits.

(iv) To allow the present writ Petition with cost.

(v) Such other and further order which their Lordships of this Hon ble High Court deem fit and proper may please be passed."

2. It is the case of the petitioner and contended by Mr. V.K. Garg, learned Sr. Counsel that, on March 05, 2015, the respondent No.2 National Highways and Infrastructure Development Corporation Limited ('NHIDCL', in short) invited online applications for filling up approximately 40 posts of Graduate Engineers / Site Engineers / Site Supervisors for working in the Ministry of Road Transport and Highways, NHIDCL Headquarters in New Delhi and NHIDCL's Project Monitoring Units located in North Eastern States, Sikkim, J&K, Uttarakhand etc.

3. Surprisingly petitioner, on being successful received his offer of appointment dated November 20, 2015 from the respondent No.4 T&M Services Consulting Private Ltd for the post of Graduate Engineer for a fixed period of contract from November 24, 2015 to November 23, 2016. Pursuant thereto, NHIDCL prepared the final result and the petitioner was deployed at NHIDCL Headquarters. He received an email from HR Department of NHIDCL regarding the details required for registration of Biometric attendance. The petitioner was issued an identity card of NHIDCL valid upto December, 2020. The petitioner was very much regular on his duties and worked with great responsibilities as expected from an employee.

4. According to Mr. Garg, the petitioner was in receipt of an email dated May 30, 2016 from respondent No.4 whereby it had cancelled the appointment of the petitioner; though the said mail of termination was cancelled immediately. The reason for such an action is not known till date. He submits that the contract of employment of the petitioner was renewed from time to time. The petitioner was also granted promotion to the post of Manager (Tech). The NHIDCL subsequently advertised additional new posts to be filled through manpower agency. The advertisement also stated that the candidates with the qualifications and experience stated therein can also walk in to appear in the written test. The petitioner while working as Manager (Tech) received an email from the Ms. Neetu Negi, OA HR of NHIDCL stating that outsourcing agency / manpower agency has been changed. He once again received fixed term appointment letter dated September 01, 2018 by a different manpower agency i.e. respondent No.5 making the appointment fixed term till August 31, 2019.

5. Mr. Garg highlighted the fact that a Commendation Letter was issued by the Director (Admin & Finance) of NHIDCL praising the work done by the petitioner and bringing glory to NHIDCL, surely signifies the relationship between the petitioner and the respondent No.2. He has drawn my attention to an email dated February 12, 2019 of the petitioner to the Cabinet Minister wherein he

has highlighted his grievance, which included his employment under NHIDCL on outsourced basis. He submits that for all purposes, the petitioner is an employee of NHIDCL as he was assigned all responsibilities but not limited to supervision and monitoring of national highway project works, handling / taking of official files and other project documents, obtaining approvals, generating reports, developing IT platforms etc.

6. The submission of Mr. Garg is in fact, that the petitioner has been engaged for NHIDCL on the post sanctioned and created by NHIDCL though through respondent Nos. 4 and 5 as is clear from the annual report of NHIDCL for the year 2016-17 wherein at page 394, this fact has been stated. According to Mr. Garg even the promotion of the petitioner as Manager (Technical / Projects) was against the sanctioned post of the NHIDCL. He stated, the process evolved by NHIDCL to make recruitment through outsourcing basis is violative of Articles 14, 16 and 21 of the Constitution of India. In other words, the respondent Nos. 1 to 3 cannot avoid recruitment to the post and engage persons like the petitioner through intermediaries / contractors and pay them partly wages and deny regularization of services, that too, when the sanctioned posts exist with the NHIDCL. In fact, it is his case that the outsourcing system adopted by the NHIDCL is sham and ruse to avoid extending to the petitioner and similarly placed persons, the genuine service entitlement and the presence of respondent Nos. 4 and 5 as intermediaries has to be ignored and the petitioner need to be declared to have been directly appointed by NHIDCL.

7. According to Mr. Garg if this Court hold the same, then the impugned order passed by NHIDCL whereby it has called upon the intermediary to withdraw the contract deployment of the petitioner, has to be held illegal. He seeks the reliefs as prayed for in the petition.

8. On the other hand, learned counsel for the respondent No. 4 would contest the petition and states that the appointment letters issued from time to time were by respondent Nos. 4 and 5 and as such the privity of contract of the petitioner is with the said respondents. She states that the latest appointment letter has been issued by respondent No.4 and the petitioner has stopped reporting for the work with effect from January 01, 2021. It is under these circumstances, the NHIDCL has to send the impugned communication. She also state that the plea of Mr. Garg that the salary was being paid by the NHIDCL is incorrect as the salary was being paid by respondent Nos. 4 / 5.

