

Vijay Kumar Yadav & Ors vs Union Of India And Anr on 6 May, 2021

Author: Rajiv Shakdher

Bench: Rajiv Shakdher, Talwant Singh

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 5080/2021

VIJAY KUMAR YADAV & ORS.

..... Pet

Through: Mr. Rajesh Mohan Sinha, Adv.

versus

UNION OF INDIA AND ANR.

..... Respon

Through: Mr. Om Prakash, Adv. for R-2/FC

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

ORDER

% 06.05.2021 [Court hearing convened via video-conferencing on account of COVID-19] CM APPL. No.15549/2021

1. This is an application filed under Section 149 read with Section 151 of the Code of Civil Procedure, 1908. In effect, this is an application preferred under Article 226 of the Constitution of India.

2. The prayer sought is to grant exemption from filing attested affidavits along with the writ petition. The prayer made in the captioned application is allowed, subject to the petitioners placing on record the attested affidavits, within three days of the resumption of the normal functioning by this Court.

3. The application is, accordingly, disposed of.

W.P.(C) 5080/2021 & CM APPL. No.15548/2021 [Application filed on behalf of the petitioners seeking to restrain the respondents from transferring the petitioners from Shakti Nagar to Okhla or any other Depot and stay the operation of the E-tender notice no.4/2021]

4. Briefly, the petitioners, who are engaged as regular employees under the Direct Payment System (in short „DPS) by respondent no.2, i.e., Food Corporation of India (in short „FCI), are aggrieved on account of the fact that, their en bloc transfer is being effected from FCI Food Storage Depot (in short „FSD), Shakti Nagar to Okhla and/or other Depot. 4.1. According to the petitioners, this step seeks to change the texture and the contours of the Shakti Nagar Depot, inasmuch as the petitioners, who are the regular employees of the FCI, are being replaced with contractual labour. 4.2. The petitioners assert that this step has been taken by respondent no.2/FCI under the garb of exemption notifications dated 06.07.2016, 26.06.2018 and 25.06.2020. The petitioners assert that these notifications have been challenged, and are the subject matter of the writ petitions numbered as

W.P.(C) Nos.7241/2016 and 7627/2016.

4.3. It is in this background, that the petitioners have assailed the E-Tender notice no.4 of 2021, dated 01.03.2021, issued by respondent no.2/FCI.

5. Mr. Rajesh Mohan Sinha, who appears on behalf of the petitioners, has drawn our attention to the orders passed by the learned Single Judge in W.P.(C) No.7241/2016 and W.P.(C) No.7627/2016. The two orders, to which our attention has been drawn by Mr. Sinha, are dated 13.11.2017 [which makes a reference to order dated 13.09.2017, passed in W.P. (C) 7241/2016] and 04.02.2019, also passed in W.P.(C) No.7627/2016, whereby, order dated 13.11.2017 was made absolute.

6. On the other hand, Mr. Om Prakash, who appears on advance notice on behalf of respondent no.2/FCI, relies upon the judgment of the Bombay High Court, Nagpur Bench dated 20.11.2015 [See Annexure P-1, appended on page 37 of the paper book]. In particular, reliance is placed on the observations made in paragraphs 27 and 30.

6.1. We may note that this judgement was carried in an appeal to the Supreme Court. The Special Leave Petitions („SLPs) were filed, we are told, by various FCI Workers Unions [See Annexure P-4, appended on page 71 of paper book]. The SLPs filed by the various FCI Workers Unions, challenging the judgment of the Bombay High Court, Nagpur Bench dated 20.11.2015, were dismissed with the following observations:

"1. We do not see any merit in these special leave petitions, which are hereby dismissed. We make it clear that this order shall not prevent the petitioners - Food Corporation of India Workers Union/Food Corporation of India Sharmik Union/FCI Handling Workers Union, to challenge any order, passed in furtherance of the directions issued in the impugned order (dated 20.11.2015), in appropriate proceedings before an appropriate Court.

