

Sudhir Vasudev Cmd Ongc & Ors vs M.George Ravishekar & Ors on 4 February, 2014

Equivalent citations: AIR 2014 SUPREME COURT 950, (2014) 141 FACLR 7, (2014) 1 LAB LN 296, (2014) 2 MAD LJ 756, 2014 (3) SCC 373, (2014) 2 SCALE 50, (2014) 2 JCR 215 (SC), (2014) 136 ALLINDCAS 71 (SC), (2014) 2 SERVLJ 104, (2014) 2 ALL WC 1991, (2014) 1 CURLR 682, 2014 (103) ALR SOC 20 (SC), 2014 (1) KLT SN 45 (ALL)

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Bench: Shiva Kirti Singh, Ranjan Gogoi, P. Sathasivam

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.1816 OF 2014
Special Leave Petition (C) NO.23272 OF 2012

SUDHIR VASUDEVA, CHAIRMAN & MD. ... APPELLANT (S)
ONGC & ORS.

VERSUS

M. GEORGE RAVISHEKARAN & ORS. ... RESPONDENT (S)

J U D G M E N T

RANJAN GOGOI, J.

1. Leave granted.

2. Aggrieved by a direction of the Madras High Court in exercise of its contempt jurisdiction to create supernumerary posts, this appeal has been filed by the respondents in the contempt proceeding.

3. Shorn off unnecessary details the core facts that would need a recital are enumerated hereinbelow.

The respondents in the present appeal were engaged as Radio Operators on contract basis in the Oil and Natural Gas Corporation Ltd. (hereinafter referred to as “the Corporation”), a Public Sector

Undertaking, inter alia, engaged in on-shore and off-shore oil and natural gas exploration. By a notification dated 08.09.1994 issued under Section 10(1) of the Contract Labour (Regulation and Abolition) Act, 1970 employment of contract labour in various works in the Corporation, including the work of Radio Operators, was prohibited. A Writ Petition bearing No. 15211 of 1991 seeking a direction to the Corporation to treat the contract Radio Operators at par with the regular Marine Assistant Radio Operators was pending before the High Court at that point of time. Subsequently, the union representing 56 number of contract employees engaged as Radio Operators instituted another Writ Petition i.e. W.P. No. 1178 of 1996 seeking the same relief.

4. In *Air India Statutory Corporation and Others Vs. United Labour Union and Others*[1] this Court took the view that upon abolition of contract labour the persons engaged on contract basis became the employees of the principal employer and hence entitled to regularization under the principal employer. The said view has been subsequently dissented from, though prospectively, in *Steel Authority of India Ltd. & Ors. Vs. National Union Waterfront Workers & Ors.*[2]. Following the decision of this Court in *Air India Statutory Corporation and Others* (supra) the writ petitions were allowed by a learned Single Judge of the Madras High Court by Order dated 29.01.1997. The Letters Patent Appeal filed by the Corporation against the said order was dismissed. The matter was carried to this Court in S.L.P. (Civil) No.20951 of 1997 which was disposed on 12.1.1998 with the following operative direction.

“Mr. V.R. Reddy, learned Additional Solicitor General appearing on behalf of the petitioner states that those of the 56 workmen who are found to be qualified in terms of the appropriate regulations, as in force at the relevant time, shall be absorbed as contemplated by the judgment in *Air India Statutory Corporation & Ors. vs. United Labour Union & Ors.* 1997 (7) SCC 377. In view of this statement the SLP does not survive and is disposed of.”

5. Following the aforesaid order of this Court in the special leave petition the respondents herein were absorbed as “Junior Helpers” with effect from 29.1.1997 by an order dated 2.4.1998. Their pay was fixed at the bottom of the basic pay of Class IV employees of the Corporation. It may be noticed, at this stage, that the respondents being employees of the Southern Region of the Corporation were posted at Karaikal and Rajamundry stations.

6. It appears that thereafter a Committee was constituted by the Ministry of Petroleum & Natural Gas which recommended that the Corporation is bound to absorb all the contract Radio Operators who had the requisite qualification in the post of Marine Assistant Radio Operators with effect from 8.9.1994 and in the pay scale applicable to the said post as on 8.9.1994.

7. As the aforesaid recommendation of the Committee was not being given effect to, the present respondents instituted another proceeding before the High Court i.e. Writ Petition No. 21518 of 2000 seeking a direction for their absorption as Marine Assistant Radio Operators with effect from 8.9.1994.

Specifically, it must be taken note of that in the aforesaid writ proceeding the Corporation had, inter alia, contended that there was no requirement of Marine Assistant Radio Operators in the Southern

Region Business Centre (SRBC) or other regions of the Corporation as there were no adequate off-shore operations. It was also contended that on account of the upgraded technology available, there is also no necessity for the service of a Radio Operator as with the advancement of technology the users themselves were in a position to operate the system without the assistance of an operator.