9. Having heard the learned counsel for the parties, the issue which arises for consideration in this petition is whether the petitioner has been appointed on behalf of NHIDCL and he has been discharging the responsibilities assigned by the said respondent and as such, a declaration can be given that he be treated as an employee of NHIDCL.

10. Mr. Garg has heavily relied upon the advertisement issued by the NHIDCL to contend that the process of recruitment, which resulted in the appointment of the petitioner was started by the said respondent by making it clear that the appointment is under it. That apart, the post against which the petitioner has been recruited, was created by NHIDCL. The appointment by respondent Nos.4 and 5 as intermediaries is only to deny the petitioner, the status of a regular employee and the emoluments etc. The salary to the petitioner being paid by NHIDCL surely establishes the relationship of employer and employee between NHIDCL and the petitioner.

11. Suffice to state, this fact has been denied by the learned counsel for the respondent No. 4. In any case, the grant of the reliefs, as prayed for by the petitioner, involves adjudication of several issues like (i) Whether the recruitment of the petitioner was in terms of the advertisement, said to have been issued by NHIDCL at annexure P-3; (ii) Whether the recruitment is against the post sanctioned / created by the NHIDCL; (iii) Whether the petitioner was discharging all the duties of Manager (Technical / Projects) in the NHIDCL including but not limited to supervision and monitoring of national highway project works, handling / taking of official files and other project documents, obtaining approvals, generating reports, developing IT platforms etc.; (iv) Whether the petitioner was being paid salary by NHIDCL or by the intermediaries i.e. respondent Nos. 4 and 5; (v) What is the effect of issuance of appointment letters by respondent Nos. 4 and 5 to the petitioner and their acceptance by him; (vi) Whether the NHIDCL has adopted the outsourcing method for recruitment and if yes, whether the same is impermissible in law; (vii) Whether the process of outsourcing adopted by NHIDCL is sham and ruse to avoid extending to the petitioner the genuine service benefits / status; (viii) What is the nature of relationship between respondent No.2 and 4 and 5.

12. The law in this regard is well settled by the Constitution Bench of the Supreme Court in the case of Steel Authority of India Ltd. & Ors. v. National Union Water Front Workers and Ors. AIR (2001) SC 3527 wherein the Supreme Court though concerned with the contract labour under the provisions of Contract Labour (Regulation and Abolition) Act, 1970, has on the issue whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder, inter-alia held that the determination of such an issue requires an inquiry into the disputed facts, which cannot be conveniently gone into in the exercise of jurisdiction under Article 226 of the Constitution of India. In this regard, I reproduce the following paragraphs:-

" xxxx xxxx xxxx (5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labour in the concerned establishment subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.

xxxx xxxx xxxx We have used the expression industrial adjudicator by design as determination of the questions afore-mentioned requires inquiry into disputed questions of facts which cannot conveniently be made by High Courts in exercise of jurisdiction under Article 226 of the Constitution. Therefore, in such cases the appropriate authority to go into those issues will be industrial tribunal/court whose determination will be amenable to judicial review. (emphasis

supplied)

13. The aforesaid conclusion of the Supreme Court squarely applies to the facts of this case as it is also the case of the petitioner that he is the employee of the NHIDCL and the „outsourcing is a sham / ruse to deny him the status / emoluments / benefits as an employee of the NHIDCL.

14. The Supreme Court has also in the case of Raj Kumar Singh vs. Union of India (UOI) and Ors. (2009) 4 SCC 269, in paragraph 5 held as under:-

"5. We find that the authorities placed on record original letter dated 23.11.1995. By order dated 18.12.1995, the DG, Assam Rifles passed the order and accepted the resignation on compassionate ground to be effective from 29.2.1996. The appellant has taken the stand that he has not given voluntary resignation and the blank signatures were taken from him. The plea is clearly unsustainable. There is no material on record and, in fact, it is not the stand of the appellant that he made any grievance about the aforesaid act before any authority. Whether he had signed the letter voluntarily or signatures were taken on blank papers involves disputed questions of fact which cannot be decided in a writ petition. Learned Single Judge and the Division Bench noted that the authorities have acted on the basis of the letter of resignation. That being so, there is no scope for interference in this appeal."

15. In view of above position, as the grant of reliefs sought for by the petitioner involves issues which can only be proved through the process of an inquiry, which cannot be undertaken in the writ jurisdiction, but by a Civil Court, it is appropriate that the petitioner is relegated to the Civil Court. It is ordered accordingly. Granting liberty to the petitioner to seek remedy before the Civil Court, the present petition is closed.

In view of my above conclusion, in the writ petition, this application has become infructuous.

V. KAMESWAR RAO, J APRIL 16, 2021/ak