

HINDUSTAN STEELWORKS CONSTRUCTION LTD.

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v.

THE COMMISSIONER OF LABOUR AND ORS.

SEPTEMBER 3, 1996

[N.P. SINGH AND SUJATA V. MANOHAR, JJ.]

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Labour Law :

Contract Labour (Regulation and Abolition) Act, 1970 : Sections 2(1)(h), 7, 12 and 21(1)(4).

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Contract labour—Payment of wages—Contractor agreed to supply workers to principal employer—However, contractor paid lower wages to his workers than those paid by principal employer to his workers—Commissioner of Labour found there was similarity of work between workers of principal employer and contract labour—Held : Wages meant contractual wages payable in presenti under terms of employment between contractor and contract labour as well as under any existing award, settlement or order of court—If the contractor did not pay these wages, the principal employer became liable to make good the difference and recover the same from contractor—However, such liability of the principal employer did not cover any additional amount payable by contractor under R. 25(v) (a) of A.P. Rules which required wages of contract labour at par with wages of principal employer's workers who did same or similar kind of work—However, if contractor paid lesser wages than the contractual wages the principal employer was liable to pay the difference and recover the same from contractor—A.P. Contract Labour (Regulation and Abolition) Rules, 1971, Rr.25(v)(a) & 21—Payment of Wages Act, 1936, S.2(vi).

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Contract labour—Payment of wages—Workers who did same or similar kind of work—Difference between contractual wages and actual wages—Recovery of additional amounts—Rights of contract labour—Held : Question left open since the contract labour was not a party.

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Words & Phrases :

"Wages"—Meaning of—In the context of Section 2(1)(h) of the Contract Labour (Regulation and Abolition) Act, 1970.

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A The appellant was a Government company and registered as an employer under Section 7 of the Contract Labour (Regulation and Abolition) Act, 1970. Respondent-4 was a private company and possessed a licence as a contractor under Section 12 of the said Act. As per an agreement, respondent 4 agreed to supply to the appellant watch and ward workers on the terms and conditions specified therein. The appellant had accordingly paid to respondent-4 the remuneration of the workers. However, respondent-4 paid lower rate of wages to the workers and retained the balance amounts. The Assistant Commissioner of Labour visited the site of the appellant and found that there was a difference between the wages paid by the appellant to its own watch and ward staff and the contract labour supplied by the respondent-4 who were doing similar work. Therefore, he filed a complaint before the Commissioner of Labour who, under Rule 25(v)(a) of the Andhra Pradesh Contract Labour (Regulation and Abolition) Rules, 1971, held that the workers supplied by respondent-4 performed the same kind of work as that performed by the workers of the appellant itself.

D Respondent-4 filed a writ petition before the High Court challenging the order of the Commissioner of Labour. A Division Bench of the High Court directed : (i) that respondent-4 should pay to the workers the amounts retained by it from out of the amounts which were paid by the appellant in respect of the wages of the workers supplied by it; (ii) that the appellant should pay to the contract labour the difference between the wages paid by the appellant to its own security staff; and (iii) that in case the contractor failed to pay the amounts to the contract labour concerned, the appellant should pay the same to the contract labour employed by it and may thereafter recover the amount so paid from respondent-4. Being aggrieved by these directions the appellant preferred the present appeal.

E Allowing the appeal in part, this Court

F HELD : 1. In view of Section 2(1)(h) of the Contract Labour (Regulation and Abolition) Act, 1970 read with Section 2(vi) of the Payment of Wages Act, 1936, the term 'wages' for the purpose of Section 21 of the Act, means contractual wages which are payable under the terms of employment as between the contractor who is the employer and the contract labourers who are his employees. If the contractor does not pay these wages to his workmen engaged by him as contract labourers, then under

Section 21(4) the principal employer becomes liable to make good the difference and recover this amount which the principal employer has paid to the workmen of the contractor, from the contractor.

