

(2010) 05 DEL CK 0353

In the Delhi High Court

Case No : Writ Petition (C) No. 5532 of 2003

Buddhadev Maity and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-05-2010

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 10, 10(1), 10(2), 3, 4
General Labour (Regulation and Abolition) Central Rules, 1971 — Rule 25(2)

Citation : (2010) 4 LLJ 451

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Ravi Gupta and Ambika Ray, for the Appellant; Ruchir Mishra and Mukesh Tiwari for R-1 and 3 and V.N. Kaura, Paramjeet Benipal and Munindra Dvivedi for R-2, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The petitioner No. 1, being the Secretary of the Haldia Refinery (Mechanical/Maintenance) Contractors Workmen Union and the petitioners No. 2 to 18 seek quashing of the orders dated 23rd December, 2002 and 2nd June, 1992 of the Central Government made in exercise of powers u/s 10 of The Contract Labour (Regulation and Abolition) Act, 1970, deciding not to prohibit employment of contract labour in normal maintenance, repair or emergency shut down and operation works in the Mechanical Division of Haldia Refinery. The petitioners also seek a writ directing the Central Government to issue a notification prohibiting Contract Labour Work System at Haldia Refinery of the respondent No. 2 Indian Oil Corporation (IOC). The petitioners also seek a direction to the respondent No. 2 IOC to, in the event of employing workers for operations and other works of Haldia Refinery, give preference to the members of the petitioner No. 1 Union and the petitioners No. 2 to 18.

2. Notice of the petition was issued on 3rd September, 2003. Though the petitioners had filed CM No. 10936/2003 seeking interim directions restraining the respondent IOC from terminating the jobs of the petitioners, but the said application was dismissed as not pressed on 27th July, 2004. Rule was also

issued in the writ petition on the same date. The counsels for the petitioners, for the respondent IOC and for the respondent Union of India have been heard.

3. It is the case of the petitioners that the respondent IOC for its Haldia Refinery, has been appointing labour through contractors/labour suppliers for a particular period and on expiry of such period appoints new contractors/labour suppliers afresh but the employment and engagement and job allotment of the members of the petitioner's Union and the petitioners remains undisturbed. The petitioners claim that they have been so engaged for long for doing duties as casual/helpers in the shops, divisions and departments in the Haldia Oil Refinery and are performing various duties and functions relating to production, maintenance and transport etc. in the Refinery. They further claim that though they have been engaged through labour contractors, they continue to perform their duties under the direct control and supervision of the management of the Refinery; that the engagement through a contractor is only a paper arrangement in order to escape the liabilities under various labour laws and that their employment is under the absolute financial and other controls of the respondent IOC. The petitioners further claim that the jobs being performed by them are of a perennial nature and the respondent IOC by adopting the aforesaid device is making the petitioners living in uncertainty and fear of insecurity of job. Though there are other pleadings in this regard but it is not necessary for the present purposes to record the same herein.

4. Employment of contract labour has been a cause of various problems. The question of its abolition had been under the consideration of Government. The system of employment of contract labour lends itself to various abuses. In the Second Five Year Plan, the Planning Commission made certain recommendations for undertaking of studies to ascertain the extent of the problem of contract labour, progressive abolition of the system and improvement of service conditions of contract labour where the abolition was not possible. Various deliberations were held thereafter and the general consensus of opinion was that the system should be abolished wherever possible and practicable and that in cases where the system could not be abolished altogether, the working conditions of contract labour should be regulated so as to ensure payment of wages and provision of essential amenities. This forms the Statement of Objects and Reasons of The Contract Labour (Regulation & Abolition) Act, 1970. The Act aims at abolition of contract labour in respect of such categories as may be notified by the appropriate Government in the light of certain criteria laid down in the said Act. The Act provides for setting up of Advisory Board of a tripartite character, representing various interests, to advise the Central and State Governments in administering the legislation and registration of establishments and contractors. Section 3 of the said Act is as under:

3. Central Advisory Board.- (1) The Central Government shall, as soon as may be, constitute a board to be called the Central Advisory Contract Labour Board (hereinafter referred to as the Central Board) to advise the Central Government

on such matters arising out of the administration of this Act as may be referred to it and to carry out other functions assigned to it under this Act.

(2) The Central Board shall consist of--

(a) a Chairman to be appointed by the Central Government;

(b) the Chief Labour Commissioner (Central), ex-officio;

(c) such number of members, not exceeding seventeen but not less than eleven, as the Central Government may nominate to represent that Government, the Railways, the coal industry, the mining industry, the contractors, the workmen and any other interests which, the opinion of the Central Government, ought to be represented on the Central Board.

