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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF JUNE, 2024

BEFORE

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

WRIT PETITION No.573/2024 (L-RES)

BETWEEN:

1. WORKMEN OF BEML LTD.,
REPRESENTED BY
BEML CONTRACT WORKERS UNION,
A TRADE UNION REGISTERED UNDER
THE TRADE UNIONS ACT, 1926,
(REPRESENTED BY ITS GENERAL SECRETARY)

2. WORKMEN OF BEML LTD.,
REPRESENTED BY
BEML EX. TRAINEE,
CONTRACT OPERATORS UNION (BETCO)
A TRADE UNION REGISTERED UNDER
THE TRADE UNIONS ACT, 1926,
(REPRESENTED BY ITS PRESIDENT)

3. WORKMEN OF BEML LTD.,
REPRESENTED BY
RC-II UNIT CONTRACT
OPERATORS AND WORKERS
UNION (CITU) (BCOWU RC-II)
A TRADE UNION REGISTERED UNDER
THE TRADE UNIONS ACT, 1926,
(REPRESENTED BY ITS PRESIDENT)

4. WORKMEN OF BEML LTD.,
REPRESENTED BY
BEML HFU CONTRACT OPERATORS
AND WORKERS UNION (BCOWU HFU)
A TRADE UNION REGISTERED UNDER
THE TRADE UNIONS ACT, 1926,
(REPRESENTED BY ITS PRESIDENT)

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ALL PETITIONERS HAVING THEIR OFFICE AT
NO.1676, 2ND BLOCK, ANDERSONPET,
K.G.F. – 563 113
ALSO AT: SURI BHAVAN,
NO.40/5, 2ND B MAIN,
16TH CROSS, S.R. NAGAR,
BENGALURU – 560 027. ... PETITIONERS

(BY SRI ADITYA SONDHI, SENIOR COUNSEL FOR
SRI L. MURALIDHAR PESHWA, ADVOCATE)

AND:

1. UNION OF INDIA
REPRESENTED BY ITS SECRETARY,
MINISTRY OF DEFENSE,
NORTH BLOCK,
NEW DELHI – 110 001.

2. BEML LIMITED
FORMERLY KNOWN AS
BHARAT EARTH MOVERS LIMITED,
(A GOVERNMENT OF INDIA UNDERTAKING)
REPRESENTED BY ITS CHAIRMAN
AND MANAGING DIRECTOR,
HAVING ITS REGISTERED OFFICE AT
BEML SOUDHA, 23/1,
4TH MAIN, SAMPANGIRAMANAGAR,
BENGALURU – 560 027
AND ITS MANUFACTURING UNIT AT. ... RESPONDENTS

(BY SRI SHIVAKUMAR, CGC FOR R-1;
SRI PRASHANTH B.K., ADVOCATE FOR R-2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO DIRECT THE SECOND RESPONDENT TO REGULARIZE EMPLOYMENT OF THE PETITIONER WORKMEN, WHO ARE TERMED AS CONTRACT WORKMEN AND REPRESENTED BY THE PETITIONER UNIONS AND GRANT THEM ALL BENEFITS CONSEQUENT UPON AFTER ABSORBING THEM AS PERMANENT WORKMEN INCLUDING FINANCIAL BENEFITS TO WHICH THEY ARE ENTITLED TO IN LAW AND ETC.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED ON 24/04/2024 FOR ORDERS AND COMING FOR PRONOUNCEMENT OF

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ORDER THIS DAY, (AT KALABURAGI BENCH THROUGH VIDEO CONFERENCING) THE COURT PRONOUNCED THE FOLLOWING:

O R D E R

Though the matter is listed for hearing on interlocutory application (vacating stay), with the consent of learned counsel on both sides, the matter is taken up for final disposal.

2. Learned counsel for the petitioners seeks to withdraw the writ petition on behalf of petitioner No.1. Along with the memo, affidavits of petitioner Nos.2 to 4 are filed and the reply notice dated 26.02.2024 to petitioner No.1 by the advocate appearing for the petitioners.

3. Memo is taken on record. Petitioner No.1 is permitted to withdraw the writ petition on behalf of their union, and the writ petition continues on behalf of petitioner Nos.2 to 4.