8. By order dated 2.8.2006 the writ petition was disposed of with the following findings and operative directions:

"32. Therefore, considering the entire facts and circumstances of the case in the light of the report of the committee, recommendation made by the Ministry of Petroleum and Natural Gas and the judgment of the Supreme Court in Air India Statutory Corporation case, cited supra, I am of the considered view that the absorption of the petitioners by the respondent corporation as Junior Helpers with the pay of Rs.2,282/- old basic bottom of Class IV cadre was not fair and proper and certainly not in strict compliance of the undertaking given by the respondent corporation before the Supreme Court. On the other hand, I am of the considered view that the petitioners are entitled to be absorbed as Marine Assistant Radio Operators.

33. In the result, the writ petition is allowed as prayed for. The respondents are directed to absorb the petitioners as Marine Assistant Radio Operators with effect from 8.9.1994 on the basis of the abolition of contract labour and as per the recommendations dated 4-6- 1999 of the Ministry of Petroleum and Natural Gas, Government of India, to the first respondent and the approval of the competent authority as communicated in the fax dated 23-9-1999 to the third and fourth respondents with all monetary benefits and all other attendant benefits. If for any reason, there is no cadre of Marine Assistant Radio Operator or there are no sufficient posts are available in the cadre of Marine Assistant Radio Operators to accommodate all the petitioners, the respondents are directed to give "pay protection" to the petitioners and sanction them the scale of pay as applicable to the Marine Assistant Radio Operators as recommended by the Ministry of Petroleum and Natural Gas."

9. The aforesaid order dated 2.8.2006 was challenged by the Corporation in Writ Appeal No. 1290 of 2006 which was dismissed on 19.12.2006 with a direction to the Corporation to implement the order of the learned Single Judge dated 2.8.2006 within a period of four weeks from the date of receipt of a copy of the order. Two other writ petitions i.e. W.P. Nos. 27500 of 2006 and 27529 of 2006 seeking similar relief(s) were also allowed by a separate order of the learned Single Judge dated 4.4.2007. The aforesaid orders were challenged before this Court in Civil Appeal Nos. 765 of 2008 and 766-767 of 2008 which were heard alongwith Transfer Petition (C) No. 889 of 2007 which was filed by similarly situated persons. By order dated 30.10.2009 all the civil appeals and the transfer petition were dismissed by this Court with the following directions :

"We have heard the learned senior counsel appearing on behalf of the parties.

Learned counsel appearing for the parties have taken us to various documents and pleadings. On consideration of the totality of the facts and circumstances of this case, in our opinion, no case has been made out for our interference under our extraordinary jurisdiction under Article 136 of the Constitution of India. These appeals are accordingly dismissed.

However, as prayed for by the learned senior counsel appearing on behalf of the appellants, we direct the appellant Oil & Natural Gas Corporation to implement the orders within three months.

Transfer Petition (Civil) No. 889 of 2007 In view of our order passed in the Civil Appeals above- mentioned, no orders are necessary in the transfer petition. The transfer petition is disposed of.”

10. Alleging non-implementation and disobedience of the order dated 2.8.2006 passed in W.P. No. 21518 of 2000 as affirmed by order dated 19.12.2006 in Writ Appeal No. 1290 of 2006 and order dated 30.10.2009 passed in Civil Appeal No.765 of 2008, Contempt Petition (C) No. 161 of 2010 was filed before the High Court wherein the impugned direction for creation of supernumerary posts of Marine Assistant Radio Operator was made by the order dated 19.1.2012. The said order has been affirmed by a Division Bench of the High Court by the impugned order dated 11.7.2002.

Aggrieved, the present appeal has been filed.

11. At this stage, it may be necessary to take note of two other Contempt Petition Nos. 141 of 2010 and 343 of 2010 which had been instituted in the High Court against the similar order dated 4.4.2007 passed in Writ Petition Nos. 27500 and 27529 of 2006 which order had also been affirmed by this Court in the connected civil appeals i.e. Civil Appeal Nos.766-767 of 2008, as already noticed. Regard must also be had to Contempt Petition (C) No. 130 of 2010 filed before this Court by similarly situated persons in respect of the order dated 30.10.2009 passed in Transfer Petition (C) No. 889 of 2007.

12. Insofar as Contempt Petition (C) Nos. 141 and 343 of 2010 are concerned, the same has been dismissed by the High Court by its order dated 31.8.2010 holding that no case of commission of contempt is made out. Contempt Petition No. 130 of 2010 before this Court was ordered to be closed in view of the averments made in an affidavit dated 9.3.2011 filed on behalf of the Corporation. Paras 6 and 7 of the said affidavit would require to be taken note of and are being extracted below.