(3) The number of persons to be appointed as members from each of the categories specified in Sub-section (2), the term of office and other conditions of service of, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among, the members of the Central Board shall be such as may be prescribed:

Provided that the number of members nominated to represent the workmen shall not be less than the number of members nominated to represent the principal employers and the contractors.

5. Similarly, Section 4 provides for setting up of the State Advisory Board but with which we are not concerned herein.

6. Section 5 of the Act is as under:

5. Power to constitute committees.- (1) The Central Board or the State Board, as the case may be, may constitute such committees and for such purpose or purposes as it may think fit.

(2) The committee constituted under Sub-section (1) shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed.

(3) The members of a committee shall be paid such fees and allowances for attending its meetings as may be prescribed:

Provided that no fees shall, be payable to a member who is an officer of Government or of any corporation established by any law for the time being in force.

7. Finally Section 10 empowers the Government to prohibit contract labour.

The said provision is 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.

8. The petitioners represented to the Government of India for taking steps u/s 10 aforesaid for prohibiting employment of contract labour by the management of Haldia Refinery of respondent IOC for carrying out the maintenance and operational work in the Mechanical Division. The said representation of the petitioners was forwarded by the Government of India to the Central Advisory Board constituted u/s 3 (supra) and which Board has also been impleaded as respondent No. 3 herein. The Advisory Board in turn, appointed a three member Committee to look into the said representation. The Central Government however on 2nd June, 1992 took a decision not to prohibit employment of contract labour in the normal maintenance, repair or emergency shut down and operation works in the Mechanical Division of Haldia Refinery. The petitioners again represented to the Central Government for reconsideration of the decision dated 2nd June 1992 and to provide opportunity of being heard to the petitioners.

9. The petitioners filed W.P.(C) No. 1762/2001 in this Court in this regard. The said writ petition was disposed of vide order dated 7th May, 2002 with the directions to the Central Government to communicate its decision on the representation of the petitioners within eight weeks thereof. The Government thereafter communicated its decision dated 23rd December, 2002 stating that the decision dated 2nd June, 1992 in exercise of powers u/s 10 of the Act could not be reviewed in view of the judgments in Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., Air India Statutory Corporation, etc. Vs. United Labour Union and others [overruled],

10. Aggrieved therefrom, the present petition was filed. The counsels have addressed not on the aspect of whether the decision dated 2nd June, 1992 could be reviewed or not but on the aspect of the validity of the decision dated 2nd June, 1992.

11. Section 10 of the Act empowers the Government to, "after consultation with the Board", prohibit employment of contract labour. Section 10(2) lays down factors which the Government should consider before taking such decision. The explanation to Section 10 makes the decision of the Government final only on question as to whether any process or operation or other work is of perennial nature or not. The questions which thus arise are -

i. What is the scope of judicial review of a decision taken by the Government in exercise of powers u/s 10 of the Act?

ii. If judicial review is permissible, to what extent and circumscribed by what parameters, if any?

iii. what is the meaning of "after consultation with the Board" in Section 10(1) of the Act and whether the decision arrived at without such consultation can be quashed/set aside by the court.

12. The aforesaid aspects are covered by judgments cited by the counsels for the parties. However before noticing the said judgments, the facts leading to the decision dated 2nd June, 1992 may be noticed.

13. As aforesaid, the representation of the petitioners for abolition of contract labour was forwarded by the Central Government to the Central Advisory Board which constituted a three member Committee. The petitioners have as annexure to the writ petition filed the report of the Committee. From the said report it transpires that the matter was discussed in the meeting held on 14th December, 1987 of the Board when it was decided that a three member Committee be constituted to go into the question of whether or not the contract labour system may be abolished in the Mechanical Division of Haldia Refinery. Vide Resolution dated 30th May, 1988 of the Board, a Committee consisting of Shri N.C. Sinha, Executive Director (Establishment) of Indian Railways, Shri B. Choudhury, General Secretary, Indian National Trade Union Congress and the Welfare Commissioner, Labour Welfare Organization, Calcutta was so constituted. The terms of reference of the said Committee were to study the working of the contract labour system in the Maintenance and Operation working in the Mechanical Division of Haldia Refinery of the respondent IOC and, keeping in view the provisions of Section 10(2) of the Act, to make suitable recommendations whether or not the employment of contract labour in the said division in Haldia Refinery should be prohibited. I had during the hearing enquired from the counsels for the parties whether the members of the said Committee were otherwise also members of the Board. The answer is in the negative. The Committee thus was of independent persons and not a representative of the Board.