2. In case, such a challenge is raised by the petitioner(s), in continuation of the liberty granted to the petitioner(s), the claim raised by the petitioner(s) shall be considered in accordance with law, uninfluenced by any observations made by the High Court in the impugned order (dated 20.11.2015)."

6.2. Mr. Om Prakash also submits that the petitioners have not filed the policy document dated 12.07.2016.

6.3 Mr. Om Prakash says that, via the impugned E-Tender, respondent no.2/FCI seeks to engage 53 persons as contract labourers, and therefore, a decision has been taken to shift the petitioners, who are also 53 in number, to Okhla Depot, inter alia, to avoid industrial conflict. 6.4 Furthermore, Mr. Om Prakash also submits that the quantum of work involved at Okhla Depot is much more, than that which requires to be dealt with in the FCI FSD, Shakti Nagar, and thus as a measure of rationalisation, respondent no.2/FCI has taken the decision to transfer the petitioners to Okhla Depot.

7. It is established law that, generally, courts do not interfere with the transfer orders. Transfer orders are within the realm of administrative discretion of the employer. There are, in law, very narrow grounds on which a litigant can assail an order of transfer; malafide exercise of power being one such ground. In this case, what appears to have occurred, is that, on the one hand, en bloc transfer of the petitioners has been ordered, and on the other hand, contractual labour is sought to be engaged and positioned in FSD Shakti Nagar Depot where, presently, the petitioners are located under the garb of notifications issued under Section 31 of the Contract Labour (Regulation & Abolition) Act, 1970 [in short "the 1970 Act"]. 7.1. These notifications have, in a sense, exempted, during their subsistence, the applicability of the provisions of Section 10 of the 1970 Act. Section 10 of the 1970 Act is a provision which can trigger prohibition on engagement of contract labour in a given establishment if a notification to that effect is issued. The aspect as to whether these exemption notifications are legally viable, is pending consideration, as noticed by us, in two writ petitions, to which we have made a reference hereinabove. 7.2. The argument advanced, on behalf of respondent no.2/FCI, that the en bloc transfer is being effected, to bolster the workforce, presently available at Okhla Depot, as the quantum of work involved in that Depot is much more, than that what is, presently, carried out at the FCI FSD Shakti Nagar, seems thin, at least at this stage, because the workers who are to be recruited by respondent no.2/FCI for FCI FSD Shakti Nagar, under the impugned tender can be deployed straightaway at Okhla Depot - this is not to say that respondent no.2/FCI does not have the discretion to decide as to where the newly engaged workmen should be deployed.

7.3 That being said, what requires to be answered by respondent no.2/FCI is: as to whether, as alleged by the petitioners, it is creating a situation, which tantamounts to changing the texture and contours of the FSD Shakti Nagar Depot, which, we are told, is a notified Depot under Section 10 of the 1970 Act.

8. As noticed above, the matter requires consideration. 8.1. Since interim orders are operative in the aforementioned writ petitions, we are inclined, for the moment, to follow the same route. 8.2. Since the en bloc transfers have not been effected, as yet, status quo will be maintained by respondent no.2/FCI.

8.3 We make it clear though that, there is no stay on the recruitment process, which has been triggered by the issuance of the impugned E-Tender notice no. 4 of 2021 dated 01.03.2021. The recruitment, if any made by respondent no.2/FCI, shall be subject to the outcome in the instant writ petition. This aspect will be communicated, in no uncertain terms, to those, who are engaged by respondent no.2/FCI, pursuant to the impugned E- Tender.

8.4. Interim directions issued by us will operate till the next date of hearing.

9. Accordingly, issue notice.

10. Ms. Saroj Bidawat accepts service on behalf of respondent no.1/UOI while Mr. Om Prakash accepts service on behalf of respondent no.2/FCI. 10.1. Counter affidavit(s) will be filed within four weeks from today. Rejoinder(s) thereto, if any, will be filed before the next date of hearing.

11. List the matter on 04.06.2021.

RAJIV SHAKDHER, J TALWANT SINGH, J MAY 6, 2021/pmc Click here to check corrigendum, if any