

(1998) 01 SC CK 0005
In the Supreme Court Of India
Case No : C.A. No. 6213 of 1997

Bharat Petroleum Corpn. Ltd.

APPELLANT

Vs

Mumbai Shramik Sangha and Others

RESPONDENT

Date of Decision : 13-01-1998

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 10, 2
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 2
Employees State Insurance Act, 1948 — Section 2(9)
Industrial D

Citation : (1998) 1 AD 321 : AIR 1998 SC 720 : (1998) AIRSCW 419 : (1998) 4 ALLMR 91 : (1998) 1 JT 73 : (1998) 1 LLJ 550 : (1998) 1 SCALE 69 : (1998) 1 SCC 752 : (1998) SCC(L&S) 355 : (1998) 1 Supreme 204 : (1998) 1 UPLBEC 484

Hon'ble Judges : S. B. Majmudar, J;M. Jagannadha Rao, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Judgment pronounced by M. Jagannadha Rao J.

1. The appellant, Bharat Petroleum Corporation Ltd. (hereinafter called the 'Corporation') was the first respondent before the High Court in Writ Petition No. 436 of 1991 filed by Mumbai Shramik Sangha (a trade union), Bombay. The said trade-union is the first respondent in this appeal. M/s. Kleenwel (India). Bombay and the Union of India are the second and third respondents in this appeal and were second and third respondents, respectively, before the High Court. The appeal is preferred by the Corporation against the orders of the High Court of Bombay dated 30.1.1997, 31.1.1997 and 21.2.1997. The High Court allowed the writ petition filed by the above mentioned trade-union and held that the workmen, who were employed by the Contractor M/s. Kleenwel (India) for cleaning, sweeping, etc. In the housing colony and sports complex of the Corporation were entitled to the benefits of Notification dated 9.12.1976 issued by the Government of India u/s 10(1) of the Contract Labour (Regulation & Abolition) Act, 1970 (Act 37/ 1970) (hereinafter called the 'Act'), abolishing

contract labour and hence the said contract labour should be absorbed. w.e.f. 1.2.1991, as permanent employees of the Corporation and entitled to the emoluments and other benefits available to other workmen of the Corporation doing similar work.

2. The point therefore is whether the words "in any establishment" in section 10 of the Act, which section deals with abolition of contract labour, can taken in contract labour employed not at the place where the industrial operations or other operations necessary or incidental thereto are carried on but also those employed at the staff quarters/ sports complex of the Corporation.

3. Learned Solicitor General Sri T.R. Andhyarujina however strongly relied up the observation of the Constitution Bench of this Court in *Gammon India Ltd. and Others Vs. Union of India (UOI) and Others*, to contend that in view of the language used in Section 10 of the Act and in particular the words "in any establishment" in Section 10(1) and the words "in that establishment" in Section 10(2), the Government of India could not have issued any notification prohibiting contract labour except at the place where the main industrial operation are going on (as in Section 10(1) or where the work is 'incidental to' or 'necessary' for the industry, trade, manufacture or occupation that is carried on again at the place where the industrial operations are going on (as in section 10(2)). It was argued that the power of the Central Government u/s 10 of the Act does not, therefore, extend to prohibiting contract labour who do the work of cleaning, sweeping, etc. at the residential or Sports Complex of the staff of the Petroleum Corporation.

4. Learned counsel for the respondents have relied upon Section 2(b) which defines 'contract labour' and on Section 2(i) which defines 'workmen' where the words 'in connection with the work of an establishment' are used. Similar words are used in Section 2(9)(i) of the Employees State Insurance Act and such words have been widely interpreted in *Nagpur Electric Lights and Power Co. Ltd. Vs. Regional Director Employees State Insurance Corporation, etc.*, , *Hyderabad Asbestos Cement Products Ltd. Vs. Employees Insurance Court and Another*, . *Royal Talkies, Hyderabad and Others Vs. Employees State Insurance Corporation*, , *Regional Director, Employees' State Insurance Corpn., Madras Vs. South India Flour Mills (P) Ltd.*, . The words "in connection with" are also used in Section 2(f) of the Employees Provident Fund Act. 1952 and have been widely interpreted in *P.M. Patel & Sons Vs. Union of India* . Learned counsel for the respondents also relied upon the judgments of this Court interpreting the definition of 'workman' in Section 2(s) of the Industrial Disputes Act. 1947 where even though the words "in connection with" have not been used, the said words were more or less implied. This was in *Secretary, Madras Gymkhana Club Employees' Union Vs. Management of the Gymkhana Club*, . *Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others*, Strong reliance was also placed by respondents on *J.K. Cotton Spinning & Weaving Mills Co. Vs. Labour Tribunal*, where malis working at the residential premises of the staff were treated as 'workmen' entitled to move the Industrial Court and have the benefits

