

(2006) 12 OHC CK 0031
In the Orissa High Court

Bishra Stone and Lime Co. Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 22-12-2006

Acts Referred:

Constitution of India, 1950 — Article 12
Contract Labour (Regulation and Abolition) Act, 1970 — Section 10, 2, 5
Industrial Disputes Act, 1947 — Section 10, 2
Mines Act, 1952 — Section 2

Citation : (2007) 103 CLT 461 : (2007) 113 FLR 590 : (2007) 3 LLJ 209

Hon'ble Judges : P.K. Mohanty, J;J.P. Mishra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

P.K. Mohanty, J.—The petitioner, a Company incorporated under the Companies Act having its registered office at Calcutta and work-site at Biramitrapur in the district of Sundargarh where mining operations are carried out, calls in question the validity of the notification dated 17.3.1993 (Annexure-1) issued by the Government of India u/s 10(1) of the Contract Labour (Regulations and Abolitions) Act, 1970.

2. The petitioner's case in short is that it is a mining industry having an existing workforce of 4200 in the tribal belt of Biramitrapur in the district of Sundargarh and 95 per cent of the workforce belong to the Scheduled Caste and Scheduled Tribe Community. The Company's main industrial activity is to mine flux grade lime stone and dolomite and sell to the various Steel Plants. The mining operation is spread over on an area of around 7 kilometers at Biramitrapur. The breaking of lime stone and dolomite is done by mining workers on suitable mining faces and transported either directly to the railway wagons in case of sized stone or led to the crushing plants in case of boulders for converting into sized stone. The transportation required and done for the purpose of production and despatch of the Mines is of the types (a) transportation of sized stone from the mining faces into railway wagons; (b) transportation of sized stone from the

loading platform to railway wagons; (c) transportation of boulders from mining faces to the crushing plants; (d) transportation of sized stone converted from boulders into the railway wagon or loading plants and (e) transportation of reject stone and spoils from the mining faces for development of working face.

3. The notification Annexure-1 is challenged mainly on the grounds (a) that the Central Government had no authority or jurisdiction to regulate employment of contract labour relating to the transport of lime stone and dolomite in view of Section 2(1)(ii) of the Contract Labour (Regulations and Abolitions) Act, 1970 as well as Section 2(1)(a) (i) and (ii) of the Industrial Disputes Act since according to the petitioner, the expression "appropriate Government" defined therein could not be the Central Government but the State Government, (b) before issuing the impugned notification, the Central Government has failed to take into consideration the mandatory requirement contained in Clauses (b), (c) and (d) of Section 10(2) of the Contract Labour (Regulations and Abolitions) Act, 1970 (hereinafter called as "CLRA Act") which provides that the appropriate government shall take into consideration if the work is perennial in nature, if the work is ordinarily done through regular workmen in that establishment or establishments similar thereto, or whether it is sufficient to employ considerable number of wholtime workmen, (c) the notification having been issued with immediate effect without giving opportunity to the principal employer as well as the contractor to make alternative arrangement with regard to machinery deployed, process of mining adopted and several other like activities, the same is bad in law and liable to be struck down. It is submitted that the system of contract labour as such is not intended to be totally prohibited or abolished. The intention of the Act is more regulatory than prohibitory. The object and reasons indicate that the contract labour should be abolished wherever it is practicable, but before issuing any such notification prohibiting employment of contract labour the appropriate government is bound to have regard not only to the conditions of work and benefit provided to the contract labour but other relevant factors such as whether the work is perennial in nature or not, as to what is the practice in other similar establishments apart from the factors enumerated under Clauses (a) to (d) of Sub-section (2) of Section 10. The petitioner's firm has provided facilities to the contract labour at par with the direct employees and the wages are paid as per the provisions of law. The existing system of contract labour is not in any way harmful to the contract labour and they will not be prejudiced if the system is continued. On the contrary prohibition of contract labour in the said mines will compel the petitioner firm to ultimately abandon or reduce a part of the mining activities which would adversely affect the contract labour. The Central Government having not applied its mind to these facts and other relevant facts, the impugned notification is liable to be struck down inasmuch as the Central Government has not considered the conditions of service and benefits provided to the workers by the petitioner-firm in its establishment and they have also not considered the other relevant factors like process, appertains and other work which are not incidental to or necessary for the

industry, trade or business, manufacture or occupation carried on in the trade of the petitioner and that it cannot be done ordinarily through regular workmen in that establishment or establishments of similar type. The impugned notification dated 17.3.1993 (Annexure-1) prohibiting employment of contract labour in respect of work specified therein relating to lime stone and dolomite mines is, therefore, bad in law and liable to be struck down.

