
(1988) 09 AP CK 0006
In the Andhra Pradesh High Court

A.P. Dairy Development Cooperation Federation	APPELLANT
Vs	
K. Ramulu and Others	RESPONDENT

Date of Decision : 05-09-1988

Acts Referred:

Constitution of India, 1950 — Article 226, 32, 41, 42
Contract Labour (Regulation and Abolition) Act, 1970 — Section 10, 12, 14, 15, 2

Citation : (1989) 1 APLJ 45 : (1989) 2 LLJ 312

Hon'ble Judges : Yogeswar Dayal, C.J;M. Jagannadha Rao, J

Bench : Division Bench

Judgement

M. Jagannadha Rao, J.—This judgment is practically supplementary to the judgment delivered by us on 23rd August 1988 in the connected W.A.No. 1314/88 preferred by the writ petitioners against the same judgment to the extent they were aggrieved by the same order of the learned single Judge. We rejected that appeal on the ground that the relief for absorption and regularisation of the writ petitioners in the appellant-Federation was premature. We there referred to the judgment of the Supreme Court in *Catering Cleaners of Southern Railway v. Union of India*. 1987 1 LLJ 345

2. The present appeal is by the Federation, which was the 1st respondent in the writ petition.

3. The writ petition was filed by respondents 1 to 26 for a direction to the Government of Andhra Pradesh to initiate action u/s 10 of the Contract Labour (Regulation and Abolition) Act and for taking necessary steps for prohibition of employment of contract labour in the appellant Federation and also for issue of a consequential direction to the appellant to absorb the writ petitioners as regular employees after giving due weight to their service. The writ petitioners contended that they have been employed by the contractors who are engaged by the appellant-Federation in various departments of the dairy work since 1979. It is contended that the work done by them is of a regular and perennial nature, that they were being engaged by the contractors of the appellant, and that they

were being exploited by the appellant which is avoiding to take them as regular employees of the appellant. They contend that the Government had previously issued G.O. Ms. No. 90 (Forests and Rural Development Department) dated 3rd March 1981 with regard to Proddatur Dairy (Cuddapah District) abolishing contract labour and directing regularisation of services of employees of the contract labour, and that a similar order has to be passed by the Government u/s 10 of the Contract Labour (Regulation & Abolition) Act, 1970 (hereinafter called "the Act"). It is also stated that, for all practical purposes, the petitioners are employees of the appellant and the appellant should be directed to absorb and regularise the services of the writ petitioners, that the petitioners are entitled to the benefits which accrue to the regular employees of the appellant, that they are entitled to bonus. On those allegations they sought the above mentioned relief against the appellant-Federation and the Government.

4. On behalf of the appellant, the General Manager of the Milk Products Factory, Hyderabad, filed a counter-affidavit stating that the appellant is not aware of the names of the employees of the contractor, that the contractor in question is a licensed contractor fulfilling the conditions of the licence, that there is no regularity in the engagement of the writ petitioners by the contractor, that the Dairy industry itself has flush and lean seasons of 4 and 8 months respectively every year and that the contract labour are employed only when there is shortage of attendance of the regular employees of the appellant. It is further stated that in G.O. Ms. No. 90 dated 3rd March 1981, there is no direction for absorption of the contract labour and that the work of the petitioners does not come within the enumerated list of types of work stated in G.O. Ms. 492 dated 8th July 1980 wherein contract labour has been prohibited. The appellant prayed that the writ petition may be dismissed. It appears that by the time the writ petition was disposed of, the Government did not file any separate counter.

5. The learned single Judge observed that the appellant-Federation has contended that it had no direct relationship with the writ petitioners who are employed by the appellant's contractor and that the contractor is registered under the Act and he has been complying with the provisions of the Act and that therefore the court cannot go into the correctness of these contentions. The learned Judge then referred to Section 10 of the Act and gave two directions, one to the Government to "initiate" action as per Section 10. for abolition of contract labour and the other direction to the appellant, directing it "to continue the petitioners whom-so-ever the independent contract work is allotted to, till action is taken by the Government u/s 10 for abolition of contract labour.

6. The appellant-Federation is aggrieved by the second direction referred to above, namely, that one directing it to see that the writ petitioners are continued to be employed by every contractor whoever maybe entrusted with the work by the appellant from time to time" till the government chooses to abolish the contract labour u/s 10 as per the first direction given against the Government. The appellant's counsel Sri C. Ramakrishna stated that the appellant is not

questioning the direction given against the Government by the learned single Judge for initiating action for abolition of contract labour u/s 10.

