
(2014) 07 DEL CK 0042
In the Delhi High Court
Case No : W.P. (C) 5514/1993

Gujarat Heavy Chemicals Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 02-07-2014

Acts Referred:

Constitution of India, 1950 — Article 31A(1)(e)
Contract Labour (Regulation and Abolition) Act, 1970 — Section 1, 10, 10(1), 10(2), 20
Factories Act, 1948 — Section 2(1)
Industrial Disputes Act, 1947 — Section 2
Mines and Minerals (Development and Regulation) Act, 1957 — Section 3(d)

Citation : (2015) 213 DLT 282

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Advocate : Venkata Subramanian, Adrija Thakur and Sanjeev Narula, Advocate for the Appellant; Prasouk Jain, Udit Gupta, Advocates appearing for B.V. Niren, CGSC, Advocate for the Respondent

Final Decision : Dismissed

Judgement

V. Kameswar Rao, J.—The challenge in this writ petition is to the notification issued by the respondent No. 1 dated March 17, 1993 in exercise of its power u/s 10(1) of the Contract Labour (Regulation & Abolition) Act, 1970 ("Act" in short), whereby the respondent No. 1 prohibited from the date of publication of the notification, the employment of contract labour in the following works in the limestone and dolomite mine in the country:-

- (i) Raising of minerals including breaking, sizing, sorting of limestone/dolomite.
- (ii) Transportation of limestone and dolomite which includes loading into and unloading from trucks, dumpers, conveyers and transportation from mine to the factory.

In the alternative it is the prayer of the petitioner for a direction against the respondents not to apply the said notification dated March 17, 1993 to the

limestone mines situated in the State of Gujarat catering to the Soda Ash Industry including the petitioner.

2. The facts as culled out from the record are, the petitioner is a company within the meaning of Companies Act, 1956 with its registered office at Ahmedabad and the factory is situated at Sutrapada Virawal, District Junagarh, Gujarat. It is a Joint Sector Enterprise with the State Government of Gujarat holding 18.02% shares of the petitioner through Gujarat Industrial Investment Corporation. The petitioner is the manufacturer of Soda Ash and has a capacity of 4,20,00 MT of Soda Ash per annum, which has been categorized in the grade of "Heavy Chemical Industry". The main activity of the petitioner company is the manufacturing and sale of Soda Ash. The limestone is the main raw material for the manufacture of Soda Ash. The petitioner company own mines for the excavation of limestone for the captive consumption. The operation of the petitioner company is restricted to the manufacture of Soda Ash only. Gujarat accounts for 95% of total production of Soda Ash in the country, primarily on account of availability of chemical grade limestone and salt in Gujarat. Apart from the petitioner, there are three other Soda Ash factories in the State of Gujarat namely (i) Swarashtra Chemicals Ltd. (ii) Tata Chemicals Ltd. and (iii) D.C.W. Ltd.

3. The petitioner has eight mining leases for mining of chemical grade limestone for the requirement of its Soda Ash factory. These mines meet 55% of the petitioner's requirement of limestone. The balance 45% requirement is met by the purchases from private mines. The drilling and blasting operations are done by the company's specialized regular workers, who are, under the provisions of Metalliferous Mines Regulations, 1961 controlled by the Directorate General of Mines Safety, Dhanbad. The requirement of limestone for the Soda Ash industry is restricted to size of 3 inch to 4 inch which is collected from boulders of 2 feet to 4 feet sizes. For sizing and for transportation of the same to the factory, the petitioner has entered into a contract with the contractors. It is the contractors, who employ their own labour for this work on contract basis.

4. It is the case of the petitioner that it is the principal employer under the Contract Labour (Regulation and Abolition) Act, 1970 ("Act" in short) pursuant to a permission obtained from the Asst. Labour Commissioner (Central) for employment of 1200 contract labours in its captive mines for the purpose of raising, breaking and sizing of limestone and its transportation from the mines to the factory of the petitioner. The petitioner has come on record to state that the workers are not paid any fixed remuneration but on piece rate basis i.e. on per tonne of breaking and sizing of limestone.

5. Pursuant to the impugned notification dated March 17, 1993, the petitioner received on August 04, 1993, notice dated July 20, 1993 from the Labour Enforcement Officer, Central, Rajkot, calling upon the petitioner to stop the employment of contract labour for the work of raising, excavation, breaking, sizing and sorting of the limestone at the mines and the transportation from the

mines to the factory. A representation dated June 03, 1993 was made by the Alkali Manufacturers Association of India, of which, the petitioner is a member to the Minister of Labour, Govt. of India against prohibiting the employment of contract labour for raising, sizing, sorting and transportation of limestone for Soda Ash industry. It was their case in representation that the contract labour must be allowed to continue and the notification should be withdrawn. It appears that even the contractors and agriculturists who were doing the work of breaking, sizing, sorting and transportation of limestone for the Soda Ash industry also sent representation to the State Government, seeking abolition of contract labour in raising, sizing, sorting and transportation of minerals, including loading and unloading of limestone/dolomite. It is their case that despite representations, no steps have been taken by the respondent No. 1 to withdraw the notification.

