
(2010) 02 JH CK 0072
In the Jharkhand High Court

Damodar Valley Corporation

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 25-02-2010

Acts Referred:

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

Citation : (2010) 126 FLR 312 : (2010) 4 LLJ 664

Hon'ble Judges : D.G.R. Patnaik, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.G.R. Patnaik, J.—Heard counsel for the parties and with their consent this application is disposed of at the stage of admission.

2. Challenge as made by the petitioner D.V.C. in this writ application is to the notification dated 23.06.2004 (Annexure-7) whereby the appropriate Government has prohibited the employment of contract labour in any process, operation or other work relating to colony cleaning job and coal feeding job in the Bokaro Thermal Power Station, Bokaro and in the Chandrapura Thermal Power Station, Chandrapura with effect from the date of publication of the notification.

3. The challenge is made inter-alia on the following grounds:

(i) Before issuing the notification of prohibition, the State Government has not considered the essential conditions specified u/s 10(2) Of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as the Act).

(ii) The principles of natural justice have not been followed causing prejudice to the petitioner in as much as, before issuing the impugned notification, no reasonable opportunity was given to the petitioner of being heard.

(iii) The impugned notification which was issued in 2004 and thereafter more than six years have lapsed during which period, substantial changes have

occurred. The prohibition of engaging contract labour may now entail serious problems as because the workmen employed by the contractors cannot be automatically absorbed in service by way of their regularization under the petitioner.

4. Elaborating each of the grounds, Sri S.B. Gadodia, learned senior Advocate would explain the first ground by referring to the provisions of Sections 10(1) and 10(2) of the Act. Learned Counsel argues that though Section 10(1) of the Act enables the appropriate Government to prohibit employment of contract labour in any process, operation or other work in any establishment, but the provisions of Section 10 of the Act lay down certain procedures and criteria on the basis of which any order of prohibition can be imposed.

Referring to Provisions of Section 10(2) of the Act, learned Counsel explains that the notification can be issued only after consultation with the Central Board or the State Board, as the case may be, and only upon the conditions, as enumerated in Section 10(2) of the Act, are fulfilled.

5. Inviting attention to the minutes of the meeting of the Advisory Board, learned Counsel submits that the petitioner was not invited to participate in the meeting and the comments purported to have been made with reference to the petitioner's establishment by some participating members, appear to have been accepted on its face value without inviting any comments from the petitioner. The Advisory Board as also the appropriate Government was bound to make its assessment only after having regard to the conditions of work and the benefits provided to the contract labour in the petitioner's establishment. Learned Counsel submits that had it been invited to offer its comments, the petitioner would have satisfied the Advisory Board and the appropriate Government that the conditions of work and benefits provided to the contract labour, are not less than what is being provided to the regular employees of the petitioner and as such, there would have been no necessity for the appropriate Government to invoke its powers for prohibiting the contract labour in the petitioner's establishment.

Referring to the impugned notification, learned Counsel would explain further that the notification only repeats the conditions as mentioned in Section 10(2) of the Act but it does not reflect the application of mind as to whether the individual conditions do exist. This, according to the learned Counsel, would amply demonstrate that the appropriate Government has not considered the essential conditions specified u/s 10(2) of the Act.

In support of his contentions, learned Counsel would refer to and rely upon the judgements of the Supreme Court in tie case of L and T Mc. Neil Ltd. etc. Vs. Government of Tamil Nadu, and to another judgement in the case of Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., .

6. Sri S.B. Gadodia would further argue that the contention of the respondents

that the power exercised by the State Government u/s 10 of the Act is of legislative nature is incorrect and misleading. Referring to the observations made by the Supreme Court in the case of Steel Authority of India Ltd. v. Union of India 2006 (12) SCC 233, learned Counsel submits that while considering the scope and nature of the powers u/s 10 of the Act, the Supreme Court has held that the order passed u/s 10 of the Act is in the nature of administrative order and would not be beyond the pale of judicial review.