“6. I say that since there is no vacant post in the cadre of Assistant Marine Radio Operator in the Southern Region (to which region the Respondents in Civil Appeal Nos. 765-767 of 2008 before this Hon’ble Court belonged and to which region the Petitioners in the present Contempt Petition belong) and, no vacancy in the post of Assistant Marine Radio Operator in the Southern Region has arisen after the order and judgment dated 2.8.2006 of the Ld. Single Judge in Writ Petition No.

21518 of 2000, the respondents in the said Appeal could not be accommodated in the post of Assistant Marine Radio Operator. Consequently, until such vacancies arise and, in accordance with the direction issued by the Ld. Single Judge of the High Court (and upheld by this Hon'ble Court), Respondent No. 1 took the following steps :

(i) deployed the respondents in Civil Appeal No. 765/2008, who formed a separate protected class, as Supernumerary Helpers in the scale of pay applicable to Assistant Marine Radio Operators, so that they are not rendered idle.

(ii) gave "pay protection" to the said respondents for the pay drawn by Assistant Marine Radio Operator from the date of their absorption, i.e. 08.09.1994.

(iii) paid them the difference between the "protected pay" and the pay previously drawn by them as Junior Helpers from the date of their absorption on 08.09.1994.

7. I say that even as on date there is no vacancy in the post of Assistant Marine Radio Operator (Southern Region). However, since the Petitioners herein have sought to be treated at par with the Respondents in Civil Appeal No. 765 of 2008, Respondent No. 1 is prepared to, in order to give a quietus to the matter extend to the Petitioners the same treatment and benefits aforesaid extended to the Respondents in Civil Appeal No. 765 of 2008 with effect from the date of their absorption i.e. with effect from 18.2.1998, as has been prayed for by the Petitioners in the Writ Petition filed by them in the High Court of Judicature of Andhra Pradesh."

13. The question that arises in the present appeal, in the backdrop of the facts noted above, is whether the appellants who are the officers of the Corporation and had complied with the alternative direction contained in the order dated 2.8.2006 passed in Writ Petition (C) No. 21518 of 2000 would still be liable for commission of contempt and the only way in which the appellants can purge themselves of the contempt allegedly committed is by creation of supernumerary posts of Marine Assistant Radio Operators. An answer to the above question centres around the contours of the power of the Court while exercising its contempt jurisdiction.

14. We have heard Shri Goolam E. Vahanvati, learned Attorney General for the appellants and Shri P.P. Rao, learned senior counsel for the respondents.

15. The learned Attorney General has urged that the question of the very necessity of having/continuing the posts of Marine Assistant Radio Operators in the Corporation was a live issue in Writ Petition No. 21518 of 2000 as the Corporation had contended that the work requirement of the Corporation did not justify the continuation of the post in the cadre of Marine Assistant Radio Operators, particularly, in the SRCB where the Corporation was not engaged in any off-shore operation. It is urged that in the light of the stand taken by the Corporation, the option/alternative direction of granting parity of pay to the respondents was issued. It is not in dispute that the Corporation had complied with the said direction. In a situation where the operational requirements of the Corporation did not justify the retention of the posts of Marine Assistant Radio Operators any further, its officers cannot be faulted for not creating supernumerary posts of Marine Assistant

Radio Operators and instead creating posts of Junior Helpers to accommodate the respondents and thereafter giving them protection/parity of pay in terms of the option granted by the High Court. The learned Attorney has further submitted that there being no direction for creation of posts of Marine Assistant Radio Operators in the order dated 2.8.2006 it was beyond the power of the learned Judge, hearing the Contempt Petition, to issue such a direction. The said error, being apparent, ought to have been corrected in the appeal filed before the High Court. The order of the Division Bench dated 11.7.2012 impugned in the present appeal is, therefore, open to interference in the present appeal.

14. On the other hand Shri P.P. Rao, learned senior counsel appearing for the respondents has contended that an obligation to create supernumerary posts of Marine Assistant Radio Operator is mandated by the very terms of the Order dated 02.08.2006 passed in Writ Petition No. 21518 of 2000. Shri Rao has contended that when supernumerary posts of Junior Helpers have been created and parity of pay with the higher post has been granted it is difficult to conceive why supernumerary posts of Marine Assistant Radio Operator were not created in order to fully comply with the Order of the High Court. It is also pointed out that it is evident from the provisions of the relevant Regulations governing the service conditions of the respondents i.e. Oil and Natural Gas Corporation Ltd. i.e. Modified Recruitment and Promotion Regulations, 1980, that had the respondents been absorbed as Marine Assistant Radio Operators they would have earned promotions under the Regulations which avenues stand closed due to their absorption in the post of Junior Helper. Shri Rao has also referred to the correspondence exchanged between the Corporation and the Ministry of Petroleum and Natural Gas, Government of India, which is available on record, to show that there existed/exists a cadre of Marine Assistant Radio Operator and the strength of the cadre depends on the necessity of the operations of the Corporation. The cadre strength is flexible depending on the job requirement, it is urged. Shri Rao, therefore, has contended that the action taken by the appellants in purported compliance of the Court's Order dated 02.08.2006 would still make them liable for contempt which can be purged only by creation of posts of Marine Assistant Radio Operator, as directed by the High Court.