6. It is the case of the petitioner that the work of breaking, sizing and sorting of limestone at the mines and the transportation to factory is seasonal and intermittent in nature and of insufficient duration. Depending upon the requirement, the local villagers are engaged to constitute the manual labour for doing the work. There are no fixed timings and the work is done by the villagers as per their convenience and for varying periods. The villagers' first priority is working in their agricultural fields, and this work is done by them only to earn additional income. It is also the case of the petitioner, on account of the location of the mines in remote areas, and the intermittent nature of work of insufficient duration, no regular labour force on permanent basis is available. The agriculturist who does the work at his convenience to get additional income is not interested in permanent employment and the employment of outside labour on permanent basis would deprive the local agriculturist of the additional income. Even if permanent and regular labour force was available, it would not be economically viable or feasible as the work is not of regular duration. In other words, the duration of the work is very short. Further, in the long monsoon season, very little and intermittent limestone mining is done and workers would, by and large, during the monsoon season, are completely idle and as such, it is not economically feasible or otherwise possible to employ permanent work force for the year. The aforesaid are the reasons that the work of breaking, sizing, sorting and transportation of limestone for the Soda Ash industry can only be done through contract labour.

7. The petitioner would also impugn the notification dated March 17, 1993 on the ground that the notification has been issued without any consultation with the State Advisory Contract Labour Board u/s 4 of the Act. According to the petitioner, the Board is aware of the requirement, nature, conditions and other relevant factors relating to necessity of using contract labour at the limestone mines for Soda Ash industry. It is also the case of the petitioner that the Central Government also had no consultation whatsoever with the Soda Ash industry or the contractors working in the limestone mines at Gujarat. No opportunity was given to the petitioner or other Soda Ash factories situated in the State of

Gujarat and also the contractors and labourers to explain the special features relating to limestone mining in Gujarat for the requirement of Soda Ash industry. The impugned notification adversely affects the functioning of Soda Ash industry in Gujarat and before prohibiting the employment of contract labour at the limestone mines in Gujarat, it was imperative for the Central Government to consult the Soda Ash industry in Gujarat.

8. On the other hand, it is the case of the respondents that the notification prohibiting employment of contract labour in the entire country in the limestone and dolomite mines in raising of minerals including breaking, sizing, sorting of limestone and dolomite and transportation of limestone and dolomite which includes loading into and unloading from trucks, dumpers, conveyers and transportation has been issued by the Central Government in consultation with the Central Advisory Contract Labour Board ("Board" in short) in accordance with the provisions of Section 10 of the Act. The Central Govt. is the appropriate Government. The reasons for issuance of notification by the Ministry of Labour as it relates to limestone and dolomite mines and in respect of mines, the Central Govt. is the appropriate Government u/s 2 of the Industrial Disputes Act, 1947 (ID Act) and consequently, under the Act also. The respondents would also state that this position has not been controverted by the petitioner inasmuch as the petitioner itself has stated in the writ petition that under the provisions of the Act, it had obtained licences for employment of 1200 contract labourers in its captive mines.

9. The respondents have drawn a distinction between the manufacturing of Soda Ash which may come under Heavy Chemical Industry and the mining of limestone and dolomite, which are primarily mining activities, as such, the mining activity cannot be considered as part of the Heavy Chemical Industry. That apart, the limestone and dolomite are only raw materials used for the manufacture of Soda Ash. In fact, the limestone and dolomite are used as raw material for the manufacturing process in a number of industries, such as, steel, cement, preparation of bricks for furnace etc. and therefore, they cannot be said to be part of Heavy Chemical Industry. In other words, the mining of limestone and dolomite is a part of mining industry and not the chemical industry.

10. On January 22, 1986, a Committee was appointed by the Board to go into the working of contract labour system in limestone and dolomite mines in the country, of which the representatives of the mining industry and the mines' workers were also the members. The Committee after meeting the representatives of the employers and the workers, and making on the spot study of various units spread all over the country, submitted its report, which was placed before the Board. A notification was issued by the Central Government after consultation with the Board and taking into account the guidelines laid down in Clause 10(2) of the Act. It is the case of the respondents that the work which has been prohibited by the impugned notification is not seasonal in character. The mining operations are being carried out by the contractors, even

though, such operations are regular and continuous and form the basic and essential requirement to work on the mine or to achieve the objectives for which, the mining operations have commenced by the petitioner-company for manufacturing Soda Ash. The very fact that the petitioner-company has engaged a contractor for supply of limestone and dolomite through their captive mines due to economic considerations, goes against the interest of poor workers who are engaged through the contractors.