4. A counter affidavit sworn to by the Regional labour Commissioner (Central) has been filed by the Opposite Party refuting the allegations and claim made by the writ petitioner. It is stated that notification prohibiting employment of contract labour in the lime stone and dolomite mines in the country in respect of the raising of minerals including breaking, sizing, sorting of lime stone and dolomite which includes leading into and unloading from trucks, dumpers, conveyors and transportation from mine site to factory has been issued by the Central Government in consultation with the Central Advisory Contract Labour Board (hereinafter called CACLB) in accordance with the provisions of Section 10 of the CRLA Act. According to the Opposite Party in exercise of power conferred u/s 5 of the CLRA Act, the CACLS constituted a Committee to go into the question of working of contract labour system in limestone and dolomite mines in the Country. Normally three members Tripartite Committee from amongst the Members of CACLS representing the employers, workers and the Government is constituted to go into the question of working of contract labour system. However, considering the importance of the matter involving a large number of limestone and dolomite mines in the public and private sectors, both captive and non-captive, spread all over the country, and a number of user industries, a seven member Tripartite Committee was constituted to go into the question of working of contract labour system in lime stone and dolomite mines in the country. After making indepth study of contract labour system in the lime stone and dolomite mines and availability of essential amenities like drinking water, first-aid, shelters, urinals and latrines, washing facilities, canteens, creches etc., it submitted a report recommending prohibition of employment of contract labour in certain jobs and works in the lime stone and dolomite mines in the country. The report was submitted before the CACLS and keeping in view the guidelines laid down in Clauses (a) to (d) of Sub-section (2) of Section 10 of CLRA Act, the Central Government has issued the notification dated 17.3.1993. Reference has been made to certain decisions of the Apex Court which would be dealt with at the appropriate time. It is submitted that as per the definition of "appropriate government" as contained in CLRA Act, 1970 read with the provisions of Section 2 of the Industrial Disputes Act, 1947 in respect of mines, the Central Government is the appropriate government and hence, the Central Government has jurisdiction with regard to lime stone and dolomite mines to which the present notification pertains. Transportation of minerals from the mines to factory is an activity which is incidental to and closely connected with the mining operation and cannot be separated or treated in isolation. As regards the jurisdiction of the Central Government with regard to transportation of lime stone

and dolomite from the mines site to the factory, this aspect was considered in depth by the Committee and it came to the conclusion that this was incidental to and closely connected with the main activity of the industry and is of perennial nature. The work in lime stone/ dolomite mines is not casual or intermittent in nature but is of permanent and perennial in nature. Lime stone/dolomites are required for production of cement and in the process of manufacture of steel in Steel Plants. The notification dated 17.3.1993 prohibiting employment of contract labour in certain process, jobs and works in limestone and dolomite mines in the country as specified in the schedule do not cover the process, jobs and works as specified in the earlier notification dated 15.12.1979. It is submitted that the question whether the employment of contract labour in any process/operation or other work in any establishment would be abolished or not is a matter for the decision of the appropriate Government after considering the matters required to be considered u/s 10 of the Act. The decision in B.H.E.L. Workers Association, Hardwar and Others Vs. Union of India and Others, and the Workmen of The Food Corporation of India Vs. Food Corporation of India, have been referred to by the Opposite Party to contend that the appropriate government is required to consult the Central Board or the State Board, as the case may be, before arriving at the decision and the decision is subject to judicial review. Reference has also been made to the decision of this Court in a batch of writ petitions O.J.C. No. 372 of 1985 and O.J.C. No. 690 of 1986 (Miter Sen and Company, Contractor v. Union of India represented by the Secretary, Ministry of Labour and others) where a Division Bench of this Court in Judgment dated 20.11.1990 had occasion to consider the challenge of the writ petitioners relating to prohibition of employment of contract labour in Chrome mines on very many grounds but it was held that the conditions of Section 10(2) of the Act has been complied with inasmuch as it was held that so far as the progressive measure meant to take care of the exploitation of labour and also to uphold its dignity, a very rigid stand in the matter is not expected while considering the report of the Committee or for that matter the final notification issued by the Central Government. A further reference has been made to a Single Judge decision of the Gujarat High Court annexed as Annexure-B as regards an interim order.

