

O.A. Nos. 208/2001 & 296/2001.

Thursday this the 19th day of July 2001.

CORAM:

HON'BLE MR A.M.SIVADAS, JUDICIAL MEMBER
HON'BLE MR G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

O.A.208/2001:

1. Gopalakrishnan K.R.,
Kekkattuputhenpurayil,
Koratty South P.O.,
Thrissur District-680 308.
2. Eldo C.V., Cherakkakuzhy,
Kattichal, Manandy P.O.,
Nilgiris-643 339.
3. Roy P.C., Puthiyedath House,
Eroor West P.O., Tripunithura-682 306.
4. Vinu N.E., Nammanary House,
Malayidamthuruth P.O.,
Edathala Aluva-683 561.
5. Gireesh K.P., Kochanjallikkal House,
kadabhagam, Palluruthy, Kochi-682 006.
6. Vinod Kumar P.S., Sreebhavan,
Kummenam Post,
Kottayam District-686 036.
7. Mujeeb Rahman K.M., Kalliyil House,
Thannipadam, Mannam P.O. North Parur,
Ernakulam District.
8. Sathyan a.N., Azhuveliparambil House,
Kadavanthara-682 020.
9. Suresh Babu T.G. Theroth House,
Ochamthuruth P.O., Cochin-682 508.
10. Satheesh K.N., Kothamangalathu Chira,
Cheramangalam, Mayithara P.O.,
Cherthala-688 539.
11. Harikumar N., Vadakara Chellam Veedu,
Varanad P.O., Cherthala, Alleppey District.
12. John Paul C.G., Chakkalakkal House,
Keerthi Nagar Road, Elamakkara,
Kochi-26.
13. Mohan M., Mathusoothanapuram,
Parakkal P.O., Kanyakumari District,
Tamil Nadu.

14. Manoj P., Sreenilayam, Thodiyoor P.O.,
Karunagappally, Kollam District.
15. Pradeesh K.V., Puthuvalnilath,
Chandiroor P.O., Cherthala,
Alappuzha District.
16. Anil Kumar D., Erezhamadam,
Pallana P.O.,
Alappuzha District.
17. Murali V.B., Vallon Chathenedu,
Eloor North,
Udyogamandal-683 501.

Applicants

(By Advocate Shri N.N.Sugunapalan)

Vs.

1. Union of India, represented by
its Secretary, Ministry of Defence,
New Delhi.
2. Garrison Engineer E/M,
Military Engineering Service,
Naval Base P.O., Cochin-682 004.
3. The Flag Officer, Commanding in-Chief,
Southern Naval Command, Willingdon
Island, Cochin-682 009.
4. The Central Advisory Board,
Constituted under Section 10 of
Contract Labour(Regulation and
Abolition) Act 1970, New Delhi,
represented by its Chairman,
New Delhi.
5. M/o Well Trone Engineering Services
42/225, Mundakkara Road,
Cochin-682 014, represented by its
Proprietor.

6. M/s. A.R.Traders, 26/2579,
Mattummal, Thevar-682 013.

Respondents

(By Advocate Shri K.V.Sachidanandan(R.1-4))

O.A.No.296/2001:

1. I.V.Joseph, Ittikunnathu House,
Elamkunnappuzha P.O., Kochi-682 503.
2. K.X.Alex James,
Kattiparambil House,
Kannamaly P.O., Cochin-682 003.
3. V.F.Anthony, Varithaikal House,
Pattalam, Fort Kochi.

4. P.J. Joseph Samson,
Paliyath House, Kannamaly P.O.,
Kattiparambu, Kochi-8.
 5. K.J. Anthony, Kurananthara House,
Kannamaly P.O., Kattiparambu,
Kochi - 8.
 6. J.P. Pushpangathan,
Jathikadavil House, Perumbalam P.O.,
Perumbalam - 688 570.
 7. N. Sajeevan, Puthuparambil House,
Ramancherry, Arattupuzha P.O.
 8. A.M. Thomas, Athipuzhi House,
Mundamvely P.O., Kochi-7.
 9. C.M. Thomas, Chiramel House,
Mulamkuzhy, Mattancherry P.O., Kochi.
 10. S.M. Shajahan, House No.V/19,
Bazaar Road, Mattancherry.
- Applicants
- (By Advocate Shri N.N. Sugunapalan)
- Vs.