11. The respondents have also taken a stand that the Committee appointed by the Board has made an in-depth study of the contract labour system prevailing in limestone and dolomite mines. This included the visiting the mines, talking the representative of the employers and workers as well as observing the working and living conditions of the workers. It is only thereafter, on the basis of said recommendations, in consultation with the Board, the Central Government has issued the impugned notification. It is a social welfare measure, the deployment of contract labour leads to various abuses.

12. Mr. Venkata Subramaniam learned counsel appearing for the petitioner would apart from reiterating the stand taken by the petitioner in the writ petition would also submit that the impugned notification is arbitrary and under classification inasmuch as the respondents have classified all those who extract limestone under the common heading "mines" without bearing in mind that the distinction between those who carry out the activity of mining per-se and those industries who extract mineral for their own use. It is his case that the contract labour engaged by the petitioner do not perform any activity which is classified as "mining". According to him, the labour is used for sorting of limestone so that the limestone of appropriate size can be sorted out for use in the factory of the petitioner. He had further stated that the process of sizing is not a general sizing as done in the case of mining but a specific form of sizing done by the soda ash industry, in substance, his submission is without keeping in view these distinctions the respondents have imposed the impugned notification. He would further submit that the impugned notification insofar as it exists to workers involved in activities peculiar to the nature of industry namely chemicals as ultra vires to the jurisdiction of the Central Government. He would further submit that limestone is required as essential raw material by the soda ash and cement industry, whereas the cement industry is in a position to utilize limestone in the form of dust and small sizes, insofar as the soda ash industry is concerned it can only use limestone in sizes of 2 inches to 4 inches. He would state that the Gujarat accounts for 95% of the total production of soda ash in the country, primarily on account of the availability of required chemical grade limestone in the Gujarat. The limestone deposits in the Gujarat are of relatively new and brittle in character. The sizing of limestone for the soda ash industry cannot be done by mechanical means as the production of dust in mechanization is exorbitantly high at 40 to 50%, which is a complete waste and cannot be utilized for the production of soda ash. The breaking and sizing of limestone for the soda ash industry is necessarily done by the use of manual labour. He would also

submit that the impugned notification has been issued by overlooking and ignoring the mandatory requirement of section 10(2) of the said Act. Under sub Section 2 of Section 10 of the Act in passing any notification prohibiting employment of contract labour, the appropriate government is required to have regard to the conditions of work and benefits provided to contract labour in the establishment keeping in view the parameters laid down in the said section. It is his case that the said parameters have been completely ignored by the Central Government in making the impugned notification applicable to the limestone mines in Gujarat catering to the requirement of soda ash industry. In the last, it is his submission that the notification being omnibus not being in respect of a specified establishment need to be quashed. He would rely upon the following judgments in support of his contention:

1. Bhagwan Dass Vs. State of U.P. and Others, .
2. Bihar Mines Ltd. Vs. Union of India (UOI), .
3. Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., .
4. 1991 Law Suit (Orissa) 358, Tata Refractories Ltd. Vs. UOI
5. Indian Iron and Steel Co. Ltd. Etc. Vs. Union of India (UOI) and Others, .
6. Indian Oil Corporation Ltd. Vs. UOI and Ors. WP (C) No. 5775/1998, decided on July 01, 2003 by this Court.

13. On the other hand, Mr. Prasouk Jain, learned counsel appearing for the respondents, apart from reiterating the stand taken by the respondents in its counter affidavit, would rely upon the judgment of the High Court of Gujarat at Ahmedabad in LPA No. 1649/1997 and connected appeals/Special Civil Applications, decided by the Division Bench of the said Court on May 11, 1999, by submitting that the High Court of Gujarat has decided the vires of the same notification which is under challenge in the present case. He also relied upon the judgment of High Court of Gujarat reported as Saurashtra Chemicals and Another Vs. State of Gujarat and Others, wherein the Division Bench of the High Court has held, while issuing notification u/s 10 of the Act it is not necessary to afford opportunity of being heard to the parties. He has also placed before this Court notification dated July 04, 1996 by which the respondent No. 1 has amended the impugned notification dated March 17, 1993 by substituting item No. 2 as under:

2. Loading and unloading of limestone and dolomite into and from trucks, dumpers, conveyers and transportation within the mines site.