5. In view of the pleadings of the parties and the contentions raised by the Learned Counsel, it is necessary to go into the relevant provision of law. Clause (i) and (ii) of Section 2(a) of Contract Labour (R & A) Act, 1970, "appropriate Government" has been defined as under:

a) "appropriate Government" means.

i) In relation to any other establishment in respect of which the appropriate Government under the Industrial Disputes Act, 1947, (14 of 1947) is the Central Government;

ii) in relation to any other establishment, the Government of the State in which that other establishment is situate.

Under Section 2(a), of the Industrial Disputes Act "appropriate government" means:

In relation to any industrial dispute concerning any industry carried on by or under the authority of Central Government or by a railway company or concerning any such controlled industry as may be specified in this behalf by the Central Government or in relation to an industrial dispute concerning XXX XXX XXX a mine, an oilfield, a Cantonment Board or a major port, the Central Government.

ii) In relation to any other industrial dispute the State Government.

"Mine" has been defined u/s 2 of the Industrial Disputes Act to mean a mine as has been defined in Clause (J) of Sub-section (1) of Section 2 of the Mines Act which reads thus:

"mine" means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on and includes:

(i) all borings, bore holes, oil wells and accessory, crude conditioning plants, including the pipe conveying mineral oil within the oil fields;

(ii) all shafts, in or adjacent to and belonging to a mine, whether in the course of being sunk or not,

(iii) all levels and inclined planes in the course of being driven; (iv) all open cast workings;

(v) all conveyors or aerial ropeways provided for the bringing into or removal from a mine of minerals or other articles or for the removal of refuse therefrom;

(vi) all adits, levels, planes, machinery, works, railways, tramways, and sidings in or adjacent to and belonging to a mine;

(vi) all protective works being carried out in or adjacent to a mine;

(vii) all workshops and stores situated within the precincts of a mine and under the same management and used primarily for the purposes connected with that mine or a number of mines under the same management;

(viii) all power stations, transformer substations, converter stations, rectifier stations and accumulator storage stations for supplying electricity solely or mainly for the purpose of working the mine or a number of mines under the same management;

(ix) any premises for the time being used for depositing sand or other material for use in a mine or for depositing refuse from a mine or in which any operations in connection with such sand, refuse or other material is being carried on, being premises exclusively occupied by the owner of the mine;

(x) any premises in or adjacent to and belonging to a mine on which any process

ancillary to the getting, dressing or preparation for sale of minerals or of coke is being carried on.

6. A constitution Bench of the Apex Court in *Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc.*, while considering Section 10(1) of the Industrial Disputes Act, 1947 and Section 2(a) of the Contract Labour (Regulation & Abolition) Act, 1970 in the context of determining appropriate Government in relation to an industrial establishment have held that in case of a Central Government company/undertaking, an instrumentality of the Government, carrying on an industry, the criteria to determine whether the Central Government is the appropriate Government within the meaning of the CRLA Act, is that the industry must be carried on by or under the authority of the Central Government and not that the company/undertaking is an instrumentality or an agency of the Central Government for purpose of Article 12 of the Constitution; such an authority may be conferred either by a statute or by virtue of relationship of principal and agent or delegation of power and this fact has to be ascertained on the facts and in the circumstances of each case. It has been held that before January 28, 1986, the determination of the question whether Central Government or the State Government is the appropriate government in relation to an establishment, will depend, in view of the definition of the expression "Appropriate Government" as stood in the CLRA Act, on the answer to a further question, is the industry under consideration carried on by or under the authority of the Central Government or does it pertain to any specified controlled industry; or the establishment of any railway, cantonment board, major port, mine or oilfield or the establishment of banking or insurance company and if the answer is in the affirmative, the Central Government will be the appropriate Government; otherwise in relation to any other establishment the Government of the State in which the establishment was situated, would be the appropriate Government. In view of the new definition of that expression, the answer to the question referred to above, has to be found in Clause (a) of Section 2 of the Industrial Disputes Act; if (i) the concerned Central Government company/undertaking or any undertaking is included therein eo nomine, or (ii) any industry is carried on (a) by or under the authority of the Central Government, or (b) by railway company; or (c) by specified controlled industry, then the Central Government will be appropriate Government otherwise in relation to any other establishment, the Government of the State in which that other establishment is situated, will be the appropriate Government.