15. The power vested in the High Courts as well as this Court to punish for contempt is a special and rare power available both under the Constitution as well as the Contempt of Courts Act, 1971. It is a drastic power which, if misdirected, could even curb the liberty of the individual charged with commission of contempt. The very nature of the power casts a sacred duty in the Courts to exercise the same with the greatest of care and caution. This is also necessary as, more often than not, adjudication of a contempt plea involves a process of self determination of the sweep, meaning and effect of the order in respect of which disobedience is alleged. Courts must not, therefore, travel beyond the four corners of the order which is alleged to have been flouted or enter into questions that have not been dealt with or decided in the judgment or the order violation of which is alleged. Only such directions which are explicit in a judgment or order or are plainly self evident ought to be taken into account for the purpose of consideration as to whether there has been any disobedience or willful violation of the same. Decided issues cannot be reopened; nor the plea of equities can be considered. Courts must also ensure that while considering a contempt plea the power available to the Court in other corrective jurisdictions like review or appeal is not trenched upon. No order or direction supplemental to what has been already expressed should be issued by the Court while

exercising jurisdiction in the domain of the contempt law; such an exercise is more appropriate in other jurisdictions vested in the Court, as noticed above. The above principles would appear to be the cumulative outcome of the precedents cited at the bar, namely, Jhareswar Prasad Paul and Another vs. Tarak Nath Ganguly and Others[3], V.M.Manohar Prasad vs. N. Ratnam Raju and Another[4], Bihar Finance Service House Construction Cooperative Society Ltd. vs. Gautam Goswami and Others[5] and Union of India and Others vs. Subedar Devassy PV[6].

16. Applying the above settled principles to the case before us, it is clear that the direction of the High Court for creation of supernumerary posts of Marine Assistant Radio Operator cannot be countenanced. Not only the Courts must act with utmost restraint before compelling the executive to create additional posts, the impugned direction virtually amounts to supplementing the directions contained in the order of the High Court dated 02.8.2006. The alternative direction i.e. to grant parity of pay could very well have been occasioned by the stand taken by the Corporation with regard to the necessity of keeping in existence the cadre itself in view of the operational needs of the Corporation. If despite the specific stand taken by the Corporation in this regard the High Court was of the view that the respondents should be absorbed as Marine Assistant Radio Operator nothing prevented the High Court from issuing a specific direction to create supernumerary posts of Marine Assistant Radio Operator. The same was not done. If that be so, the direction to create supernumerary posts at the stage of exercise of the contempt jurisdiction has to be understood to be an addition to the initial order passed in the Writ Petition. The argument that such a direction is implicit in the order dated 02.08.2006 is self defeating. Neither, is such a course of action open to balance the equities, i.e. not to foreclose the promotional avenues of the petitioners, as vehemently urged by Shri Rao. The issue is one of jurisdiction and not of justification. Whether the direction issued would be justified by way of review or in exercise of any other jurisdiction is an aspect that does not concern us in the present case. Of relevance is the fact that an alternative direction had been issued by the High Court by its order dated 02.08.2006 and the appellants, as officers of the Corporation, have complied with the same. They cannot be, therefore, understood to have acted in willful disobedience of the said order of the Court. All that was required in terms of the second direction having been complied with by the appellants, we are of the view that the order dated 02.08.2006 passed in W.P. No. 21518 of 2000 stands duly implemented. Consequently, we set aside the Order dated 19.01.2012 passed in Contempt Petition No. 161 of 2010, as well as the impugned order dated 11.07.2012 passed in Contempt Appeal No.2 of 2012 and allow the present appeal.

.....CJI.

[P. SATHASIVAM]J. [RANJAN GOGOI]J. [SHIVA KIRTI SINGH] NEW DELHI, FEBRUARY 4, 2014.

- [1] (1997) 9 SCC 377
- [2] (2001) 7 SCC 1
- [3] (2002) 5 SCC 352
- [4] (2004) 13 SCC 610
- [5] (2008) 5 SCC 339

[6] (2006) 1 SCC 613