14. In the last, it is his submission that for parity of reasons and coupled with the fact that the impugned notification dated March 17, 1993 has been passed in accordance with the law more particularly Section 10 of the Act, the writ petition is liable to be dismissed.

15. Before I deal with the submissions of the learned counsel for the parties, a

word on the settled position of law insofar as the scope of Section 10 of the Act. It is primarily to find out whether contract labour is necessary for the industry, trade, business, manufacture or occupation which is carried out in the establishment. It empowers the government to prohibit employment of contract labour in an establishment. The government has to apply its mind to various factors before it prohibits contract labour in any process, operation or other work in the establishment. The Supreme Court in the case reported as Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., has held as under:

A careful reading of Section 10 makes it evident that sub-section (1) commences with a non obstante clause and overrides the other provisions of the CLRA Act in empowering the appropriate Government to prohibit by notification in the Official Gazette, after consultation with Central Advisory Board/State Advisory Board, as the case may be, employment of contract labour in any process, operation or other work in any establishment. Before issuing notification under sub-section (1) in respect of an establishment the appropriate Government is enjoined to have regard to: (i) the conditions of work; (ii) the benefits provided for the contract labour; and (iii) other relevant factors like those specified in clauses (a) to (d) of sub-section (2). Under clause (a) the appropriate Government has to ascertain whether the process, operation or other work proposed to be prohibited is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment; clause (b) requires the appropriate Government to determine 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; clause (c) contemplates a verification by the appropriate Government as to whether that type of work is done ordinarily through regular workmen in that establishment or an establishment similar thereto; and clause (d) requires verification as to whether the work in that establishment is sufficient to employ considerable number of whole-time workmen. The list is not exhaustive. The appropriate Government may also take into consideration other relevant factors of the nature enumerated in sub-section (2) of Section 10 before issuing notification u/s 10(1) of the CLRA Act.

16. Insofar as the submission of the counsel for the petitioner that the contract labour engaged by the petitioner do not perform any activity which is classified as "mining". The same has no relevance for the purpose of decision for issuance of notification u/s 10 of the Act. Section 10 stipulates prohibition of employment of contract labour in any process, operation or other work in any establishment. A perusal of the impugned notification would reveal the prohibition of employment of contract labour has been effected in raising of minerals including breaking, sizing, sorting of limestone, dolomite as a mineral, in a mine.

17. In a case reported as Barat Fritz Werner Ltd. Vs. State of Karnataka, , the Supreme Court held that the words process, operation or other work need not be

interpreted to mean only the core activity and not peripheral activity. The relevant extract of para Nos. 20 & 21 is reproduced below.

20. The learned counsel for the Petitioners sought to make a distinction arising u/s 10 of the Act in relation to "prohibition of contract labour" and "regulation of contract labour". They contended that the basis on which contract labour can be abolished under this section is that it should relate to the manufacturing, industry, trade, business or occupation that is carried on in the establishment. In other words, in matters integral to the work in the establishment and not to a mere facility in respect of its workmen as defined in Section 2(1) of the Factories Act. Once again, the argument cannot be appreciated at all because it would be a matter of policy for the Government to prohibit or to regulate the contract labour in an establishment does not necessarily dependent upon whether they are engaged in the core activity or a peripheral activity like the facility of a canteen. Learned counsel for the Petitioners adverted to certain decisions in Standard Vacuum Refining Co., wherein the abolition was in relation to the workmen engaged in the cleaning of the machinery; Shibu Metal Works, wherein workers being engaged for work which was of a permanent nature and it was a part of manufacturing process of the goods manufactured in the factory; Vegoils Pvt. Ltd., wherein it was in relation to the feeding of hoppers in the solvent extraction plant which is an activity closely and intimately connected with main activity of the appellant such as crushing oil cakes and oil seeds for extraction of oil and other chemical production; Catering Cleaners of Southern Railways where it was observed that the work of cleaning, catering establishment and pantry car is necessary and incidental to the industry or business of the Southern Railway and, therefore, the requirement of Section 10(2) was satisfied. The words other work in any establishment in section 10 are to be construed as ejusdem generis and the expression other work in the collection of words "process, operation or other work in any establishment" occurring in section 10 has not the same meaning as the expression in connection with the work of an establishment with reference to a workman or a contractor.

21. Section 10 of the Act provides for prohibition of employment of contract labour in any process, operation or other work in an establishment. The words "Process, operation or other work" need not be interpreted to mean only the core activity and not peripheral activity as is sought to be suggested by learned counsel for Petitioners. In sub-section (2) of Section 10 of the Act certain guidelines have been provided for the Government before the issue of any notification to find out whether the "Process, operation or other work" is incidental or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment. The expression used therein is wide in ambit to cover other activity arising in industry and not merely the actual manufacture. Otherwise to understand the expression Process, operation or other work other than the meaning given in clause (a) of sub-section (2) of section 10 would be to narrow down the meaning thereto. That does not seem to be the intention of the enactment at all. Therefore, we cannot agree with the

submission made by the learned counsel for the Petitioners in this regard either.