7. On the other hand, the learned Counsel for the respondents (writ petitioners) Sri Vijay Chandra contended that this court, while acting under Article 226 of the Constitution of India, has ample jurisdiction to issue directions to the appellant-Federation to see to it that every contractor to be engaged by it should employ the writ petitioners for doing the works entrusted to him by the appellant-Federation, that such a power is to be inferred from the intention behind the enacting a welfare measure such as Contract Labour (Abolition & Regulation) Act, 1970 and also from the Directive Principles of the Constitution. Our attention is drawn also to *Catering Cleaners of Southern Railway v. Union of India* (supra) and *B.H.E.L. Workers Association, Hardwar and Others Vs. Union of India and Others*, dealing with the Act. Certain other rulings relating to the powers of this Court under Article 226 of the Constitution have also been cited. 8. The point that therefore arises is whether this Court can direct the appellant-Federation to see that writ petitioners are employed by every contractor to whom-so-ever the appellant might entrust its work on contract basis and whether such a direction can be issued under Article 226 of the Constitution in the context of the provisions of the Act?

9. We shall first advert to some of the relevant provisions of the Act and the Rules. The Act is intended to "regulate" the employment of contract labour in certain establishments and to provide for its "abolition" in certain circumstances and for matters connected therewith. The Statement of Objects and Reasons mentions that the system of employment of contract labour has tended itself to various abuses and the question of its abolition had been under the consideration of the Government for a long time. The Planning Commission had made certain recommendations in the Second Five Year Plan viz., undertaking of study in this behalf and improvement of service conditions of contract labour where the abolition was not possible. The general consensus thereafter was that the contract labour system should be abolished wherever possible and practicable and further that in cases where this system could not be abolished altogether, the working conditions of the contract labour should be regulated so as to ensure payment of wages and provision of essential amenities.

10. The above said objectives have been brought into the statute which was enacted in 1970. Section 2 gives the definition of various words while Section 3 deals with the constitution of a Central Advisory Board and Section 4 with the constitution of a State Advisory Board. These Boards are empowered to constitute various committees as mentioned in Section 5, Chapter III is Important and deals with the "registration" of establishments employing contract labour while Chapter IV deals with the "licensing" of contractors employed by these establishments. Section 7 deals with the registration of certain establishments notified by the Government and these establishments are obviously the principal employers as defined in Section 2(g). Section 8 provides

for revocation of registration in certain cases and Section 9 deals with the effect of non-registration. u/s 9 no principal employer of an establishment, to which the Act applies, shall (a) in the case of an establishment required to be registered u/s 7, but which has not been registered within the time fixed for the purpose under that Section (b) in the case of an establishment the registration in respect of which has been revoked u/s 8, employ contract labour in the establishment after the expiry of the period referred to in Clause (a) or after the revocation of registration referred to in Clause (b). Section 10 deals with prohibition of employment of contract labour and reads as follows:

Section 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 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 carried on in that 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 there on shall be final.

11. Chapter IV deals with the licensing of contractors. Sub-clause (1) of Section 12 states that with effect from such date as the appropriate Government may, by notification in the Gazette, appoint, no contractor to whom this Act applies, shall undertake or execute any work through contract labour except under and in accordance with a licence issued in that behalf by the licensing officer. Sub-clause (2) of Section 12 provides that subject to the provisions of the Act, a licence under Sub-section (1) may contain such conditions including, in particular, conditions as to hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem

fit to impose in accordance with the rules, if any, made u/s 35 and shall be issued on payment of such fees and on the deposit of such sum, if any, as security for the due performance of the conditions as may be prescribed. Section 14 provides for revocation, suspension and amendment of licences while Section 15 provides for an appeal.

12. Chapter V deals with the welfare and health of contract labour and makes provision for establishing canteens, rest rooms, other facilities and first aid. Section 20 provides that in case of default by the contractor in providing such amenities the principal employer may provide the same and deduct the expenditure out of the amount payable to the contractor. Section 21 deals with the responsibility of the contractor to pay wages in the presence of a nominee of the principal employer and in case of default, enables the principal employer to pay the wages and recover the same out of the amounts payable to the contractor.

13. Chapter VI deals with the penalties and procedures. Section 22 deals with the obstructions, Section 23 deals with contravention of provisions regarding employment of contract labour and Sections 24 and 25 deal with other offences and offences by companies.

14. Chapter VII makes certain miscellaneous provisions and Section 30 provides that laws and agreements inconsistent with the provisions 5 of the Act shall be void except where such agreements or contracts or standing orders afforded more favourable facilities to the employees than provided under the Act.