4. The petitioner Nos.2 to 4 are seeking for following prayer"

> *"a) A Writ of MANDAMUS or any other appropriate writ, order or direction, directing the Second Respondent to regularize employment of the Petitioner workmen, who are termed as Contract workmen and represented by the Petitioner*

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Unions and grant them all benefits consequent upon after absorbing them as permanent workmen including financial benefits to which they are entitled to in law;

b) A Writ of MANDAMUS or any other appropriate writ, order or direction, declaring that the notification in Annexure L, as illegal, ultravires of the constitution of India and more particularly against the Article 14, 16, 21 and 23 under Part III of the Constitution and Article 38, 39, 43 and 43 A under Part IV of the constitution and also violative of the Constitutional Principles;

c) A Writ of CERTIORARI or any other appropriate writ, order or direction, setting aside the notification in Annexure L since the same is illegal, ultravires of the constitution of India and more particularly against the Article 14, 16, 21 and 23 under Part III of the Constitution and Article 38, 39, 43 and 43 A under Part IV of the constitution and also violative of the Constitutional Principles;

d) Such other writ, direction or order as this Hon'ble Court may deem just and expedient in the circumstances of the case including award of costs."

5. Heard Sri Aditya Sondhi, learned Senior Counsel appearing for Sri L. Muralidhar Peshwa, learned counsel for the petitioners and Sri Prashanth B.K. learned counsel for respondent No.2.

6. The issue on hand is "*Whether inviting applications from the candidates to recruit to Group-C position by the*

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company-respondent No.2, while they are already a significant number of workmen/workers performing similar duties as contract workers, without being regularized, is fair and lawful."

7. The grievance of the petitioners is that, respondent No.2 has employed only around 450 permanent workmen and has engaged around 1800 workmen as contract workmen, even though they are working in the permanent and perennial nature of work and performing the same work as regular workmen employed in such posts. It is the case of the petitioners that the workmen are supervised only by managerial person of respondent No.2 and there are no employees of the so called contractors, who are in any manner involved with the petitioners-workmen other than remitting the wages, sanctioned by the respondent No.2 and collecting huge commissions for remitting the wages at the cost of petitioner-workmen. It is the case of the petitioners that the workmen are continuing to perform permanent and perennial nature of work and many of these workmen have been working continuously for respondent No.2 for more than 20 years. The petitioner-union in continuation of their earnest attempt to get

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their legitimate rights/demands, addressed several representations to respondent No.2, when the situation stood thus, respondent No.2 published Recruitment Notification dated 27.09.2023 calling recruitment of Group-C position across BEML Limited. It is the case of the petitioner that by virtue of notification which specifies that requisite qualification for wage Group-C is ITI with National Apprentice Certificate and not Diploma Engineering, which is a general qualification and majority of the petitioners-workmen are ITI qualified and have completed National Apprentice Certificate and the impugned notification deprives the petitioners-workmen of their legitimate expectation for getting regularized with their service for having the same skills for applying to the said posts, but due to the age restrictions, none of the petitioners can apply for the posts as per the impugned notification and they are deprived of their minimum rights.

8. Objections statement along with vacating stay has been filed by respondent No.2, *inter alia,* contending that the writ petition is not maintainable as the petitioner has approached this Court on the premise that the petitioners have

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a right to get regularized as the permanent workmen of respondent No.2. It is stated that the question as to whether the contract labour should be abolished or not, the same being within the exclusive domain of the appropriate Government and it is only the appropriate Government who can issue a notification prohibiting the employment of the contract labour, if the factors enumerated in Sub-Section 2 of Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 ('CLRA Act' for short) are satisfied. It is further contended that the petitioner, instead of approaching the authority constituted under the CLRA Act has attempted to have a back door entry to the Contract Labour Arrangement at the respondent No.2-company. It is contended that respondent No.2 has engaged the contract workers in accordance with the CLRA Act and has provided them with those amenities specified under Chapter V of the CLRA Act. The respondent No.2 states that they being the principal employer has ensured that all the contractors were paying the wages on time besides ensuring compliance with other social benefits, EPF, ESI, Bonus, etc., and the engagement of the contract labour is as per the CLRA Act and

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the rules framed under. It is stated that the issuance of the advertisement of the recruitment is for the post of diploma trainees, ITI Trainees and staff nurse and received 13,700 number of applications and after following the procedures, the final list of 118 were selected for 5 domains and waiting list of 81 candidates were prepared. It is the contention of respondent No.2 that the petitioners are employees of the Labour Contractor and as such, there is no master and servant relationship between the petitioners and respondent No.2, stating these grounds, respondent No.2 sought to dismiss the writ petition.