18. Suffice to say, the impugned notification does not indicate that the same is related to a mining activity. It does indicate the prohibition of certain activities in a mine but does not relate to the core mining activity of extraction of minerals. The intent of the notification being, to prohibit activities in a mine which is permissible in view of the position of law stated above.

19. This Court is also of the view that the usage of limestone/dolomite as a raw material for the manufacturing activity resulting in an end product nor the usage of the said minerals for own use are not the relevant factors which need to be considered by the government while exercising power to prohibit the contract labour u/s 10 of the Act.

20. The judgments as relied upon by the learned counsel for the petitioner in the case of Bhagwan Dass case (supra), Som Dutt Builders case (supra) and Bihar Mines Ltd. case (supra) are of no relevance inasmuch as in Bhagwan Dass case the Supreme Court has stated as under:

The sand and gravel are deposited on the surface of the land and not under the surface of the soil and therefore they cannot be called minerals and equally so, any operation by which they are collected or gathered cannot properly be called & mining operation. It is in the first place wrong to assume that mines and minerals must always be sub-soil and that there can has no minerals on the surface of the earth. Such an assumption is contrary to informed experience. In any case, the definition of mining operations and minor minerals in Section 3(d) and (e) of the Act of 1957 and 2(5) and (7) of the Rules of 1963 shows that minerals need not be subterranean and that mining operations cover every operation undertaken for the purpose of "winning" any minor mineral. "Winning" does not imply a hazardous or perilous activity. The word simply means "extracting a mineral" and is used generally to indicate any activity by which a mineral is secured. "Extracting" in turn means drawing out or obtaining. A tooth is extracted" as much as is fruit juice and as much as a mineral. Only, that the effort varies from tooth to tooth from fruit to fruit and from mineral to mineral.

In Som Dutt Builders Ltd. case (supra), the Supreme Court has reiterated what has been held in the Bhagwan Dass Case (Supra) and stated as under:

The sand and gravel are deposited on the surface of the land and not under the surface of the soil and, therefore, they cannot be called minerals.

In Bihar Mines Ltd. case (supra), the Supreme Court has stated as under:

In the collocation of words "work and win", the expression "win" might be construed to mean some activity preparatory to the working and extraction of the mineral. But we see no reason for giving this narrow meaning to the expression "winning" in Art. 31A(1)(e) of the Constitution or in s. 3(d) of the Mines and Minerals (Regulation and Development) Act, 1957. The court has stated further that in a popular sense, winning a mineral means getting or

extracting it from the mine.

21. Further insofar as the submission of learned counsel that the notification exists to the workers involved in activities peculiar to the nature of the industries namely chemical is ultra vires to the jurisdiction of the Central Government is concerned, suffice to state that such a submission is made on a fallacy that the nature of industry is chemical. The impugned notification which prohibits contract labour are those activities which are carried out in a "mine". For the purpose of mines it is the Central Government which is competent. Even otherwise what has been pleaded by the petitioner is contrary to its own conduct inasmuch as it has never been the case of the petitioner that the Central Government is not the appropriate government to prohibit the employment of contract labour in a mine. The same shall be clear from the representations made and relied upon by the petitioner in the writ petition which are admittedly addressed to the Central Government. If the Central Government was not the appropriate government then there was no reason for the petitioner to make representation to the Central Government. I agree with the stand of the respondents that the petitioner itself in para No. 11 of the writ petition stated that it had obtained licenses under the Act from the Assistant Labour Commissioner (Central), Aadipur, Kutch, for the employment of 1200 contract labourers in its captive mines, who is an officer working under the Ministry of Labour, Government of India. This itself shows that the petitioner knowing well that the appropriate government being the Central Government, it had to seek the approval of the authority under the Central Government.