Gujarat Electricity Board v. Hind Mazdoor Sabha & Ors., [1995] 5 SCC 27 and *B.K. Panda & Ors. v. Steel Authority of India & Ors.*, [1994] 5 SCC 304, relied on. [454-D-E; H; 455-A]

2.1. Wages which are the subject-matter of Section 21 are specified sums which are payable *in presenti* by the contractor under the terms of his contract of employment with each worker as well as under any existing award, settlement or order of the court. Section 21 does not deal with, nor does it cover the obligations which are imposed upon a contractor under the provisions such as the Andhra Pradesh Contract Labour (Regulation and Abolition) Rules, 1971. Hence Section 21(4) will not apply to such obligations of the contractor which may be the subject-matter of dispute between the contractor and his workers at the time of disbursement of wages and which do not fall within the definition of "wages" under the Act. [456-E-F]

2.2. Rule 25 of the Rules imposes on the contractor certain conditions subject to which a licence is granted to him. One such condition is to the effect that the contractor shall not pay to the contract labour in his employment wages which are lower than the wages paid by the principal employer to his own workers who do the same or similar kind of work. This is a condition of the contractor's licence. There is no provision under these rules by which the principal employer is made liable for payment in the event of non-compliance by the contractor with this condition. If the contractor commits a breach of the conditions of his licence he alone will take the consequences. The right of the workers to recover any additional wages which may be so determined would be against the contractor. Section 21(4) has no application to a situation where a contractor may have paid the wages but has not complied with the condition imposed by Rule 25(v)(a) of the Rules. The definition of wages under Section 2 of the Act read with the definition of wages under the payment of Wages Act, 1936 does not cover any additional amount found payable under Rule 25(v)(a). The appellant would, however, be liable under Section 21(4) to pay to the workers any difference between the wages contracted for under its agreement with respondent-4 contractor and the lesser wages actually paid by the contractor to contract labour, and recover the same from the contractor. [456-G-H; 457-A-C; F]

A 2.3. In the present appeal the contract workers employed by respondent-4 are not a party. The dispute is between the contractor and the principal employer. This Court is, therefore, not called upon to pronounce on the rights of the contract labour employed by respondent-4 to recover the additional amounts. [457-E]

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11355 of 1996.

From the Judgment and Order dated 7.11.95 of the Andhra Pradesh High Court in W.A. No. 1196 of 1988.

C Dr. Shankar Ghosh, B.D. Ahmad and S.Roy for Lawyers Associated for the appellants.

Dr. Rajiv Dhavan, R.S. Krishnan and Sunil Kumar for the Respondents.

D The Judgment of the Court was delivered by

MRS. SUJATA V. MANOHAR, J. Special leave granted.

E The appellant, Hindustan Steelworks Construction Ltd., is a Government company within the meaning of Section 617 of the Companies Act, 1956. It is engaged in the work of construction of various types in India and abroad. At all times material to this appeal, the appellant had undertaken to carry out civil engineering work for the 5th respondent, Vishakhapatnam Steel Plant under various contracts. The appellant had registered itself as an employer under Section 7 of the Contract Labour (Regulation and Abolition) Act, 1970.

F Respondent No. 4 M/s. Investigation and Security Services India Pvt. Ltd., is a Private Limited Company which carries on the business of providing security services through contract labour for various companies and individuals. It maintains officers and workmen to render, inter alia, security services to various establishments and individuals. Respondent No. 4, at all material times, possessed a licence as a contractor under Section 12 of the Contract Labour (Regulation and Abolition) Act, 1970, read with Andhra Pradesh Contract Labour (Regulation and Abolition) Rules, 1971.

G On or about 11th December, 1980, the appellant entered into an

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agreement with respondent No. 4 by which respondent No. 4 agreed to supply to the appellant (i) Security Guards (ii) Shift Incharge and, (iii) Security Sergeants on the terms and conditions specified in that agreement. The agreement specifies that the appellant would pay to respondent No. 4 monthly amounts at the rate of Rs.400, Rs. 500 and Rs. 600 as remuneration for the supply of Security Guards, Shift Incharge and Security Sergeants respectively. The appellant has accordingly paid to respondent No. 4 the said amounts by way of monthly remuneration for each of the categories of workmen supplied by the 4th respondent. Respondent No. 4, however, in turn, paid to the Security Guards Rs. 317.77 instead of Rs. 400; to the shift Incharge Rs. 360.13 instead of Rs. 500; and to the Security Sergeants Rs. 359.46 instead of Rs. 600 thus retaining Rs. 82.23 in respect of Security Guards, Rs. 139.87 in respect of Shift Incharge or Head Guards and Rs. 240.54 in respect of Security Sergeants.