9. Learned Senior Counsel appearing for the petitioners would contend that:

i. Action of the respondent No.2 is in violation of Articles 14 and 19, according of equality of status and opportunity, assuring the dignity of the individual.

ii. The impugned notification is arbitrary in view of the fact that the workmen who are working under

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respondent No.2, it is utter disregard of fundamental rights guaranteed under constitution.

iii. Method adopted by respondent to refer the workmen as contract workmen and not paying the same and similar wages as paid to the permanent workmen of respondent No.2 and not regularizing their services is totally unfair, illegal and unconstitutional and also against CLRA Act.

iv. The impugned notification inviting application from candidates to recruit in Group-C position while already significant number of workmen performing similar duties with similar qualifications are not being regularized.

v. The Conciliation Officer had advised the management-respondent No.2 to consider the contract operators by way of regularizing their services, in case any recruitment arises for the company for the same type of work in further.

vi. The terms of settlement at Annexure-O clearly indicates that the management agreed that when an

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existing man power has to be augmented, for organizational requirement and if vacancy arise in wage group, all the vacancies will be notified initially within the company and after exhausting internal sources, external recruitment will be resorted to, which settlement the management had not adhered to and the impugned notification inviting applications to Group-C position is in a arbitrary manner.

vii. A settlement arrived in the course of conciliation proceedings with the majority union will be binding on all the workmen in the establishment and even those who belonged to minority union, which had objected to the same, placing reliance on the decision of the Apex Court in the case of ***National Engineering Industries Ltd., Vs. State of Rajasthan and others***[1] *(National Engineering Industries).*

[1] (2000) 1 SCC 371

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viii. Placing reliance on the memo produced by the petitioner for additional documents, it is contended that the similarly placed workmen who were engaged as contract workmen, their services have been regularized by respondent No.2.

10. *Per contra,* learned counsel appearing for the respondent No.2 would urge the following grounds:

i. The petitioners are the employees of the Labour Contractors and there is no relationship between the petitioner and respondent No.2

ii. The petitioners are contract workmen and petitioner No.4 is a registered Trade Union representing the contract workmen

iii. The respondent No.2, for temporary and non-perennial works has engaged contractors, who inturn has engaged contract workers in accordance with CLRA Act.

iv. The petitioners are contract labourers and not entitled for regularization or permanency.

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v. The bipartite settlement between the recognized union of the respondent No.2 and the management, which is placed reliance by the petitioners is a settlement applicable only to the permanent employees of respondent No.2 and not the petitioners-workmen.

vi. The petitioners have got alternative efficacious remedy of approaching the authorities constituted under the CLRA Act, placing reliance on ***Steel Authority of India Ltd. vs. Union of India (UOI) and others***[2] *(Steel Authority of India).*

vii The Regularization sought by the petitioners before this Court is not maintainable and the petition has to be dismissed at the threshold.

11. This Court has carefully considered the rival contentions urged by the learned counsel for the parties and perused the material on record.

[2] AIR 2006 SC 3229

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12. The CLRA Act was introduced to regulate the employment of contract labour in certain establishments, and provide for its abolition in certain circumstances and for matters connected therewith. Section 2(c) of the CLRA Act defines contractor as under:

> *"2. **Definitions**.-(1) In this Act, unless the context otherwise requires,-*
>
> *(c) "contractor", in relation to an establishment, means a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor;"*

Section 2(g) defines 'principal employer' as under:

> *"(g) "principal employer" means-*
>
> *(i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as 'the Government or the local authority, as the case may be, may specify in this behalf,*
>
> *(ii) in a factory, the owner or occupier of the factory and where a person has been*

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named as the manager of the factory under the Factories Act, 1948 (63 of 1948), the person so named.

(iii) in a mine, the owner or agent of the mine and where a person has been named as the manager of the mine, the person so named,

(iv) in any other establishment, any person responsible for the supervision and control of the establishment."

13. Section 7 envisages registration of certain establishment, which states that every principal employer of an establishment to which this Act applies, shall within such period as the appropriate government may, by notification in the official gazette, fixed in this behalf with respect to establishments, generally, or with respect of any class of them, make an application to the registering officer in the prescribed manner for registration of the establishment.

14. Section 8 provides for revocation of registration in certain cases. Section 9 provides for effect of non-registration. Section 10 envisages prohibition of employment of contract labour. Section 12 envisages that no contractor to

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whom this Act applies as notified by the appropriate government shall undertake or execute any work through contract labour except under and in accordance with the licence issued in that behalf by the licencing officer.