22. Insofar as the submission of learned counsel for the petitioner that no opportunity was given to the petitioner or other soda ash manufacturers situated in the State of Gujarat, and the contractors and labourers to explain the special features relating to limestone mining in Gujarat nor the committee has visited the Gujarat to ascertain the position prevailing in that State which was imperative is concerned, I note from the perusal of the judgment of the Division Bench of the Gujarat High Court in LPA No. 1649/1997 and connected matters, a reference of which has been given above the Court has in its finding to Point B referring to the counter-affidavit of the respondents has observed as under:

10..... It is clear from the affidavit-in-reply dated 8th August 1997 filed on behalf of the respondents that a Committee was appointed u/s 5 by the Central Board to go into the question of working of contract labour system in Limestone and Dolomite mines in the country with the terms of reference as stipulated therein vide resolution dated 20th January 1986. The Committee decided to collect the relevant information from the cross-sections of mines, captive or non-captive all over the country and such information/data were furnished by 25 mine owners/managements including the present appellant Company, i.e. M/s. Tata Chemicals Ltd., Ranavav, District Junagadh, captive mine attached to Soda Ash plant by replying the questionnaire which was circulated by the Committee. Thus, the data was collected from the concerned mine owners all over the country and the

Committee also visited five States viz. Orissa, Madhya Pradesh, Rajasthan, Andhra Pradesh and Karnataka which were selected to represent the regions and the Committee selected cross-sections of mines operated in public sector as well as private sector representing both big mines and small establishments.

23. From the above, it is clear that the committee appointed by the Central Board had sought the information from the captive users of the limestone and dolomite including from a company M/s. Tata Chemicals Ltd. situated in Ranavar, District Junagarh, Gujarat manufacturing the very same product i.e. soda ash through a questionnaire. The Data collected from the concerned mine owners situated all over the country both in private and public sectors representing the big mines and small establishments was the basis for the Board to recommend and the Government to issue the impugned notification. It is not necessary that views of every establishment need to be taken before forming an opinion. Suffice to state, the information has been given by the similarly placed company; the rules of natural justice have been followed. I note the relevant conclusion of the Supreme Court in *Bharat Fritz Water case* (supra) wherein the Supreme Court in para No. 24 has held as under:

24. It was next contended that conditions in each one of the factories had to be ascertained and separate notification had to be issued in respect of each one of the factories. This argument needs to be rejected out right because when the Government was formulating the policy it has to take note of the conditions prevalent generally in such establishments and not with reference to any one or other. In general, if it is found that it would be appropriate to abolish contract labour in canteens run by factories, individual distinctive features do not affect such a decision.

Even on this ground the impugned notification cannot be interfered.

24. Insofar as the submission of learned counsel for the petitioner that the impugned notification has been issued overlooking and ignoring the mandatory requirement of Section 10(2) of the Act is concerned, I refer to the conclusion of the Supreme Court in para No. 48 of the judgment in *Steel Authority of India's case* (supra). The relevant portion has already been reproduced above in para No. 15 of this judgment. It is evident from the perusal of the said paragraph that compliance of sub-section 2 of Section 10 of the Act is mandatory. The Parliament has laid down the guidelines to be complied with in sub-section 2 before a notification can be issued u/s 10(1) of the Act. The appropriate government has to come to a conclusion whether the factors mentioned in sub-section 2 of Section 10 of the Act exists in respect of a particular establishment and in respect of an employment/job of a particular kind before a notification is issued in this regard. From the report of the Committee which has been filed by the respondents, which was the basis for the Board to recommend and the appropriate government to issue notification it can be seen that the said factors have been taken into consideration. I reproduce the relevant conclusion of the committee appointed by the Board which recommended for abolition of the

contract labour in the jobs as specified in the notification.

During the discussions the information gathered and the facts found during the actual visits to some of the mines and the information ascertained through other sources were discussed. As mentioned earlier the terms of reference are as under:

1. To study the nature of jobs, processes and operations such as raising of minerals including breaking, sizing, sorting and loading at mine site and recommend if the contract labour system should be abolished in these jobs/processes/operations in the Limestone and the Dolomite Mines, and
2. To report whether the welfare amenities provided for contract labour in the Limestone and Dolomite Mines in the Country are in accordance with the requirements of the law.

After careful consideration of the issues the Committee has come to the following conclusions.

1. Raising:

i) In relation to the nature of jobs, processes and operations for raising of minerals, which include all or any one or more operations of breaking, sizing, sorting and stacking off limestone or dolomite or rejections it was unanimously resolved that the contract labour system should be abolished in these operations.

ii) As regards transportation of mineral and rejections which includes loading into and unloading from trucks, dumpers, conveyors etc. or other mining machinery if such transportation is within the mine premises or from the Mine site to the factory if it is close by, it was resolved by majority of the members that the contract labour system should be abolished with Shri Dalmia only dissenting and would be sending a dissenting note by sending by Regd. Post A/d by 7th August, 1990. Members present today (i.e. 28.7.90) except Shri Dalmia agree that the recording in this clause was correct in consonance with the deliberations of the meeting held at Calcutta on 13th & 14th April 90. Shri P.N. Singh who is not present on 28.7.90 has at no stage till today communicated any dissenting note or suggestion for rectification of the said recording in this clause.

iii) As regards transportation of the mineral from the mines site to places outside mining leases where the vehicle has to travel on a public road, there was divergence of opinion whether the contract labour system should be abolished or allowed to continue.