The Assistant Commissioner of Labour connected with the enforcement of provisions of the said Act visited the site of the appellant where the contract labour supplied by the 4th respondent was employed. He found that there was a difference between the wages paid by the appellant to its own watch and ward staff and the contract labour supplied by the 4th respondent who were doing similar work. On 19th of May, 1983, he filed a complaint before the Commissioner of Labour. Under the proviso to Rule 25(v) (a) of the Andhra Pradesh Contract Labour (Regulation and Abolition) Rules, 1971, in the case of any disagreement with regard to the type of work, the same is required to be decided by the Commissioner of Labour, Andhra Pradesh whose decision shall be final. The Commissioner of Labour accordingly by an order dated 13th of August, 1984, held that the appellant was the principal employer and the respondent No. 4 was the contractor who had supplied contract labour under the said act. He further held that the Security Guards supplied by the 4th respondent to the establishment of the appellant were performing the same kind of work as that performed by the Security Guards engaged by the appellant itself.

The 4th respondent thereupon filed a writ petition before the Andhra Pradesh High Court, being Writ Petition No. 12963 of 1984 challenging the order of the Commissioner of Labour. A learned Single Judge of the High Court by his order dated 6th of July, 1988 dismissed the writ petition and upheld the order of the Commissioner of Labour. Aggrieved by this order, respondent No. 4 preferred an appeal before the High Court being Appeal

- A No. 1196 of 1988. The Division Bench of the High Court decided to examine the legality of the agreement dated 11th December, 1980 entered into between the appellant and the 4th respondent. It held this agreement to be *ultra vires*. It proceeded to give a direction to the 4th respondent to pay the amounts retained by it from out of the amounts which were paid by the appellant in respect of the wages of the Security Guards supplied
- B by the 4th respondent. It further gave a direction to the appellant to pay to the contract labour the difference between the wages paid by the contractor and the wages which were paid by the appellant to its own security staff. The Division Bench further gave a direction that in case the
- C contractor failed to pay the amounts to the contract labour concerned, the appellant shall pay the same to the contract labour employed by it and may thereafter recover the amount so paid from the 4th respondent either by deduction from any amount payable by the appellant to the 4th respondent under any contract or may recover the same as a debt payable by the 4th
- D respondent to the appellant. Being aggrieved by these directions, the appellant has come by way of the present appeal.

- Under Chapter V of the Contract Labour (Regulation and Abolition) Act, 1970, dealing with "Welfare and Health of Contract Labour", Section 16 provides that the appropriate Government may make rules requiring that in every establishment canteens should be provided and
- E maintained by the contractor as specified therein for the use of contract labour. Similarly, Section 17 casts an obligation on the contractor to provide rest-rooms as set out therein. Section 18 casts a duty on every
- F contractor employing contract labour to provide and maintain wholesome drinking water, sufficient number of latrines and urinals and washing facilities as specified therein. Section 19 requires a contractor to provide
- G and maintain first-aid facility for contract labour as set out therein. The primary liability to provide these amenities is on the contractor. Section 20, however, provides that if any amenity required to be provided under
- H Sections 16, 17, 18 or 19 for the benefit of contract labour employed in an establishment, is not provided by the contractor as set out therein, such amenity shall be provided by the principal employer. Under sub-section (2) of Section 20, however, all expenses incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor in the manner set out therein. Thus the liability to provide amenities under Sections 16, 17, 18 and 19 is of the contractor who agrees to supply contract labour to an establishment. But under Section 20 if the

contractor fails to carry out his obligations, the principal employer is required to provide the amenities at the cost of the contractor. Sections 21 which forms a part of the same Chapter deals with the responsibility for the payment of wages. It provides as follows :

"(21) *Responsibility for payment of wages :*

(1) A contractor shall be responsible for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed.