14. The aforesaid Committee invited views of the petitioner's Union, held consultations with the Regional Labour Commissioner and also held discussions with the management and workers of the Haldia Refinery as well as the then contractors. The Committee also enquired into and studied the practice being followed in other Refineries of the respondent IOC as to how the work during emergency and annual turn-around time was being carried on in the other Refineries. The Committee also made a study/analysis of the jobs in the Mechanical Division of Haldia Refinery. Two members of the Committee finally made the following findings:

5. From the submissions made by the management and the Union and the visit to the Refinery it is found

(a) that the contract labour is engaged in the Mechanical Division on the processes/operations and area of work which is incidental to and/or necessary for the jobs carried out in Haldia Refinery;

(b) engagement of contract labour in Haldia Refinery on day to day job is of perennial nature although the management stresses that they are engaging the contract labour "due to historical reasons and under pressure;"

(c) at least in 2 other Refineries, except for annual shutdowns, the day to day job and emergencies are being carried out without assistance of the contract labour; and

(d) while it may not be possible for the management to employ large number of persons for attending to annual shutdowns, which are of limited duration, the day to day operations and most of emergencies can be carried out by the department labour the strength of which is under study by the National Productivity Council.

15. The third member of the Committee gave his dissent report and in the said dissent report concluded that the need for contract labour is there in the Mechanical Division of Haldia Refinery and recommended accordingly.

16. Notwithstanding the dissent of one of the members, the Committee, probably acting on the principle of majority, made the following recommendations under the signature of all three members:

14. The Committee, therefore, recommends that except for annual turn arounds, the employment of contract labour in the Mechanical Division of the Haldia Refinery of Indian Oil Corporation Limited should be prohibited.

17. The aforesaid report/recommendation of the Committee was placed before the Board. The Board however only forwarded the report of the Committee to and left the matter for the decision by the Government "taking into consideration the views expressed in the matter."

18. The Central Government in the decision dated 2nd June, 1992 has held as under:

2. In pursuance of the recommendations of the Board, the matter has been considered in detail by the Central Government and it has been decided not to prohibit employment of contract labour in normal maintenance, repair of emergency shutdowns, and operation works in the Mechanical Division of Haldia Refinery. It has further been decided that wage rates and other conditions of service be regulated in terms of Rule 25(2)(v) (a) of the General Labour (Regulation and Abolition) Central Rules, 1971 to ensure that the workers get same benefits/facilities as are being made available to the regular employee doing the same or similar jobs.

19. The aforesaid facts would show that though the representation of the petitioners was rightly forwarded by the Central Government to the Board constituted under the Act and though the Board in exercise of its powers u/s 5 of the Act constituted a Committee but on receipt of a report of the Committee the only advice of the Board to the Central Government was to decide "taking into consideration the views expressed in the majority and the minority report of the Committee". What thus falls for adjudication is whether the aforesaid can constitute an "advise of the Board to the Government" within the meaning of Section 3 of the Act so as to hold that the Central Government has taken the decision in exercise of powers u/s 10(1), "in consultation with the Board."

20. "Consultation" is a word of many hues. Its meaning/interpretation is contextual. In my view, the word "consultation" in Section 10 has to take colour from and/or be read in the context of the obligation/duty of the Board in Section 3 to advise the Government. In the present case no advice has been given by the Board. All that the Board has done is to constitute a Committee and to forward the report of the said Committee to the Government. The views, suggestions, observations, recommendations of the members of the Committee cannot be considered as the advice of the Board to the Central Government. Moreso when the same were not unanimous. As aforesaid, the members of the Committee were not the members of the Board. They were outsiders appointed to investigate facts and place the report with their views before the Board. The obligation/duty under the Act to advise the Central Government is not of the members of the said Committee but of the Board. The Board as aforesaid has been prescribed to comprise of a Chairman to be appointed by the Central Government, the Chief Labour Commissioner and such other members from the Government, Railways, Coal Industry, Mining Industry, contractors, workmen or any other interest, which, in the opinion of the Government, ought to be represented on the Board. It is assumed that the Government, in appointing the Chairman of the Board will have due regard to the duties to be performed by him. The person appointed as a Chairman is expected to be an expert or having experience and qualification in the subject. The role of such a highly specialized body, containing representatives from several fields, as the Board is u/s 3 of the Act, cannot be reduced only to appointment of a committee and of forwarding the report of the committee to the Central Government. The qualifications prescribed of the members of the Board are not to be utilized in the appointment

of the committee and/or in selecting the members of the committees but in rendering advice to the Government on whether the employment of contract labour in any process, operation or other work in any establishment should be prohibited or not. I am afraid the Board in the present case has not rendered any advice whatsoever as it was required to and in the absence of any advice rendered, there could not be any consultation of the Central Government with the Board, only whereafter the Central Government is to take a decision on whether to prohibit contract labour or not.