15. Section 15 provides for an appeal by any person aggrieved by an order made under Section 7, Section 8, Section 12 or Section 14 can prefer an appeal to an Appellate Officer.

16. As rightly contended by the learned senior counsel the appeal provided under the CLRA Act applies to the contractors against the order made under Sections 7, 8, 12 and 14. The issue in this petition is whether the employment of the contract workers without regularization having been engaged for prolonged period when they are essentially performing duties similar to those of Group-C position, they may have a legal claim to regularization under the Labour Laws, but the jurisdiction of this Court under 226 seeking for regularization by the contract workers, was working under

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the principal employer or were under the contractors and whether there was an relationship of employer and the employee is essentially a question of fact, the remedy to the petitioner is to approach the industrial tribunal for declaring either the contract labour system under which they had employed was camouflage and that they are direct employees of the respondent No.2 and for consequential relief, the appropriate remedy is to approach the industrial tribunal and this Court has no jurisdiction to absolve the petitioners by regularization on the ground that the work for which the petitioners were engaged as contract labour was perennial in nature, the said question would be on determination of several number of factors. The Apex Court in the ***Steel Authority of India*** as stated supra has held at paragraph Nos.12 to 15 as under:

> *"12. Before adverting to the questions raised before us, we may at this juncture notice the contention of Mr. V.N. Raghupathy that whereas in the reference only 26 workmen were made parties, more than 600 workmen were made parties in the writ petition and, thus, only because before the*

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appropriate Government a demand was raised by some of the workmen contending that they were workmen of the contractors, an industrial dispute could be raised that the contract was a sham one and in truth and substance the workmen were employed by the management.

Writ Petitioner No.1 was Visveswaraya Iron & Steel Limited Contract Employees' Union. 615 workmen were parties thereto. They were admittedly represented by Writ Petitioner No.1 only. An industrial dispute was also raised, as noticed hereinbefore, by Visveswaraya Iron & Steel Ltd. Workers Association and Visveswaraya Iron & Steel Limited Contract Employees Union. The Contract Employees' Union was common both in the proceedings under the Industrial Disputes Act also in the writ petition. The 1970 Act is a complete code by itself. It not only provides for regulation of contract labour but also abolition thereof. Relationship of employer and employee is essentially a question of fact. Determination of the said question would depend upon a large number of factors. Ordinarily, a writ court would not go into such a question.

13. In State of Karnataka and Ors. v. KGSD Canteen Employees' Welfare Association and Ors.

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MANU/SC/0018/2006 : (2006) ILLJ 691 SC, this Court held:

> *"Keeping in view the facts and circumstances of this case as also the principle of law enunciated in the above-referred decisions of this Court, we are, thus, of the opinion that recourse to writ remedy was not apposite in this case."*

We may reiterate that neither the Labour Court nor the writ court could determine the question as to whether the contract labour should be abolished or not, the same being within the exclusive domain of the Appropriate Government. A decision in that behalf undoubtedly is required to be taken upon following the procedure laid down in sub-section (1) of Section 10 of the 1947 Act. A notification can be issued by an Appropriate Government prohibiting employment of contract labour if the factors enumerated in Sub-section (2) of Section 10 of the 1970 Act are satisfied.

When, however, a contention is raised that the contract entered into by and between the management and the contractor is a sham one, in view of the decision of this Court in Steel Authority of India Limited (supra), an industrial adjudicator would be entitled to determine the said issue. The industrial adjudicator would have jurisdiction to determine the said issue as in the event if it be held that the contract

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purportedly awarded by the management in favour of the contractor was really a camouflage or a sham one, the employees appointed by the contractor would, in effect and substance, be held to be direct employees of the management. The view taken in the Steel Authority of India Limited (supra) has been reiterated by this Court subsequently. [See e.g. Nitinkumar Nathalal Joshi and Ors. v. Oil and Natural Gas Corporation Ltd. and Ors. MANU/SC/0190/2002 : (2002) IILLJ 262 SC] and Municipal Corporation of Greater Mumbai v. K.V. Shramik Sangh and Ors. MANU/SC/0318/2002 : (2002) IILLJ 544 SC.