15. We shall also refer to Rule 25 of the Rules which mentions the conditions subject to which licence could be issued to a contractor u/s 12. The said rule inter alia provides that a licence issued to a contractor shall not be transferable, that contractors cannot employ workmen in excess of the number specified therein and that rate of wages payable to the workmen shall be the rate prescribed under the Minimum Wages Act, 1948. Clause (V)(a) of the Rule 25(2) is important and reads as follows.

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.

Rule 25(2) further provides for accommodation for women and children and for the times of work of females.

16. From the above provisions, it is clear that the Act serves a two fold purpose of regulation of the conditions of service of workers employed by a contractor who is engaged by a principal employer and also provides for the appropriate Government abolishing contract labour altogether, in certain notified processes,

operations or other works in any establishment. Neither the Act nor the rules provide that upon the abolition of the contract labour the said labour should be directly absorbed by the principal employer. Nor is there any provision that pending decision upon an application u/s 10 by workers, the said workers should continue to be engaged, at the instance of the principal employer, by any contractor engaged by such principle employer.

17. The second direction given by the learned single Judge directing the appellant Federation to insist upon every contractor engaged by it to continue to employ the writ petitioners, cannot therefore be sustained by any positive provision in the Act or Rules. As already stated, there is no provision in the Act or rules obligating the principal employer to insist upon every successive contractor employed by it to engage as workers the petitioners who might have filed the application u/s 10 of the Act. When the Act does not provide for such a measure but contents itself by mere regulation of the conditions of service of employees under the contractor and abolition of contract labour, it is, in our opinion, not permissible for this Court acting under Article 226 of the Constitution to direct the principal employer to impose a condition on the successive contractors engaged by it to employ the writ petitioners till a final order is passed u/s 10 by the State Government.

18. It is however, argued by the learned Counsel for the writ-petitioners-respondents, Sri Vijaychandra, that the Supreme Court had, in fact, given such a direction in *Catering Cleaners of Southern Railway v. Union of India* above referred to. In our opinion, the directions given by the Supreme Court in that case have to be understood in the context of the special facts of that case. There the writ petitioners were employed as catering cleaners by the contractors of the Southern Railway. The said caterers contended in an application filed under Article 32 of the Constitution that contract labour was abolished u/s 10 by all the various railways in the country except the Southern Railway and that therefore they were being discriminated against. In that context, the Supreme Court referred to the report of a Parliamentary Committee of Petitions which went into the question of abolition of contract labour engaged in railway catering departments of the Southern Railway. Their Lordships extracted the conclusions arrived at the said Parliamentary Committee and on that basis came to the conclusion that the various conditions mentioned in Clauses (a) to (d) of Section 10(2) for abolition were satisfied. After so holding, their Lordships considered the question whether a writ of mandamus could be issued directing the Central Government to abolish the contract labour system in the Southern Railway and observed that they were refraining from doing so in as much as Section 10 required the Central Government to consult the Central Board. They then directed the Central Government to take appropriate action u/s 10 in relation to the catering establishments and pantry cars in the Southern Railway within six months. They further directed that the Southern Railway should refrain from employing contract labour until such decision of the Central Government and that till then the work of cleaning catering establishments and pantry cars should be

done departmentally by employing the writ petitioners who were previously employed by the contractor, on the same wages and conditions of work as were applicable to those engaged in similar work by the Western Railway. They also passed a conditional order that if the Central Government did not finally decide the question within six months, the said Railway will absorb the writ petitioners into their service and regularise the same. It will be noticed that in the above said decision of the Supreme Court their Lordships came to the conclusion, on the basis of the report of the Parliamentary Committee, that the conditions specified in Clauses (a) to (d) of Section 10(2) were satisfied and in those circumstances, while leaving the Central Government to take action u/s 10, their Lordships thought fit to restrain the Southern Railway from employing contract labour and directed that the writ petitioners should be employed by the Southern Railway departmentally and in case the Central Government did not take a decision u/s 10 within six months, the writ petitioners should be absorbed in the Southern Railway. The learned Counsel for the respondent-writ petitioners cannot therefore rely on the said decision for sustaining the second direction given by the learned single judge. The writ petitioners in the present case are not in the same position as the writ petitioners in that case in as much as there the Court had the advantage of the report of the Parliamentary Committee to hold that the conditions for abolition of contract labour mentioned in Section 10(2) were satisfied. In the parent case, there is no such material and further, the State Government is yet to go into the factors covered by Section 10(2). The said decision of the Supreme Court is therefore clearly distinguishable. In any case, this Court cannot impose a burden on the appellant-Federation to see that the writ petitioners are engaged by any contractor to whom the Federation may award its contracts in future.

