

(1993) 05 P&H CK 0079
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 11239 of 1992

F.C.I. Class IV Employees Union

APPELLANT

Vs

F.C.I.

RESPONDENT

Date of Decision : 17-05-1993

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 10, 10(2), 2(11)

Citation : (1994) 2 LLJ 102

Hon'ble Judges : Jawaharlal Gupta, J

Bench : Single Bench

Advocate : Sarjit Singh and Vikas Singh, for the Appellant; Hemant Kumar and Rajesh Garg, for the Respondent

Final Decision : Dismissed

Judgement

Jawaharlal Gupta, J.—Is the Food Corporation of India not entitled to employ a watchman as contract labour? This is the short question that arises for consideration in this petition. A few facts may be noticed.

2. The Food Corporation of India Class IV Employees Union is the petitioner. It seeks a writ of mandamus directing the Corporation "not to employ watchman for its godown as contract labour". It avers that the workmen in the country had been demanding abolition of contract labour. The employment of contract labour causes discrimination as much as the facilities which are available to the regular workmen are not afforded to the workmen employed through contract. In order to eliminate such discrimination, the Parliament enacted the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as "the Act"). According to the petitioner, the Government of India issued a Notification dated December 9, 1976 prohibiting employment of contract labour w.e.f. March 1, 1977 "for sweeping, cleaning, dusting and watching of building owned or occupied by establishments in respect of which the appropriate Government under the said Act is the Central Government." It has been further averred that there was a controversy as to which is the, Appropriate Government" in respect

of the Regional Offices of the Corporation. This controversy was resolved by the Supreme Court in *Hindustan Gum and Chemicals Ltd. Vs. State of Haryana and Others*,), Thereafter, the provisions of the Act were amended by Act No. 14 of 1986. It was provided that Appropriate Government means the Central Government in "relation to an establishment in respect of which the appropriate Government under the Industrial Disputes Act, 1947 (14 of 1947), is the Central Government"; and "in relation to any other establishment, the Government of the State in which that other establishment is situated." The petitioner avers that in view of the amendment, the Central Government is the appropriate Government in respect of the Regional Offices of the Food Corporation of India w.e.f. January 28, 1986. On this premises, it is maintained that "as soon as the Central Government became the appropriate Government in respect of the respondent-Corporation, the notification dated December 9, 1976 mentioned hereinabove became applicable to the respondent-Corporation". According to the petitioner, the Corporation is now prohibited from employing contract labour for sweeping, dusting and watching the buildings owned or occupied by it. It is alleged that inspite of the notification, the Corporation continues to employ watchman through contractors which is contrary to the notification. This action is challenged as being totally arbitrary, discriminatory and violative of Article 14 of the Constitution. Having failed to achieve the desired result by approaching the departmental authorities, the petitioner has approached this Court through the present writ petition.

3. A written statement has been filed on behalf of the respondent. It has been inter alia averred that there is no notification prohibiting the employment of watchmen as contract labour in the State of Punjab as contemplated u/s 10 of the Act. It has been further averred that till January 28, 1986, the State Government was the appropriate Government in respect of the establishments within the territorial limits of the State of Punjab and that the notification dated December 9, 1976 is "applicable only to those buildings in respect of which the Central Government was the appropriate Government in the year 1976." It has been further averred that "the Regional Labour Commissioner has issued clarification Annexure P-1 clarifying that the notification is not applicable to those units for which the State Government was an appropriate Government." The respondent has further averred that "the Central Advisory Contract Labour Board discussed the matter of prohibiting the contract labour for sweeping, dusting and watching the buildings owned or occupied by the Food Corporation of India in its 21st meeting held on July 31, 1989 and a Committee was constituted on November 15, 1989 to consider this matter. The report of Mobile Committee was discussed by the Central Adivsory Contract Labour Board in its meeting held on February 28, 1992 and the Government of India has taken a decision not to prohibit the employment of "contract labour in sweeping, dusting or watching of buildings owned or occupied by the Food Corporation of India vide circular dated May 28, 1992." On these premises, the claim made in the petition has been controverted and it is maintained that the writ petition has no merit.

