

(1995) 03 SC CK 0144

In the Supreme Court Of India

Case No : Writ Petitions (C) Nos. 822 Of 1993 And 915 Of 1993

All India General Mazdoor Trade Union (Regd.)

APPELLANT

Vs

Delhi Administration and Others

RESPONDENT

Date of Decision : 29-03-1995

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 10

Citation : (1996) 7 SCC 298

Hon'ble Judges : A. M. Ahmadii, C.J;S. P. Bharucha, J;K. S. Paripoornan, J

Bench : Full Bench

Final Decision : Disposed Of

Judgement

1. The members of the petitioner Union comprise workmen engaged in the operation and maintenance of an air-conditioning plant in the complex owned by respondent No. 2. The workmen contend that in order to deny them regular employment, the respondent No. 2 has engaged the services of respondent No. 3, a Contractor. Taking the stand that respondent No. 2 is a State within the meaning of Article 12 of the Constitution, the petitioner-Union contends that the work which its members carry out at the plant in question is of a perennial nature and necessary for the maintenance of the plant and yet instead of engaging labour directly respondent No. 2 has devised the method of engaging labour through a Contractor with a view to denying them security in service. The Union has, therefore, approached this Court for a writ in the nature of a writ of mandamus to command the appropriate Government to issue a notification under Section 10, of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter called the "Act").

2. Section 10, of the Act reads as under;

"10. Prohibition of employment of contract labour -

(1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board, or, as the case may be, a State

Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.

(2) Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as

(a) whether the process, operation or other work is incidental to, or necessary for the industry, Trade, business, manufacture or occupation that is carried on in the establishment:

(b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;

(c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;

(d) whether it is sufficient to employ considerable number of whole-time workmen.

Explanation.- If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final."

3. It would thus be seen on a plain reading of the said provision that the appropriate Government is charged with the duty to consider whether or not in the facts and circumstances of a given case it is necessary to prohibit employment of contract labour in any process, operation or other work in any establishment. Of course, this it must do after consultation with the Central Board or as the case may be, a State Board constituted under Sections 3 and 4, respectively of the Act. Sub-section (2) of Section 10, provides that before issuance of any notification regard shall be had by the appropriate Government to the conditions of work and benefits provided for the contract labour in the given establishment and other relevant factors enumerated in clauses (a) to (d) of that subsection and the decision in that behalf of the appropriate Government is made final by the explanation thereto. In the present case, the question which arises for consideration is whether the requirements for the issuance of a notification under Section 10, of the Act have been satisfied. That is a question to which the appropriate Government must first address itself because it would be required to consult the Board also after collecting and collating the factual data. Unfortunately, the Union in the instant case did not approach the appropriate Government to make out a case for the issuance of a notification under Section 10 of the Act. Had it done so the factual data would have been available to this Court and if despite a case having made out for issuance of a notification under Section 10, the appropriate Government had unreasonably refused to exercise power. This Court in its review jurisdiction would have been able to grant a

mandamus on being satisfied that the requirements for the issuance of a notification had been established. In the absence of any probe by the appropriate Government it is difficult for this Court to collect all the information directly and proceed to issue a mandamus without the appropriate Government having an opportunity to examine the request made by the petitioner-Union. We think that in such cases it is appropriate that the authority established under the statute is approached first in point of time so that it is in a position to collect and collate the data and place it in the correct perspective for decision making and if despite a case having been made out, the appropriate Government does not exercise power, the aggrieved workers can certainly move the appropriate forum for writ of mandamus. We are, therefore, of the opinion that in the facts and circumstances of this case and having regard to the case law in this behalf and particularly the decision in *R. K. Panda vs. Steel Authority of India Ltd*, (1994) 5 SCC 304, it would be appropriate to dispose of these cases with a direction that the present writ petitions be treated by the appropriate Government, i.e. respondent No. 1, as a representation by the workmen and the appropriate Government take a decision on the demand made by the workmen whether or not a case for issuance of a notification under Section 10 of the Act is made out.

4. Having regard to the nature of work required to be done in the plant managed by respondent No. 2, we are of the opinion that this question ought to be resolved without loss of time. It must also be realised that in the meantime the workmen involved herein must continue in employment till the question is resolved. If the services are terminated by the Contractor or by efflux of time, a contract being for a limited period, the entire grievance of the workmen projected through the Union would be rendered infructuous and redundant. Taking these special facts into consideration, we are of the opinion that a time frame should be prescribed within which respondent No. 1 should take a decision. We would expect all concerned to co-operate. We must make it clear that if the workmen delay the process in any manner whatsoever and respondent No. 1 cannot complete the proceedings within the time-frame on account of delaying tactics, the benefit of the protection of continuance in employment will be lost to them. We think that the entire process should be completed expeditiously and within four months from April 1, 1995, i.e. by the end of July, 1995. We direct that within two weeks from today the petitioner-Union will present a copy of this petition along with additional documents, if any, to respondent No. 1. If that is not done, the benefit of the protection given by this Court for continuance of their employment will terminate. Thereafter, the parties will appear before respondent No. 1 on 17th April, 1995. The respondent No. 1 will immediately enter upon the dispute and as stated above proceed with it expeditiously and complete the same by the end of July, 1995. The decision it takes may then be communicated to the parties concerned. Till this process is completed, subject to what we have said earlier, the workmen will be continued in employment and respondent No. 2 will ensure their continuance. The writ petitions will stand disposed of accordingly with no order as to costs.