7. In view of the clear provision of Section 2(1)(a) of the CLRA Act read with Section 2(a) of the ID Act, the "appropriate Government" in relation to and concerning a Mine as contemplated in Section 10(1) of the CLR Act has to be Central Government and not the State Government as contended by the Learned Counsel for the petitioner.

8. The next submission of the Learned Counsel for the petitioner is that the impugned notification dated 17.3.1993 issued by the Central Government is

otherwise illegal and ultra vires and is in excess of the jurisdiction so far as it prohibits employment of contract labour for transportation of limestone from mines site to factory inasmuch as the appropriate Government in respect of such transportation contractors is the State Government has also to be rejected. We have already held that the appropriate Government in respect of mines is the Central Government in view of the clear provision of Section 2(a) of the Industrial Disputes Act read with Section 2(1)(a) of the CLRA Act and Section 2(1)(f) of the Mines Act. However, it has to be seen whether the work transport operation said to have been undertaken by the contract labour in the mines of the petitioner are within the purview and ambit of the mining operation as claimed. The question is whether process, operation or other work like transportation of sized stone from the mining faces into railway wagons, transportation of boulder from mining faces to the crushing plants, transportation of sized stone converted from boulder into the railway wagons or loading plants and transportation of rejected stone and spoils from mining faces for development of working face comes within the activities of mining operation as defined under the Act.

9. A reference has already been made to the provision of Section 2(j) of the Mines Act and the definition of "Mine" in the Mines Act has been quoted herein before. A perusal of Clause (v) of Section 2(j) would make it clear that all conveyors or aerial ropeways provided for bringing into or removal from a mine of minerals or other articles or for the removal of refuse therefrom are included within the category of mining operation. Similarly under Clause-vi thereof all adits, levels, planes, machinery, works, railways, tramways, and sidings in or adjacent to and belonging to a mine are also inclusive of the definition. Similarly, under Clauses (x) & (xi), any premises for the time being used for depositing sand or other material for use in a mine or for depositing refuse from a mine or in which any operations in connection with such sand, refuse or other material is being carried on, being premises exclusively occupied by the owner of the mine and any premises in or adjacent to and belonging to a mine on which any process ancillary to getting, dressing or preparation for sale of minerals or of coke is being carried on are also covered within the scope and ambit of mine as defined under the Act. In view of the provision of law, there cannot be any doubt that the operation in question, the manner of operation and the process are ancillary and/or incidental to the mine and as such have to be held to be activities coming within the purview of the Act and, therefore, the impugned notification (Annexure-1) issued by the Central Government in exercise of powers conferred under Sub-section (1) of Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970, prohibiting employment of contract labour in limestone/dolomite mines and transportation of limestone and dolomite which includes loading into and unloading from trucks, dumpers, conveyors and transportation from mine site to factory as mentioned in Annexure-1 has to be held as valid and cannot be termed as illegal, arbitrary or beyond the powers conferred under the statute on the Central Government.

10. The contention of the Learned Counsel for the petitioner that the Central Government having not consulted the Central Advisory Contract Labour Board as contained in Clauses (b), (c) and (d) of Section 10 of the CLRA Act, the impugned notification is vitiated and liable to be quashed has to be rejected. Central Government has taken the specific stand that before issuing notification dated 17.3.1993 vide Annexure-1 the requirements of the Section were complied with and the Central Advisory Contract Labour Board was duly consulted. Keeping with their recommendation, the employment of contract labour in works specified in the schedule to Annexure 1 was issued and therefore there is no violation of any statutory provision. It has further been stated that the Central Advisory Contract Labour Board constituted the Committee to make an indepth study of the matter and make their recommendation to the Board. The Board on consideration of the recommendation of the Committee and having done an indepth study of the matter made their recommendations to the Central Government. The stand taken by the Central Government has not been controverted by the petitioner. In view of the uncontroverted factual position, the assertion of the petitioner that the Central Government had not duly consulted the Advisory Board before issuing the impugned notification is without any basis.

In any view of the matter, we find no merit in the writ petition to interfere with the impugned order and accordingly, the writ petition is dismissed. However, there shall be no order as to cost.

J.P. Mishra, J.

11. I agree.