4. The averments made in the written statement have not been controverted by the petitioner by filing any rejoinder or affidavit.

5. I have heard Mr. Sarjit Singh, learned counsel for the petitioner, and Mr. Hemant Gupta, learned counsel for the respondent.

6. Learned counsel for the petitioner has contended that on the promulgation of Act No. 14 of 1986 by which the definition of "Appropriate Government" was substituted, the Notification dated December 9, 1976 has become automatically applicable to all establishments of the Food Corporation of India employing watchmen and as a result, the respondent-Corporation cannot employ contract labour to work as watchmen. The claim made on behalf of the petitioner has been controverted by the learned counsel appearing for the respondent. Both sides have placed reliance on certain decisions to which a reference shall be made later on

7. At the outset, a few provisions of the Act deserve to be noticed. It was promulgated "to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith." In Section 1(4), its application has been restricted "to every establishment in which twenty or more workmen are employed or were employed on any day of the preceding twelve months as contract labour"; and "to every contractor who employs or who employed on any day of the preceding twelve months twenty or more workmen." The power to extend the provision of the Act to "any establishment or contractor employing such number of workmen less than twenty as may be specified in the notification" has been reserved to the appropriate Government which may do so "after giving not less than two months" notice of its intention by notification in the Official Gazette." The Act does not apply "to establishments in which work only of an intermittent or casual nature is performed." The question "whether work performed in an establishment is of an intermittent or casual nature", has to be decided by the appropriate Government after consultation with the Central Board or as the case may be, a State Board, and its decision shall be final." Section 2 inter alia defines the "appropriate government" and "establishment". Sections 3 and 4 provide for the constitution of the Central and State Advisory Boards respectively. Section 5 provides for constitution of committees. Provision for registration of establishments employing contract labour or the revocation of registration and the effect of non-registration have been made in Sections 6 to 9 of the Act. Section 10 is relevant for resolving the controversy in the present case. It may be usefully reproduced. It reads as under:-

"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 wholetime workmen.

Explanation: If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government therein shall be final."

8. On a perusal of the above provision, it is apparent that the Act does not contemplate total abolition of the employment of contract labour. Its purpose is to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances. It does not apply to every establishment automatically. The provision is an enabling one. It is not unlimited, in its operation. Before exercising this power, the appropriate Government is required to consider "the conditions of work and benefits provided for the contract labour" in an establishment. It has also to consider various relevant factors as delineated in Sub-clauses (a) to (d). It is after examination of all these relevant factors and after consultation with the Central or State Board that the appropriate Government can prohibit the employment of contract labour in any process, operation or other work in an establishment. Further, it has to do so by issue of a notification. Consideration of factors enumerated in Clause (2) and consultation with the Board is a condition precedent for the issue of a notification in the Official Gazette. The mandate of the Parliament is that the appropriate Government must take into consideration all the relevant factors including the existing conditions of work and benefits provided for the contract labour before it can decide to prohibit the employment of contract labour. Has it been done in the present case?

9. There is not even a bald averment in the petition that the Central Government had examined the conditions of work and benefits provided for the contract labour in any of the Regional Offices of the Food Corporation of India or that it had considered the factors stipulated in Sub-clauses (a) to (d) of Clause (2) of Section 10. In spite of the fact that no such averment has been made, it is sought to be contended by the learned counsel for the petitioner that the issue of

notification by the Central Government on December 9, 1976 is clear proof of the fact that the provisions of Section 10 had been complied with.

