

(2003) 09 MAD CK 0181

In the Madras High Court

Case No : W.A. No's. 492 and 1703 of 2000

BHEL Thuppuravu Thozhilalar Sangam, BHEL Ltd.

APPELLANT

Vs

Management of Bharat Heavy Electricals Ltd.
BHEL
Thozhilaga Thuppuravu Thozhilalar Sangam and Another Vs
State of Tamil Nadu

RESPONDENT

Date of Decision : 24-09-2003

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 10(1)

Citation : (2004) 1 LLJ 480

Hon'ble Judges : S.K. Krishnan, J;R. Jayasimha Babu, J

Bench : Division Bench

Advocate : R. Subramanin, for the Appellant; N.G. Kalaiselvi and Sanjay Mohan, for Ramasubramaniam Associates, for the Respondent

Final Decision : Dismissed

Judgement

R. Jayasimha Babu, J.—When the appellant filed the writ petitions seeking implementation of the notification, dated September 19, 1988, issued by the Tamil Nadu Government under the provisions of Section 10(1) of the Contract Labour (Regulation and Abolition) Act, 1970, the petitioner could not have foreseen that very notification would be struck down by the Apex Court some ten years later which in fact has happened. The notification was set aside by the Supreme Court in the case of L&T Mc. Neil Ltd. v. Government of Tamil Nadu 2001 I LLJ 735.

2. That judgment of the Supreme Court was not available when the learned single Judge decided the matter. The learned single Judge held that as the respondent-employer is a public sector undertaking owned by the Government of India, appropriate Government is the Central Government and therefore, the notification issued by the State Government not being binding on the said undertaking, the petitioner was not entitled to any mandamus directing the employer to implement the notification issued by the State Government. For so

holding the learned Judge relied upon the law as it then stood and as reflected in the decision of the Supreme Court in the case of Air India Statutory Corporation, etc. Vs. United Labour Union and others [overruled], .

3. Subsequently the law laid down in the case of Air India Statutory Corporation v. United Labour Union (supra) was overruled by the Constitution Bench of the Supreme Court in the case of Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., . As a result of that judgment it is now clear that even in respect of undertakings owned by the Government of India which are registered as companies, the appropriate Government is the State Government and not the Central Government.

4. Had the notification issued by the State Government been valid, the appellant would have been on firm ground in seeking its implementation. As already noticed that notification no longer survives and is unavailable for implementation as a notification having statutory force.

5. Learned counsel for the appellant, sought to get over this predicament in which the appellant is placed by submitting that the employer in this case namely, BHEL had itself challenged this very notification by filing the writ petition way back in the year 1992 and that the writ petition so filed by it had been dismissed. The appeal against that judgment had also not succeeded. Counsel contended that in view of the fact that the notification had not been struck down at the instance of the respondent-employer, the respondent employer was bound by the notification and the principles of res judicata would be attracted. The further submission was that even if it could be held that the principles of res judicata are not applicable on facts, nevertheless this Court should proceed to grant the relief by taking note of the fact that after the writ petition was filed a Commissioner had been appointed and that Commissioner had identified the persons who were eligible for being regularised by taking note of the period for which they had served as contract labourers earlier. Reliance was placed by the counsel in this regard in the case of National Federation of Railways Porters, Vendors and Bearers Vs. Union of India and others, .

6. The argument based on the principle of res judicata is not an argument that can be accepted. No such question arises here. What had been challenged by the employer respondent was a notification issued under the statute. The person who was required to defend the notification was the State Government and not the employees union. In fact the union was not even a party to the writ petition when it was filed and some unions became parties on their own application. The notification had not been issued by the union but had been issued by the State and it was the State which had to sustain that notification having regard to the requirements of the Act and the rules made thereunder. The defence offered by the State found favour with the Court and therefore, the notification was not interfered with. That judgment does not in any way enable the appellant to contend that a notification which no longer exists by reasons of the judgment the Supreme Court in the case of L&T Mc. Neil Ltd. v. Government of Tamil Nadu

(supra) should now be implemented merely on the ground that the notification had not been set aside by this Court when it was challenged earlier by the respondent employer. There was no "Us" at that point of time with regard to implementation of the notification as between the employer and the employees. What was in issue was the legality of the notification.

7. A notification issued under an Act is a notification which has a statutory force. Statute is one which has to be applied uniformly to all whom it seeks to cover. It is not possible to envisage a situation where the statutory notification is valid for some, but invalid for others even though contents of the notification, remain the same. The appellant's argument that the invalid notification continues to bind the respondent because its challenge at an earlier point of time to the validity of the notification was unsuccessful, even though that notification is now non-existent in the eye of law after that notification was set aside by the Supreme Court in the case of L&T Mc, Neil Ltd. v. Government of Tamil Nadu (supra), is wholly untenable.

8. There is no question of mandamus being issued to implement a statutory notification which has been struck down by the Supreme Court.

9. Learned counsel submitted that even in the case of Steel Authority of India Ltd. v. National Union Waterfront Workers (supra), Constitution Bench had not interfered with the reliefs already granted to workmen who had received such relief as a result of the orders of the Court or as a result of the employer voluntarily giving effect to the notification. No such situation exists here. This notification has not been implemented so far in the respondent employer's undertaking and there was at no point of time any order of any Court directing such implementation.

10. The further submission that this Court should de hors anything done or omitted to be done under the Act direct the regularisation of the erstwhile contract labourers is also not a submission which can be accepted.

11. As to whether contract labourers should be allowed to continue in any given employment is a matter for regulation under the provisions of the Act. If the Government, is of the view that it should be prohibited it may prohibit the same after following the procedure prescribed under the Act. When specific legislation is available the Court will not ordinarily bypass the legislation and the procedure prescribed thereunder and grant relief de hors that statute ignoring all the requirements laid down thereunder as also, the limitations and exceptions that may be found in the statute.

12. In two cases, where the employer was the Government and the number of employees affected was very large, the Supreme Court had directed regularisation of the workers. That cannot be regarded as a declaration of law to the effect that Court should as a matter of routine bypass duly enacted statute and proceed to grant the relief as if the statutes were not there on the statute book. The rights of the parties are to be ascertained with reference to the laws

governing them and if the Courts were to proceed routinely to ignore the statute, then the persons who are governed by such statute will be left in a State of confusion not knowing what their rights are under the statute and the extent to which they can rely upon the statute as a reliable guide for ascertaining their rights in respect of matters dealt with in the statute.

13. In the result, we do not find any good ground to grant any of the reliefs sought for by the appellant although the reasons for which we decline to grant such relief are not the same as those given by the learned single Judge. The writ appeals are dismissed. No costs.