(2) Every principal employer shall nominate a representative duly authorised by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.

(3) It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorised representative of the principal employer.

(4) In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contract or and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor."

Under this section also, the liability for payment of wages to each employee engaged by a contractor as contract labour is of the contractor. But in case the contractor fails to make payment of wages, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the workers. The principal employer, in turn, is entitled to recover the amount so paid from the contractor. Thus, it is clear that under Section 21 also the responsibility for payment of wages of contract labourers is on the contractor who employs them. In case of any default by the contractor, the principal employer is required to make good the default, but at the cost of the contractor from

A whom the principal employer can recover the amount.

"Wages" are defined in Section 2(1)(h) of the said Act to have the same meaning assigned to the term "wages" in Clause (vi) of Section 2 of the Payment of Wages Act, 1936. Sections 2(vi) of the Payment of Wages Act, 1936, defines "wages" to mean :

B "all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes -

C (a) any remuneration payable under any award or settlement between the parties or order of a Court;

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 E Therefore, the term "wages" for the purpose of Section 21 of the Contract Labour (Regulation and Abolition) Act, 1970, means contractual wages which are payable under the terms of employment as between the contractor who is the employer and the contract labourers who are his employees. "Wages" would also include, inter alia, any remuneration which the contractor is required to pay under any award or settlement between the parties or under an order of the Court. By reason of Section 21 of the Contract Labour (Regulation and Abolition) Act, 1970, the principal employer is required to nominate a representative to be present at the time of disbursement of wages by the contractor to the contract labour employed by him, in order to certify that the contractor has paid these wages. And similarly a duty is cast on the contractor to ensure that the disbursement of wages takes place in the presence of the authorised representative of the principal employer. The purpose of keeping the representative of the principal employer present is obviously to ensure that
 F the contractor makes full payment of wages to each worker employed by the contractor as contract labour. These wages are the wages which the contractor has to pay to his workers in terms of the agreement of employment, or any award, settlement etc. If the contractor does not pay these wages to his workmen engaged by him as contract labourers, then under
 G sub-section (4) of Section 21 the principal employer becomes liable to
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make good the difference and recover this amount which the principal employer has paid to the workmen of the contractor, from the contractor, (Vide *Gujarat Electricity Board v. Hind Mazdoor Sabha & Ors.*, [1995] 5 SCC 27 at 44 and *R.K. Panda & Ors v. Steel Authority of India & Ors.*, [1994] 5 SCC 304 at 308. A

Under Section 35 of the said Act the appropriate Government is entitled to make rules for carrying out the purposes of this Act. Accordingly, the Government of Andhra Pradesh has framed The Andhra Pradesh Contract Labour (Regulation and Abolition) Rules, 1971. Rule 21 of these rules requires that every application by a contractor for the grant of a licence shall be made in the manner prescribed in that rule. Rule 25 provides that every licence granted under sub-section (1) of Section 12 shall be in Form VI and shall be subject to the conditions specified in Rule 25. Condition (v)(a) is as follows : B C

"Rule 25(v)(a) : in cases where the workmen employed by the contractor perform the same or similar kind of work as the workmen directly employed by the principal employer of the establishment, the wage rates, holidays, hours of work and other conditions of service of the workmen of the contractor shall be the same as applicable to the workmen directly employed by the principal employer of the establishment on the same or similar kind of work : D E

Provided that in the case of any disagreement with regard to the type of work, the same shall be decided by the Commissioner of Labour, Andhra Pradesh, whose decision shall be final." F

The 4th respondent has, in the present case, obtained a licence under Section 12(1) of the Contract Labour (Regulation and Abolition) Act, 1970 in accordance with the Andhra Pradesh Contract Labour (Regulation and Abolition) Rules, 1971. The 4th respondent had applied for a licence under Rule 21 and the licence which was granted to the 4th respondent contained, *inter alia*, the condition specified in Rule 25(v)(a) to the effect that the 4th respondent was required to pay to the workmen employed by it the same wages as those paid by the appellant in its establishment to workmen performing the same or similar kind of work. Apparently, the 4th respondent-contractor did not comply with this term of its licence. G H

A The short question that arises for determination is whether the appellant who is the principal employer is liable to pay to the contract workers any amount which constitutes the difference between the wages payable to the contract labour by the contractor and the wages paid by the appellant to its own employees doing similar work. The Division Bench seems to have relied upon Section 21(4) of the said Act for this purpose.