10. This contention cannot be accepted. Admittedly, at the time of the issue of the notification, the Central Government was not the appropriate Government in respect of the establishments of the Food Corporation in the State of Punjab. It was thus not even remotely concerned with the consideration of the matter. It was for the Punjab Government to consider and decide the matter. Admittedly, the Punjab Government had not decided to abolish the employment of contract labour in the offices of the Food Corporation. In such a situation, it appears clear to me that the notification dated December 9, 1976 was confined to only those establishments in relation to which the Central Government was the appropriate Government on December 9, 1976. Its operation cannot automatically be extended to those establishments in respect of which the Central Government was not the appropriate Government on the date of the issue of the notification. In this situation, it is not surprising that the Ministry of Labour vide letter dated May 20, 1987 clarified that establishments "which were covered by the erstwhile definition of appropriate Government continue to be covered under the Central Government Notification No. 779(E) dated December 9, 1976" and that "in regard to establishments like Indian Airlines, Air India, IAAI, etc, for which the State Government was the appropriate Government prior to the amendment dated January 29, 1986, Notification No. 779 (E) dated December 9, 1976 is not applicable.....". The opinion of the Ministry of Labour was in strict conformity with the provisions of Section 10.

11. Furthermore, on perusal of Section 10, it appears that while the appropriate Government has been empowered to prohibit the employment of contract labour by notification in the Official Gazette, the expression used is that "the Government may after consultation with the Central Advisory Board....." The appropriate Government is not bound to prohibit the employment of; contract labour. The provision is an enabling one. However, in Clause (2), there is a positive mandate. Before issuing the notification, it is incumbent on the Government to consider the relevant factors. It is provided that "the appropriate Government shall have regard to.....". The use of expression "may" in Clause (1) and "shall" in Clause (2) indicates that the Legislature clearly intended that the conditions stipulated in Clause (2) have to be complied with before the Government issues any notification under Clause (1). Cumulatively, it appears that the requirements embodied in Section 10(2) are of mandatory nature. Their non-compliance would vitiate a notification.

12. Mr. Sarjit Singh learned counsel for the petitioner, however, contends that a provision for consultation can only be directory. He refers to the decision of their Lordships of the Supreme Court in *State of U.P. Vs. Manbodhan Lal Srivastava*,) and *Kartar Singh v. State of Punjab* 1982 PLJ 441:

13. Without going into the controversy in detail, even if it is assumed that the provision relating to consultation is of a directory nature, it appears clear to me

that the requirements of Section 10(2) are clearly of a mandatory nature. These are the conditions which have to be complied with before a notification can be issued. A condition precedent for the issue of a notification makes it mandatory for the appropriate authority to examine the factors enumerated in Sub-clauses (a) to (d) of Clause (2). Taking the legislative intent, the plain language and the purpose which is sought to be achieved, into consideration, it appears clear to me that Section 10(2) contains a mandatory rule which has to be complied with by the appropriate Government. It is no doubt correct that the words "shall have regard to" indicate that the provision contains rules of guidance. However, the consideration of these matters is a condition precedent and necessary before a notification can be issued. Nothing of the sort is even alleged to have been done in respect of the establishments in question in the State of Punjab by the Central Government. In respect of these establishments, there is no evidence that the Central Government had ever applied its mind or considered the factors mentioned in Section 10(2).

14. Assuming provisions of Section 10(2) are entirely directory, it would still be incumbent on the appropriate Government to at least substantially comply with the provisions. There is not even a suggestion that the appropriate Government had ever considered the matter in respect of the godowns or other establishments of the Food Corporation of India. Viewed from any angle, it appears clearly that there was no compliance with the provisions of Section 10(2) in so far as the establishments of the Food Corporation of India are concerned. In this situation, the plea of the petitioner that the notification dated December 9, 1976 should apply and that the respondents be prohibited from employing contract labour, cannot be sustained.