Shri Y.H. Dalmia was of the view that the Contract Labour engagement of contractor for the purpose of loading, transportation and unloading in the specific circumstances mentioned in the above para should be allowed. He mentioned that the labour is insignificant part of the transaction and it is not predominant. Transportation outside the premises is a specialized work and there is a specialization which an outside agency can perform expeditiously and efficiently.

There will be operational difficulties if contract labour system is abolished. In these operations engagement of contract labour is inherent, advantageous without exploitation of labour. As in mines which have got short life it will not be possible to employ direct labour a contractor can have his own labour. Therefore he is of the view that these operations can be given to a contractor.

Shri P.N. Singh and Shri A. Khalique have fully agreed with this view of Shri Y.H. Dalmia.

Shri M. Mukherjee and Shri I.S. Rao have expressed that they are also of the view that in the particular circumstances expressed on this item, the abolition of contractors may not be feasible. They are of the opinion that the contract labour system cannot be eliminated altogether, as these operations are of such a nature that the engagement of contractor may be necessary.

However Shri S.K. Sanyal is of a different view. He stated that contract labour should be abolished in all operations in mining industry. He expressed that if for any reason if employment of contract labour is not abolished it should be regulated by the provisions of Contract Labour (Regulation and Abolition) Act irrespective of the number of contract labour employed. Further, if it is involved an insignificant number of labour, then it could be ignored and departmental operation could not significantly effect the essential operations.

As per the provisions of Contract Labour (Regulation and Abolition) Act, only such establishments in which or these contractors, who have employed 20 or more contract labour are covered by the Act. Sub section (4) of Section 1 of the Act says that the act applies "to every contractor, who employee or employed on any day of the preceding 12 months 20 or more workmen". The proviso to the subsection mentioned that "the Appropriate Government may, after giving not less than 2 months notice of its intention to do so, by notification in the official Gazette, apply the provisions of this Act to any Establishment or Contractor employing such number of workmen less than 20 as may be specified in the notification". So it will be left to the Govt. to apply the Act to Contractor employing less than 20 workers and the Central Advisory Board may also consider this point.

Therefore the recommendation of the majority of the members is to the effect that contract labour may be continued in transportation which includes loading into and unloading of mineral from the mines site to the outside where transportation by public road is involved. Shri Sanyal however insisted that operations by engagement of contract labour should be totally abolished and that the provisions of the Contract Labour (Regulation and Abolition) Act and Rules made there under should be applied to all the contractors irrespective of the number employed.

iv) As regards loading into Railway Wagons in the Railway siding it was agreed by majority of members that unloading at Railway siding and loading into wagons may be allowed by employment of contract labour, i.e. employment of contract

labour need not be abolished. Shri S.K. Sanyal and Shri Das Gupta dissented insisting on the abolition of the Contract Labour System in these operations because the work is of perennial nature and a necessary activity of the Industry.

Welfare Amenities:

The reference made was to report whether the welfare amenities provided for the contract labour in the limestone and dolomite mines are in accordance with the requirements of law. Therefore the provisions of the Mines Act, Mines Rules, Contract Labour (Regulation and Abolition) Act and the Rules made there under were referred. The actual situation noticed during the visits of the members to the Mines has been tabulated to reflect the correct position to the extent of compliance of law. It was noticed that in mines where the contract labour is employed, some or certain welfare amenities have not been provided at all and if provided are, not of the prescribed strict standard. From the perusal of the statements which reflect the actual position of extent of compliance of laws in the mines visited, it transpires that the contractors paid scant attention towards provision of statutory welfare amenities and the principal employers have also not fulfilled their legal responsibilities. Section 20 of the Contract Labour (Regulation and Abolition) Act and sub rule 2 of the Rule 40 of the Contract Labour (Regulation & Abolition) Central Rules enjoin upon the principal employer the responsibility of providing welfare amenities if any such amenities not provided by the contractor within the time prescribed. Sarvashri S.K. Sanyal and Das Gupta pointed out that in any operation for any reason whatsoever if employment of Contract Labour System is not abolished then the conditions of Employment including wages and amenities for the same or similar work be ensured as are available to the workers of the Principal Employer.

This will lead to an inference that contract labour are employed in unfavorable conditions and the are deprived of basic minimum welfare amenities.

The committee resolved to report, that in the mines where contract labour is employed, some of the statutory welfare amenities have not been provided at all and where provided they are mostly not upto the prescribed standard in accordance with the requirements of law.