B Section 21(1), however, provides that the contractor shall be responsible for the payment of wages to each worker employed by him. Section 21(4) provides that if the contractor fails to make this payment or any part thereof, the principal employer is liable to make this payment and may recover the same from the contractor as set out in that sub-section.

C Looking to the definition of wages under the said Act read with the definition of wages in the Payment of Wages Act, which we have set out earlier, it is clear that Section 21 only deals with the payment of contractual wages by the contractor to each of his worker. The definition of wages would cover within its scope, *inter alia*, also those amounts which the contractor is liable to pay to his workers under any award, settlement or order of court as well as other amounts falling within the definition of "wages" under the Payment of Wages Act. Sub-section (2) provides for a representative of the principal employer supervising this payment. Clearly, therefore, the wages which are the subject-matter of Section 21 are specified sums which are payable *in presenti* by the contractor under the terms of his contract of employment with each worker as well as under any existing award, settlement or order of the court. Section 21 does not deal with, nor does it cover the obligations which are imposed upon a contractor under the provisions such as the Andhra Pradesh Contract Labour (Regulation and Abolition) Rules, 1971. Hence Section 21(4) will not apply

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F to such obligations of the contractor which may be the subject-matter of dispute between the contractor and his workers at time of disbursement of wages and which do not fall within the definition of "wages" under the Act.

G Rule 25 of the Andhra Pradesh Contract Labour (Regulation and Abolition) Rules, 1971 imposes on the contractor certain conditions subject to which a licence is granted to him. One such condition is to the effect that the contractor shall not pay to the contract labour in his employment wages which are lower than the wages paid by the principal employer to his own workers which do the same or similar kind of work. This is a condition of the contractor's licence. There is no provision under these

H rules by which the principal employer is made liable for payment in the

event of non-compliance by the contractor with this condition. If the contractor commits a breach of the conditions of his licence he alone will take the consequences. The right of the workers to recover any additional wages which may be so determined would be against the contractor. Section 21(4) has no application to a situation where a contractor may have paid the wages but has not complied with the condition imposed by Rule 25(v)(a) of the Andhra Pradesh Contract Labour (Regulation and Abolition) Rules, 1971. The definition of wages under Section 2 of Contract Labour (Regulation and Abolition) Act, 1970 read with the definition of wages under the Payment of Wages Act, 1936, does not cover any additional amount found payable under Rule 25(v)(a) if the principal employer has its own workers doing similar work. If the principal employer does not have any employees doing similar work that question will not arise. Such contingencies are not covered by Section 21 of the Contract Labour (Regulation and Abolition) Act, 1970. The contractor cannot recover any such additional amount from the principal employer under Section 21(4). Significantly, in the present proceedings the workers are not a party at all. It is the contractor who sought to quash a finding given by the Commissioner of Labour under the proviso to Rule 25(v)(a) of the Andhra Pradesh Contract Labour (Regulation and Abolition) Rules, 1971. In the present appeal before us also the contract workers employed by the 4th respondent are not a party. The dispute is between the contractor and the principal employer. We are, therefore, not called upon to pronounce on the rights of the contract labour employed by the 4th respondent to recover these amounts. The appellant, however, who is the principal employer, is not liable to pay this additional amount under Section 21(4). The appellant would, however, be liable under Section 21(4) to pay to the workers any difference between the wages contracted for under its agreement with the 4th respondent-contractor and the lesser wages actually paid by the contractor to contract labour, and recover the same from the contractor.

In the result, the appeal is allowed as above. The direction of the Division Bench insofar as it directs the appellant to pay additional wages as per the provisions of Rule 25(v)(a) of the Andhra Pradesh Contract Labour (Regulation and Abolition) Rules, 1971, is set aside. In the circumstances, however, there will be no order as to costs.

Y.S.S.

Appeal allowed.

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