1. Union of India - represented by its
Secretary, Ministry of Defence,
New Delhi.
 2. The Garrison Engineer (Projects)
The Military Engineering Service (MES),
Rameshwaram P.O., Fort Kochi.
 3. The Flag Officer-Commanding-in Chief
Southern Naval Command,
Willingdon Island, Kochi-682 009.
 4. The Central Advisory Board,
constituted under Section 10 of the
Contract Labour (Regulation &
Abolition) Act, 1970 New Delhi -
represented by its Chairman.
 5. M/s Super Constructions, M.E.S.
Contractors XCII/901, Mundamveli,
Kochi - 682 507 - represented by its
Proprietor, K.P. Michael.
- Respondents
- (By Advocate Shri Sri Hari Rao, ACGSC (R.1-4))

The application having been heard on 19th July, 2001
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR A.M.SIVADAS, JUDICIAL MEMBER

Common order in O.A.208/2001 & O.A.296/2001.

The applicants in these O.As. seek the following reliefs:

- "i) Declare that respondents 1 & 2 cannot continue the contract labour system in the Military Engineering Service establishment any longer.
- ii) Direct the respondents to grant the applicants the status of permanent workers and absorb them into the regular service of the M.E.S. Establishment.
- iii) Direct the respondents to frame a scheme for carrying out the works in future only through regularly appointed casual labourers and to frame a scheme for their subsequent regularisation.
- iv) Direct the respondents 1 & 2 to immediately cease any further employment of contractors for supplying labour to the M.E.S. establishment.
- v) Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.
- vi) Award the cost of these proceedings to the applicants."

2. The respondents have inter alia contended that there is no jurisdiction for this Tribunal to entertain these O.As. and are to be dismissed at threshold.

3. Learned counsel appearing for the applicants in these O.As. drew our attention to the ruling of a Single Bench of the Hyderabad Bench of the Tribunal in O.A.Nos.1783, 1784, 1785 & 1786 of 1999. (Annexure-A3 in O.A.208/2001). We have carefully gone through the same.

4. Learned counsel appearing for the respondents vehemently argued that these O.As. are not maintainable for the reasons that a Division Bench of this Tribunal in O.A.Nos.

846/99 and 373/2000 has held that those O.As. are not maintainable. Learned counsel appearing for the respondents also submitted that the applicants are outside the provisions of the Administrative Tribunals Act, being employees of the Contractors.

5. Section 3 (q) of Administrative Tribunals Act reads thus:.

Section 3 (q): "Service matters" means in relation to a person, all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or as the case may be, of any corporation (or society) owned or controlled by the Government and neither the nature of the work performed nor the nature of their appointment will bring them within the ambit of the Administrative Tribunals Act.

6. Learned counsel appearing for the applicants relying on Section 14 (c) of the Administrative Tribunals Act submitted that all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation (or society) or other body, at the disposal of the Central Government for such appointment, these O.As. are well within the jurisdiction of this Tribunal.

7. An identical question was considered by this Bench of the Tribunal in O.A. Nos.373/2000 and 846/99 and both the O.As. were dismissed at the admission stage. In Gujarat Electricity Board, Thermal Power Station, Ukai Vs. Hind Mazdoor Sabha and others (AIR 1995 SC 1893), it has been held that after the coming into operation of Contract Labour (Regulation and Abolition) Act, the authority to abolish the contract labour is vested exclusively in the appropriate Government which has to take its decision in the matter in accordance with the provisions of Section 10 of the Act, that this conclusion has been arrived at on the interpretation of Section 10 of the Act and that the decision of the Government is final ofcourse subject to judicial review on the usual grounds.

8. In the light of the dictum laid down by the Apex court in the said ruling, the applicants have to exhaust their remedy available in the Contract Labour (Regulation and Abolition) Act itself under the provisions of Section 10. That being the position, the stand of the respondents is that there is want of jurisdiction to be upheld.

9. Accordingly, both the O.As are dismissed. No costs.

Dated 19th July 2001.

Sd/-
(G.RAMAKRISHNAN)
ADMINISTRATIVE MEMBER

Sd/-
(A.M.SIVADAS)
JUDICIAL MEMBER

Annexure A-3 in O.A.208/01: True copy of the judgement in
O.A.No.1783/99 dated 31.7.2000 of Hyderabad Bench.

CERTIFIED TRUE COPY

Date ~~01.08.2000~~

Deputy Registrar