15. The factual position as emerging from the record in fact indicates that the appropriate Government viz. the Central Government in this case, has formed a definite opinion that the employment of watchmen by way of contract labour should not be prohibited. The respondent-Corporation has produced a copy of the letter dated May 28, 1992 as Annexure R-2 with Civil Miscellaneous Application No. 5873 of 1992. A perusal of this letter indicates that the Ministry of Labour while considering Part I of the report of the Committee constituted to study the working of Contract Labour System in sweeping, cleaning, dusting and watching of buildings owned or occupied by establishments in respect of which the Central Government has become the appropriate Government as per the amendment in 1986 of the Contract Labour Act, 1970", has inter alia observed as under:-

"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 the employment of Contract labour in dusting etc. of building owned/occupied by the Food Corporation of India, Industrial Finance Corporation of India for which the appropriate Government under the Contract Labour (Regulation & Abolition) Act, 1970 is the Central Government."

16. Since the matter under consideration related to the prohibition of Contract

Labour System in respect of sweeping, cleaning, dusting and watching of buildings, it appears that the decision of the Central Government in respect of "dusting etc." includes the subject of watching of buildings. In fact, even in the written statement, there is a positive averment to the effect that "the matter regarding engagement of security guards was considered by the Central Advisory Labour Board and the Board was of the opinion that the engagement of security guards for the purpose of watching the godowns of the Food Corporation are not to be prohibited by way of Notification u/s 10A copy of the circular issued by the Government of India dated May 28, 1992 on the consideration of the decision to this effect is attached as Annexure R-2." This assertion by the respondent has not been controverted. It thus appears that the Central Government has taken a positive decision not to prohibit the employment of contract labour in respect of employment of security guards/watchmen etc. Such being the situation, it appears difficult to accept the tenuous argument that notification dated December 9, 1976 prohibits the employment of contract labour in the godowns of the Corporation.

17. Mr. Sarjit Singh, learned counsel for the petitioner, has placed strong reliance on the decision of a single Bench of the Bombay High Court in Zubeda Bano and others Vs. Maharashtra State Road Transport Corp. and others,). Primarily, two issues were raised before the Court in this case. Firstly, whether the Central Government was the appropriate Government and secondly whether on the amendment of the Act, notification dated December 9, 1976 became applicable to respondent No. 2. The High Court inter alia took the view that the labour employed by the contractor became the employees of the Corporation as the contractor did not have a valid licence and that on the amendment of the Act, the notification dated December 9, 1976 became automatically applicable to the Corporation. Besides the fact that in Dena Nath and others Vs. National Fertilisers Ltd. and others,) their Lordships have specifically disagreed "with the view of the Bombay High Court in the aforesaid case", at least on the first part of the decision, I have reservations about the opinion expressed by the learned Judge and with respect disagree with it.

18. I am of the view that if an enactment requires a particular thing to be done in a particular way, it can be done only in that manner and in no other. If you are bidden to do a particular thing in a particular way, you are forbidden from doing it in any other way. Section 10 contains definite steps that have to be taken before notification u/s 10 can be issued. The mere amendment of the definition of appropriate Government cannot lead to an assumption that all those steps shall be deemed to have been taken and that the notification becomes automatically applicable to the Corporation.

19. Even otherwise, every Act or provision is normally taken to be prospective unless it is made retrospectively by either making an express provision in the Statute or the Legislative intent of retrospectivity can be clearly spelled out from the provision. The amendment of the Act in 1986 does not have any element of

retrospectivity in it. It comes into force from the date of its publication. Notifications issued prior to the amendment of the Act cannot ipso facto apply to establishments which were not covered under the unamended provisions. Acceptance of the contention raised by the learned counsel for the petitioner would imply that the amendment of the Act shall be deemed to have come into operation on December 9, 1976. Such an intention cannot be spelled out either from the provisions of amending Act unless there is any evidence of such a Legislative intent.

20. No other point has been urged.

21. In view of the above, the question posed at the outset is answered in the negative. It is held that the respondent-Corporation is not debarred from employing contract labour to work as watchmen. Consequently, there is no merit in this petition. It is dismissed. In the circumstances of the case, the parties are let to bear their own costs.