25. Insofar as the submission of learned counsel for the petitioner that the notification is omnibus not with respect to specified establishment also need to be rejected inasmuch as the notification itself stipulates that the prohibition is with respect to certain activities in limestone and dolomite mines. The reliance placed by the learned counsel for the petitioner on the judgment of the Supreme Court in Steel Authority of India's case (supra) is concerned, the Supreme Court in the said case has quashed the O.M. dated December 09, 1996 on the ground that the notification is not being with respect to the specified establishment. The Supreme Court was also not satisfied that sub section 2 of Section 10 of the Act has been complied with, which is not the case here. I note for benefit the following observations of the learned Single Judge of this Court in Indian Oil

Corporation Ltd. case (supra):

The petitioner has placed reliance on *Steel Authority of India and Others vs. National Union Water Front Workers & Others* (supra) wherein a similarly worded notification was quashed. However, the notification was quashed in that case, as being omnibus, not being in respect a specified establishment. The Supreme Court was also not satisfied that Section 10(2) had been complied with. However, the notification in the present case is neither omnibus, nor is it contrary to, or in non-compliance of Section 10(2) as I have already discussed above. Therefore, I do not find that the aforementioned judgment advances the case of the petitioner.

26. I note for benefit the following observations of the Gujarat High Court in LPA No. 1649/1997 and connected matters while considering Point C which it had posed for itself i.e. whether the impugned notification is violative of Section 10 of the Act, the Court has held as under:

12. The thrust of this point is as to whether the contract labour may be prohibited only establishment wise u/s 10 and not with reference to the works in the establishments in general. No provision of enactment or any part of a particular provision can be read in isolation. It is very clear that the object of the Act was to see that the employment of contract labour is to be regulated and abolished in appropriate cases. It is very clear that the Central Board u/s 3 is to advise the Central Government to carry out the functions assigned to it under the Act and the Central Board has also been invested with the power to constitute Committees. The employment of contract labour may be prohibited u/s 10(1) itself in any process, operation, or the other work in any establishment. There may be several establishments which may carry on the same process or operation or related works and, therefore, whatever any such process or operation or other works are carried out in establishments, the employment of contract labour may be prohibited. In the instant case, the notification itself says that the employment of contract labour is prohibited in the works and in the specified schedule in the Limestone and Dolomite mines. Therefore, in all these industrial establishments relating to Limestone and Dolomite mines, the contract labour has been prohibited with regard to the works specified in the schedule and therefore, there is no basis to say that the notification is not in accordance with Section 10 of the Act and that it can be done with reference to establishment only, as it has been clearly conceived that the prohibition of employment of contract labour may be for any process or operation or other works in any establishment and this has been precisely done through the notification in the instant case. The entry no. 2 which has been substituted by the notification dated 4th July 1996 also does not impinge upon the validity of the notification and the consequence thereof. Even if the words, "transportation of Limestone and Dolomite" has been deleted from the initial entry no. 2 and it has been substituted so as to keep it confined within the mines site and not from the mines site to factory it would only mean that the prohibition of employment of contract labour is against the transportation within the mines site. While in the

initial entry, loading into and unloading from was made to be inclusive of transportation of Limestone and Dolomite as such and under the substituted entry, the transportation of Limestone and Dolomite from the site to factory has been excluded, there is no basis to raise the argument that the notification becomes violative of Section 10 nor this substituted entry affords any ground so as to render the consequential order Annexure B to be illegal at the time when it was issued in January 1994. We, therefore, do not find any substance in this point and the same is hereby rejected.

27. Learned counsel for the petitioner has relied upon the judgment of the Orissa High Court reported as Tata Refractories Ltd. and Others Vs. Union of India (UOI), to contend that the same is applicable in the facts of the case inasmuch as therein the High Court has on a conclusion that the provisions of Section 10(2) have not been followed has set aside the notification. Similarly he would rely upon the judgment of the High Court of Jharkhand in the case reported as Indian Iron and Steel Co. Ltd. Etc. Vs. Union of India (UOI) and Others, . to contend that the High Court relying upon the judgment of the Supreme Court in Steel Authority of India's case (supra) has set aside the notification as the same does not reveal that the provisions of sub section 2 of Section 10 of the Act have been followed. Insofar as these two judgments are concerned, suffice to state that the judgment in Tata Refractories Limited case (supra) is distinguishable on the ground that there was no compliance of Section 10(2) of the Act in that case. Moreover in this judgment I have held the compliance of the provisions of Section 10(2). That apart insofar as the judgment in Indian Iron and Steel Co. Ltd. case (supra) is concerned, in view of my conclusion above this judgment is also distinguishable.

28. For the reasons stated above, the challenge to the impugned notification is without any merit. The writ petition is accordingly dismissed without any order as to costs.