7. Elaborating the second ground, Sri S.B. Gadodia would argue that since the effect, of the notification proposed to be issued u/s 10 of the Act was likely to cause adverse consequences to the petitioner as also to the labourers employed by the contractor, the principles of natural justice ought to have been followed by giving the petitioner a reasonable opportunity of being heard. Learned counsel submits that the petitioner was not informed about the date of meeting of the State Advisory Board nor was any opportunity given by the Labour Commissioner to the petitioner for submitting its case. Learned counsel argues that since the State Advisory Board had the onus to give its opinion, it was incumbent upon the State Advisory Board to hear all the parties involved including the petitioner and the union of the workers. The failure of the Advisory Board to invite the petitioner and to obtain its comment on the various relevant issues, had apparently led the Advisory Board to entertain a misconceived opinion particularly in respect of the conditions of service of the contract labours.

8. Explaining the third ground, learned Counsel submits that as a consequence of the impugned notification, prohibiting the engagement of the contract labours in the petitioner's establishment, may cause acute hardship to the workmen since the petitioner's establishment cannot possibly absorb them under its regular employment.

9. Countering each of the grounds advanced by the petitioner, Sri P.K. Prasad, learned Advocate General would advance the following arguments:

(i) The notification issued u/s 10 of the Act is quasi legislative in nature. The principles of natural justice are therefore not applicable to such cases where the matter relates to exercise of legislative or quasi legislative process. Therefore the petitioner's grievance that it has not been given opportunity of being heard, is irrelevant and is of no consequence to the petitioner.

Furthermore, the provisions of Section 10(1) does not stipulate that before issuing any notification, the establishment concerned should be given an opportunity of being heard.

Learned counsel adds that even otherwise, the facts would indicate that the petitioner was given opportunity to place its case before the State Advisor Board and the representatives of the petitioner had even participated in one of the meetings held by the Advisory Board.

(ii) Refuting the other ground advanced by the learned Counsel for the petitioner

that the impugned notification does not reflect the application of mind by the State Government to the essential conditions u/s 10(2) of the Act, learned Counsel submits that the contents of the notification give amply indication that before issuing the notification, due consultation was made with the State Advisory Board as required under the provisions of Section 10(1) and 10(2) of the Act. The notification therefore does not need to state additionally that there was effective and meaningful consultation.

In support of his above arguments, learned Advocate General would refer to and rely upon the following judgements of the Supreme Court:

(i) *Alembic Chemical Works Co. Ltd. and Anr. v. State of Gujarat and Anr.* 1996 LLJ 584.

(ii) *Sundarjas Kanylal Bhatija v. Collector, Thane, Maharashtra and Ors.* 1989(3) SCC 398.

(iii) *Tulsipur Sugar Co. Ltd. Vs. The Notified Area Committee, Tulsipur, .*

10. From the rival submissions, the controversy raises two preliminary issues. The first is whether the power exercised by the Government u/s 10 of the Act is of a legislative nature or of an administrative nature? And second as to whether while taking decision to prohibit the engagement of contract labour, the State government has considered and applied its mind to the fulfillment of the conditions as specified in Section 10(1) and Section 10(2) of the Act?

11. The issue as to whether the act of the Government in exercise of its power u/s 10 of the Act is of legislative or administrative nature, has been decided by the Supreme Court in the case of *Alembic Chemical Works Co. Ltd. and Anr.* (Supra). Referring to one of its earlier judgement in the case of *South Gujarat Textile Processors Associations v. State of Gujarat* 1994(1) GLH 94, the Supreme Court has observed that "while exercising powers u/s 10(2) of the Act, Government acts in its quasi legislative sphere. Thus, the action taken by the Government is quasi legislative in nature and not quasi judicial or administrative".

The Apex Court has further observed that "while discharging quasi legislative function, the Government is not required to afford an opportunity of being heard to the petitioner".

12. In the case of *Steel Authority of India* (Supra), the issue as to whether the powers exercised u/s 10 of the Act is a legislative or administrative order, was not specifically raised. It was only in the context of deciding another issue that while referring to the nature of powers u/s 10 of the Act, as to whether such order would be amenable to judicial review, the Supreme Court has passingly referred to the nature of the order as an administrative one. Such isolated observation would not, in my opinion, offer any help to the petitioner particularly, in the light of the Apex Court's judgement in the case of *Alembic Chemical Works Co. Ltd., & Another* (Supra).