21. At this stage, another aspect may also be noted. As set out in the Statement of Objects and Reasons of the Act itself, the question of abolition of contract labour had been engaging the attention of the legislature. However in the Act as enacted, instead of prohibiting contract labour generally it was deemed expedient to empower the Government to prohibit contract labour which was found to be abusive, in certain sectors only. However, since the said decision was being left to the Government, a scheme for the manner in which the decision was to be taken was framed. The Government was empowered to take the decision only after consultation with the Board constituted under the Act and which was to be an Advisory Body to the Government in this respect. The whole purpose of constitution of such a high level Advisory Body would be lost if it were to fail in performing its duties and to reduce itself to a mere post office. The views of the members and Chairman of the Advisory Board, neither on the report of the Committee nor on the facts of the case are known. All that the Central Government had before it were the views of the Committee. In fact, the members of the Board did not even say whether they agreed with the views of the Committee or not and if so whether with the majority view or with the minority view. The Committee was not to be a substitute for the Board.

22. The senior counsel for the petitioners has invited attention to -

A. Gujarat Working Class Union Vs. State of Gujarat and Others, . The challenge before the Division bench of the Gujarat High Court was to the decision taken by the Government not to abolish contract labour system in respect of security staff of Gujarat Narmada Valley Fertilizers Company Ltd. The Board in that case comprised of a retired judge of the High Court as Chairman and nine members; while four members of the Board opined against abolition of contract labour, four other members and the Chairman opined for it. The Division Bench however found that the State Government, besides the report aforesaid of the Board, also took into consideration certain other material and which material was not before the Board. The Division Bench held that the object of consultation with the Board is not merely to collect information which the Government could have collected through its own departments or other agencies. It was held that "consult" implies a conference of two or more persons or impact of two or more minds to enable them to evolve a correct solution. It was further held that without any meaningful dialogue with the Board and interaction of views and thoughts, there was no consultation of the Government with the Board, which is mandatory. The

Division Bench thus quashed and set aside the order of the State Government and directed it to re-examine the matter in accordance with law.

B Indian Airports Employees Union Vs. Air India and Others, . In this case also the Board had constituted a Tripartite Committee. However there was no unanimity of opinion amongst the members of the Board as to the report of the said Committee. The Board as such recommended to the Central Government to take a final decision. The Division Bench of the Bombay High Court held that Section 10(1) imposes a duty on the appropriate Government to consult the Board; though the advice of the Board is not binding on the Government and the ultimate discretion to prohibit contract labour rests with the appropriate Government, nevertheless the language is suggestive that the advice of the Board has to be discarded for sound reasons. It was held that the Boards consist of representative of the workmen, of the industry and appropriate Government and so the consultation with these Boards means that the representatives of the contractor, the workmen and industry will have a voice in expressing their views when the Board is being consulted with regard to the proposal whether the contract labour should be prohibited or not. It was further held that the Act does not vest absolute discretion in the appropriate Government to prohibit contract labour. The Division Bench held that the Board in the circumstances had failed to perform its statutory duty and had abdicated its functions in favour of the Government. In this case also the decision of the Board was quashed and the matter remanded for fresh decision.

C L and T Mc. Neil Ltd. etc. Vs. Government of Tamil Nadu, laying down that the views of the Board are to be ascertained for the purpose of assisting the Government in reaching its conclusion on the matter one way or the other. The Supreme Court, finding that no definite view was expressed by the Board in that case, held that the Government could not have reached the conclusion one way or the other in the absence of any advice of the Board. The decision of the Government in issuing the notification u/s 10(1) was thus held to be vitiated.

D Zenith Industrial Services and Others Vs. Union of India (UOI) and Others, The Division bench of the Orissa High Court also held that the power u/s 10 has to be exercised in the manner indicated therein and prior consultation with the Advisory Board is a must to prevent the Government from misusing or abusing the power or exercising it arbitrarily. Finding no material of the nature of consultation, the Division Bench struck down the notification issued in exercise of power u/s 10.