14. In A.P. SRTC and Ors. v. G. Srinivas Reddy and Ors. MANU/SC/8058/2006 : (2006) IILLJ 425 SC, this Court held:

> *...If respondents want the relief of absorption, they will have to approach the Industrial Tribunal/Court and establish that the contract labour system was only a ruse/camouflage to avoid labour law benefits to them. The High Court could not, in exercise of its jurisdiction under Article 226, direct absorption of respondents, on the ground that work for which respondents were engaged as contract labour, was perennial in nature.*

It was further held:

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> *...The only remedy of respondents, as noticed above, is to approach the Industrial Tribunal for declaring that the contract labour system under which they were employed was a camouflage and therefore, they were, in fact, direct employees of the Corporation and for consequential relief....*

Similar view has been taken in KGSD Canteen Employees' Welfare Association (supra).

15. The workmen whether before the Labour Court or in writ proceedings were represented by the same Union. A trade union registered under the Trade Unions Act is entitled to espouse the cause of the workmen. A definite stand was taken by the employees that they had been working under the contractors. It would, thus, in our opinion, not lie in their mouth to take a contradictory and inconsistent plea that they were also the workmen of the principal employer. To raise such a mutually destructive plea is impermissible in law. Such mutually destructive plea, in our opinion, should not be allowed to be raised even in an industrial adjudication. Common law principles of estoppel, waiver and acquiescence are applicable in an industrial adjudication. The 1947 Act was enacted, as the preamble indicates, for investigation and settlement of industrial dispute and for certain other

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purposes. It envisages collective bargaining. Settlement between Union representing the workmen and the Management is envisaged thereunder. It provides for settlement by mutual agreement. A settlement or an award in terms of Section 18(3)(b) of the 1947 Act is binding on all workmen including those who may be employed in future. What assumes importance is the ultimate goal where for the 1947 Act was enacted, namely, industrial peace and harmony. Industrial peace and harmony is the ultimate pursuit of the said Act, having regard to the underlying philosophy involved therein. The issue before us is required to be determined keeping in view the purport and object of the 1947 Act.

It is interesting to note that in Modi Spinning & Weaving Mills Company Ltd. & Anr. v. Ladha Ram & Co. MANU/SC/0012/1976 : (1977) 1 SCR 728, this Court opined that when an admission has been made in the pleadings, even an amendment thereof would not be permitted."

17. The Apex Court has held that the CLRA Act is a complete hold by itself and the question about the relationship of the employer and the employee depends upon the large number of factors and the industrial adjudicator would have jurisdiction to determine the said issue.

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18. The Apex Court in the case of ***Secretary, State of Karnataka and others Vs. Umadevi and Others***[3] *(Umadevi)* has observed that *when a person enters temporary employment or gets engagement as contractual or causal worker and the engagement is not based on proper selection or recognized by relevant rules of procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature and such a person cannot invoke the theory of the legitimate of expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases in consultation with the public service commission and further observed that the theory cannot be invoked to seek a positive relief of being permanent in the post.*

19. In the instant case, the petitioner has sought for direction to the respondent No.2 to regularize the employment of the petitioner-workman, who are represented by the petitioners-union and to grant all benefits consequent to upon after absorbing them as permanent workmen, the prayer

[3] Air 2006 SC 1806

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seeking regularization by this Court by the contract workman is not maintainable and the prayer (a) of the writ petition cannot be granted as the petitioners have to approach the appropriate forum for seeking appropriate relief. However, it is essential to assess whether inviting application for Group-C position while existing contract workers remained unregularized is fair and equitable? And prayer No.(b) and (c) are seeking to declare the notification in Annexure-L is illegal and arbitrary. If the contract workers are qualified and have been performing satisfactorily, there may be concerns of fairness in not offering them the opportunity to apply for these positions. If, there is genuine reasons to fill the Group-C positions with external candidates due to skill gaps or other valid reasons, this could be a legitimate justification, ignoring the rights of the contract workers who may be entitled to regularization, it would be prudent for the employer to review the status of the contract workers, assess their eligibility for regulations, and ensure that the recruitment process of group-C positions is conducted in a manner, i.e., fair and transparent.

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20. Prayer (a) of the writ petition seeking regularization before this Court is not maintainable, petitioners to approach the appropriate forum having jurisdiction. However, this Court feels it appropriate in the peculiar facts and circumstances to keep the impugned notification in abeyance for a period of one month from today, with the said observation writ petition stands ***disposed of***.

SD/-
JUDGE

S*