19. The other decision of the Supreme Court reported in *B.H.E.L. Workers' Association v. Union of India* (supra) does not deal with this aspect of the matter at all. It only specifies that it is for the appropriate Government to take action u/s 10 for abolition of contract labour and it is not a matter for the Court to direct abolition. Similarly, the question whether the work done by the contract labour is the same or similar work as done by the workmen directly employed by the principal employer is also a matter to be decided by the Chief Labour Commissioner under the proviso to Rule 25(ii)(v)(a). The said decision is therefore not relevant.

20. The learned Counsel for the respondent-writ petitioners then referred to the Directive Principles of the Constitution including Articles 41 and 42 and contended that even though there is no express provision for directing the principal employers to continue the same contract labour with every contractor to be employed by them, still the intention behind the provision of the Act was to see that contract labour who had filed a petition u/s 10 should not be discontinued by any contractor that may be engaged by the principal employer. In order to explain that that was the intention behind enacting the Act of 1970, the learned Counsel referred several decisions of the Supreme Court as well as

the High Courts on the question of interpretation of welfare legislation. As none of the said decisions are decisions under the statute with which we are concerned in the present case we do not consider it necessary to refer in detail to all of them especially when they only deal with interpretation of welfare legislation and harmonising fundamental rights with directive principles. In our view, the Act merely deals with regulation of conditions of service of workmen employed by a contractor engaged by a principal employer and also deals with the conditions under which contract labour could be abolished. Parliament had gone only thus far in regard to the welfare measure undertaken by it for the benefit of the contract labour and had not gone farther. If the Parliament desired that the contract labour who filed the petition u/s 10 should be continued by every contractor that may be engaged by the principal employer during pendency of application u/s 10 before the appropriate Government one would expect clear positive provisions in that regard in the Act itself. Such a matter does not arise by way of necessary intendment from the provisions of the Act and rules as they stand in the statute book today. When such provisions are lacking in the Act and the rules, it is not permissible to accept the contention that such a situation was in contemplation of Parliament and that such was the intention behind the provisions of the Act as they stand. In our view, to accept the contention of the learned counsel for the writ petitioners would clearly amount to legislation by Court which is not permissible and we would be going much farther than what Parliament intended. The reliance therefore by the writ petitioners on Mohd. Hanif Quareshi and Others Vs. The State of Bihar, . The Municipal Corporation for Greater Bombay and Another Vs. The Advance Builders (India) Private Ltd. and Others, . U.P.S.E. Board v. Hari Shanker 1978-II-LLJ-399; State of Kerala Vs. Kumari T.P. Roshana and Another, ; . K. Rajendran v. State Tamil Nadu 1982-II-LLJ-259; National Textile Corpn. Ltd. Vs. Sitaram Mills Ltd. and Others, , D. Parraju Vs. General Manager, B.N. Railway and Others, ; and Arvapalli Balakrishnaiah Vs. State of Andhra Pradesh and Others, , is misconceived and the said ruling are therefore not in point, such of these decisions which also refer to the powers of the High Court under Article 226 to issue writs cannot also help the learned Counsel for the writ petitioners for we are clear, in our mind, that the second direction issued by the learned single Judge does not arise in any incidental manner in the context of Section 10 of the Act.

21. Further it is not known who the successive contractors may be that will be engaged by the appellant-Federation for the purpose of its works during period before any decision is arrived at by the State Government u/s 10 of the Act. Those contractors are not before this Court. To issue a direction to the appellant-Federation to impose a condition on any further contractor to be employed by the Federation that they should invariably engage the writ, petitioners as contract labour may work hardship to such new contractors and may indeed inconvenience the appellant-Federation in having various of its works done through contractors by engaging contract labour. After all the appellant has registered itself u/s 7 of the Act and is also employing contractors who are duly licenced u/s 12. As long

as the appellant is entitled to engage such licensed contractors, the conditions that may be imposed on the contractors are those mentioned in the Act and the rules alone and particularly those mentioned in Clause (i)(a) of Rule 25(2) already referred to above.

There is no provision in the Act or rules enabling the principal employer to impose any condition on the contractor to continue to employ the applicants who have moved the Government u/s 10 of the Act. When the Act and the rules, as stated above, do not contemplate such a burden to be imposed on the future contractor, it is not, in our opinion, open to the Court to impose any such condition. 22. For the aforesaid reasons, we set aside the direction given by the learned single judge to the appellant-Federation to continue the writ petitioners in employment under any independent contractor that may be allotted the work by the appellant. The writ appeal is, therefore, allowed to that extent only. So far as the direction given by the learned single Judge to the Government to initiate action u/s 10 of the Act is concerned, the same is not challenged. The writ appeal is allowed to the extent indicated above. In the circumstances there shall be no order as to costs.