23. Per contra, the respondent No. 2 IOC relies on Barat Fritz Werner Ltd. Vs. State of Karnataka, In this case also the contention was that no consultation had been held with the Board. The Supreme Court however found that the Board had sent its advice to the Government suggesting the abolition of contract labour. It was thus held that the consultation had been held. The counsel for the respondent IOC, on the basis of the said observation contends that all that is required by consultation is the assimilation of data and material and which in the

present case has been done by the Committee and as such the Board by placing the report of the Committee before the Central Government has rendered advice and nothing further was required to be done. Reliance in this regard is also placed on the judgment of Single Judge of Calcutta High Court in *Indian Oil Blending Ltd. Vs. Union of India (UOI) and Others*, However, it will be found that in *Barat Fritz Werner Ltd. (supra)* the Board had rendered advice to the Government. All that the said judgments hold is that the said advice constituted sufficient consultation.

However in the present case there is no advice whatsoever of the Board. The Board has merely appointed a Committee and pushed the report of the Committee and which also has an element of dissent, to the Government without even as much as letting the Government know whether it agrees or disagrees with the dissent. The said judgments, therefore, cannot come to the rescue of the respondent IOC.

24. The counsel for the Union of India has adopted the arguments of the counsel for the respondent No. 2 IOC.

25. Once the Board has given its advice, the sufficiency or insufficiency thereof depends on the facts of a particular case. Here we are faced with a case of no advice at all. The decision of the Central Government is thus clearly vitiated.

26. The Supreme Court in *Ex-Capt. Harish Uppal Vs. Union of India (UOI) and Another*, , in relation to a Statutory Body as the Bar Council of India, held that no Body or Authority, statutory or not, vested with powers can abstain from exercising the powers when an occasion warranting such exercise arises. It was further held that power vested in a public authority is coupled with a duty to exercise it when a situation calls for such exercise; the Authority cannot refuse to act at its will or pleasure and the Courts will always have the authority to compel or enforce the exercise of the power by the Statutory Authority and be compelled to issue directions as are necessary to compel the Authority to do what it should have done on its own.

27. Similarly, qua "consultation", in *Chandramouleshwar Prasad Vs. The Patna High Court and Others*, , it was held that consultation or deliberation is not complete or effective before the authorities thereto make their respective points of view known to the other and discuss and examine the relative merits of their views. If one party makes a proposal to the other, who has a counter proposal in his mind, which is not communicated to the proposer, the direction to give effect to the counter proposal without anything more, cannot be said to have been issued after consultation. Though in *Supreme Court Supreme Court Advocates-on-Record Association and another Vs. Union of India*, it was held that meaning of "consultation" will take colour from the context, but in the present case considering that the jobs of a socially and economically weaker section of a society are likely to be affected by the decision of the Government and further considering the machinery which has been devised under the Act, the meaning of

"consultation" would be as adopted by the Supreme Court in Chandramouleshwar Prasad (supra). The whole purpose of Constituting a high powered Statutory Advisory Board would be vitiated if the members appointed thereof do not get an opportunity to exchange their views with the Government. If the members of the said Board advise for prohibition and which would be in the interest of the workers and the Government intends to act otherwise, it is essential for the Government to place its reasons for disagreeing with the recommendation before the Board to enable the Board to point out the fallacy, if any, in the reasons prevailing with the Government. Without such fair exchange, the Government would have an executive fiat to prohibit or to not prohibit the contract labour and which would be contrary to the express language and spirit of the Act. As aforesaid, though prior to the enactment it was felt that contract labour per se should be prohibited but the decision of the sectors in which it was to be prohibited was left to the Government but the powers of the Government were circumscribed by consultation with the Board. Though the Government is not bound by the recommendation of the Board, but the decision of the Government is subject to judicial review and which would also be facilitated if a record of such fair exchange of views is maintained.

28. I, therefore, hold that in the present case the Central Advisory Board (Respondent No. 3) has failed to perform its duty and to render advice sought by the Central Government. Resultantly, the decision dated 2nd June, 1992 of the Central Government impugned in this petition is without consultation with the Central Advisory Board and thus not in accordance with Section 10 of the Act. The said decision is thus quashed. The matter has already been delayed. The representations were made by the petitioners nearly quarter of a century ago. Directions were also issued for hearing the petitioners. In the circumstances and since sufficient time has elapsed, the petitioners are given an opportunity, to within eight weeks hereof, make a fresh representation if necessary to the Central Government. The Central Government is directed to take a decision thereon in accordance with law including as aforesaid within six months of receipt of representation from the petitioners. The Central Government shall also give an opportunity of being heard to the petitioners after informing the petitioners of the advice of the Central Advisory Board.

No order as to costs.