covered by a notification, which was applicable to 'industrial employees'. In that case it was held that the words "in connection with" have to be implied in Section 2(s).

5. On the other hand, learned Solicitor General contends that Section 10(1) and (2) are based upon the limited power which earlier vested with the Industrial Courts as declared in *The Standard-vacuum Refining Co. of India Ltd. Vs. Its Workmen and Others*, and that that power was, as stated in *Vegoils Private Limited Vs. The Workmen*, and *P.M. Patel and Sons and Others Vs. Union of India (UOI) and Others*, , vested exclusively in the Central Government and that the judgment in *Gammon* adopts what is said in *Standard Vacuum* as the true basis for Section 10(1) and 10(2) and hence, the power of the Central Government to abolish contract labour extends only to the contract labour at the place where the industrial operations are going on and to other operations incidental or necessary thereto again, at the place where industrial operations are going on. *Standard Vacuum* related to certain cleaning operations incidental and necessary to the main industrial operations. It is no doubt accepted that even in *Gammon* this Court agreed that the workmen employed by a contractor at Allahabad where a building for a Delhi Bank was being constructed, were 'workmen' doing work "in connection with" the work of the principal employer and entitled to the welfare benefits like drinking water, canteen, latrines, rest rooms, first aid, equal pay as regular workers. etc. and gave an extended meaning to the definition of "contract labour" and "workmen" in Section 2(b) and 2(i) of the Act. But at the same time, this Court in *Gammon* referred to Section 10(1) and (2) by way of contrast, and interpreting the same, restricted the power of prohibition in section 10 to the contract labour at the place of the industrial operations and to work incidental/necessary thereto, again at the place where the industrial operations are going on and that hence, Section 10 cannot apply to prohibit contract labour at the residential quarters/sports complex which have no direct link with the industrial operations of the Petroleum Corporation.

6. We have given our anxious consideration to the rival contentions. It appears to us that the matter is important and also that the observations of the Constitution Bench in *Gammon* (at p. 669, 671 of SCR) in so far as section 10 was concerned were indeed not strictly necessary because *Gammon* was not a case dealing with prohibition of contract labour. Whether the restricted scope attributed to section 10 of the Act given in *Gammon* is correct or not must, in our opinion, be decided independently. We are therefore of the view that this question is to be decided by a Constitution Bench. We, therefore, refer the following questions to be decided by a Constitution Bench of this Court:

No.I "Whether the observations of the Constitution Bench in *Gammon* in so far as Section 10 of the Act is concerned are correct and whether the Central Government under Sections 10(1) & (2) of the Act can by notification prohibit contract labour doing the work of cleaning, sweeping, etc: at the residential premises of the staff or Sports Complex owned by the Bharat Petroleum

Corporation or whether the Central Government u/s 10 of the Act has no jurisdiction to abolish such contract labour."

No.2. "Whether the Notification dated 9.12.1976 issued by the Government of India u/s 10(1) of the Contract Labour (Regulation & Abolition) Act, 1970 can be construed as validly abolishing contract labour employed by contractor M/s. Kleenwel (India) Ltd. for cleaning, sweeping etc. in the Staff Housing Colony and Sports Complex owned by the appellant-Corporation and situated at Chembur, Bombay."

7. The Registry is directed to place the matter before My Lord the Chief Justice of India for passing appropriate orders referring to the above question of law to a Constitution Bench.