13. In the light of the decision of the Supreme Court in the case of Alembic Chemical Works Co. Ltd. and Anr. (Supra), there cannot be any further dispute that the powers exercised by the State Government u/s 10 of the Act, is quasi legislative in nature. The judgement of the Supreme Court in the case of Alembic Chemical Works Co. Ltd. and Anr. (Supra) lays down further that since the power exercised by the State Government u/s 10 of the Act is quasi legislative in nature, therefore there is no requirement of hearing the concerned establishment before issuing the notification of prohibition.

This is also because of the fact that even from the perusal of the report/recommendations of the State Advisory Board and the minutes of the meetings held by the Advisory Board, it appears that the petitioner was given advance notice to participate in the meetings and to submit its comments. In one of such meetings, the representatives of the petitioner did appear and had submitted the petitioner's case in course of the deliberations on the issue as to whether the prohibition as prayed for by the Union of the workers, under the Contract Labour Act, should be imposed or not.

In the light of the above facts, the petitioner cannot therefore argue that it was not granted opportunity of hearing and therefore the notification is bad.

Coming now to the next issue as to whether while deciding for imposing the prohibition of engagement of contract labours in the petitioner's establishment, the appropriate Government did apply its mind to the essential conditions as stipulated in Sections 10(1) and 10(2) of the Act, the reading of the provisions of Sections 10(1) and 10(2) of the Act do no doubt indicate that the satisfaction in respect of the essential conditions has to be arrived at by the appropriate Government, in consultation with the Advisory Board. It implies therefore that while framing its opinion on the relevant issues relating to the essential conditions, it is for the Advisory Board to consider each of the essential conditions and to advise the appropriate Government accordingly.

14. The impugned notification declares that consultation with the Advisory Board has been made on each of the essential conditions mentioned in the notification and thereafter the appropriate Government has decided to prohibit the engagement of the contract labourers in the petitioner's establishment. It is presumed that the consultation with the Advisory Board was made as required under the provisions of the Act and the notification does not need to declare that there was effective and meaningful consultation. In this context one may refer to the observations contained in the judgement of the Supreme Court in the case of Alembic Chemical Works Co. Ltd., & Another: (Supra).

15. From a perusal of the minutes of the meeting of the Advisory Board, it appears that at the meeting of the Advisory Board, representatives of the Workmen Union and, of the Management were invited to obtain their views and upon the views expressed by the members present, the Advisory Board had recorded its opinion that the employment of contract labourers in any process,

operation or other work relating to colony cleaning job and coal feeding job in the Bokaro Thermal Power Station, Bokaro and in the Chandrapura Thermal Power Station, Chandrapura under the DVC, should be abolished. The decision, as it appears from the minutes of the Advisory Board meeting, was taken on all the essential conditions as specified u/s 10(2) of the Act. The State Government, has considered the decision of the Advisory Board which was taken on the basis of the views; expressed by the members which was taken on the basis of the views expressed by the members present in respect of the conditions as specified u/s 10(2) of the Act and has agreed with the opinion of the Advisory Board and by such consultation, has proceeded to issue the impugned notification. The minutes of the meeting of the Advisory Board held on 12.01.2004 indicate that the views expressed by the representatives of the petitioner's establishment were also taken note of along with the views expressed by the representatives of the concerned workmen. The petitioner cannot therefore argue that it was not offered any opportunity of being heard or that its views were not taken into consideration or that the Advisory Board had not applied its mind to the various essential conditions specified u/s 10(2) of the Act or that the recommendations given by the Advisory Board to the appropriate Government was on the basis of incomplete informations.

16. Though the impugned notification is not beyond the scope of judicial review, the only issue which this Court has to see is as to whether in exercising its powers u/s 10 of the Act, the State Government has applied its mind to the relevant factors as provided under Sections 10(1) and 10(2) of the Act. From the discussions made above, I am satisfied that the State Government has applied its mind to the essential conditions as laid down under Sections 10(1) and 10(2) of the Contract Labour (Regulation and Abolition) Act, 1970 and the same therefore does not invite any interference by this Court. The consequences of the impugned notification which the concerned contract labourers may have to face as apprehended by the petitioner, is therefore, in my opinion, irrelevant to the main issues in this writ application.

17. In the light of the above discussions, I do not find any merit in this writ application and accordingly the same is hereby dismissed.