
(1994) 04 GUJ CK 0040
In the Gujarat High Court

Gujarat Working Class Union

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 15-04-1994

Acts Referred:

Constitution of India, 1950 — Article 21, 226

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

Citation : (1995) 1 GLR 651

Hon'ble Judges : N.N. Mathur, J;A.P. Ravani, J

Bench : Division Bench

Judgement

A.P. Ravani, J.—The petitioner is a Union of workmen working in respondent No. 2 establishment, i.e., Gujarat Narmada Valley Fertilizers Company Limited ("GNFC for short). The petitioner challenges the legality and validity of the decision of the State Government of Gujarat not to abolish contract labour system in respect of security staff of GNFC. The petitioner also prays that direction be issued to the State Government for exercising its power u/s 10 of the Contract Labour (Regulation and Abolition) Act, 1970, ("the Act" for short) and abolish the contract labour system in respect of security staff of GNFC. It is also prayed that the Government should direct the Company to absorb the members of the security staff as permanent workmen on abolition of contract labour system. Other incidental prayers for restraining GNFC and the labour contractor from terminating the services of the workmen have been made. It is also prayed that the Company be directed to make equal payment of wages and to extend benefits on same terms and conditions of service in respect of pay and allowances to the present security staff of 137 employees which are available to the permanent employees of GNFC. The petitioner has also prayed for declaration that the provision of Section 10 of the Act is unconstitutional and violative of Articles 14 and 16 of the Constitution of India.

2. The petitioner-Union has demanded abolition of contract labour in following nine operations:

1. Maintenance;
2. Electrical Maintenance;
3. Instrument Maintenance;
4. Canteen;
5. Bagging Plant Operations;
6. Cleaning and Sweeping;
7. Construction/erection;
8. Gardening;
9. Watch and Ward.

Out of the nine operations, in the following five operations contract labour has been abolished:

1. Sweeping and cleaning-removal of refuse and garbage in factory premises;
2. Removal and disposal of garbage, small scrap, cut grass, debris, rocks, etc., from different locations of factory area and service building;
3. Canteen, through co-operative society may be explored;
4. Cleaning of ammonia and urea plants; and
5. Cleaning and miscellaneous job in urea plant.

The aforesaid decision is reflected in notification dated September 28, 1990 produced at Annexure-M to the petition. Thus, by necessary implication the demand of the petitioner-Union to abolish contract labour system in watch and ward and security staff has not been accepted. The petitioner prays for setting aside the aforesaid decision and for appropriate direction to respondent No. 1, i.e., the State Government of Gujarat to issue orders directing respondent No. 2 GNFC to absorb the security staff. The prayer contained in para 25-H relates to constitutional validity of Section 10 of the Act.

3. At the time when the petition was filed, there were 137 members of watch and ward department. They are, one Senior Security Officer since 1979; four Security Supervisors - three of them have been working since 1979 and one of them since 1984; 16 security sub-inspectors, most of them have been working since 1978 and 116 guards working since 1978 or 1980. It is the case of the petitioner that before 1978 most of them or a few of them were engaged directly by respondent No. 2. It was in the year 1978, GNFC introduced contract labour system. Between the year 1978 to 1983, respondent No. 3 was the contractor. Between the years 1983 to January 31, 1989 contract was given to Security Services and Intelligence Bureau. Again from January 1989 to July 22, 1989 the old contractor - respondent No. 3, was brought back. The petitioner-Union had filed Special

Civil Application No. 5478 of 1989 inter alia praying for abolition of contract labour system and also for direction that the workmen concerned be treated as the workmen of respondent No. 2 and appropriate direction be given in that behalf. The said petition was withdrawn and the Court passed order on August 27, 1991 permitting the petitioner to withdraw the same with certain clarifications.

4. The order passed by the Court permitting the withdrawal of the aforesaid petition is produced at Annexure-N to the petition. It was permitted to be withdrawn with a clarification that in respect of the prayer that the workmen had become direct employees of respondent No. 2, the workmen will raise an appropriate industrial dispute and therefore, that aspect of the matter need not be considered by the Court in the petition. Liberty was sought to file fresh petition in relation to the decision of the Government not to abolish the contract labour system in respect of security service. The Court (Coram : S.B. Majmudar, J. as he then was and M.S. Parikh, J.) passed the following order:

Having heard learned Advocates for the parties, accordingly the petition is permitted to be withdrawn so far as the first grievance is concerned for enabling the petitioner to pursue alternative remedy for raising industrial dispute; it is treated to be withdrawn so far as the second grievance is concerned with liberty to file fresh petition for the same grievance as requested by Mr. Patel. Ad-interim relief granted earlier and modified subsequently will continue for two weeks from today. Petition accordingly stands disposed of with aforesaid liberty.

Thereafter, on September 5, 1991 the present petition is filed. The Court has granted the same interim relief as it was granted in the earlier petition. Thus the services of the workmen employed by contract labour have been protected. In substance it is directed that the services of the members of the security staff shall not be terminated directly or through the device of termination of contract labour system or by changing the contractor.

5. At the earlier stage of the petition a controversy was raised as regards supply of copy of the report of the Advisory Board. The Government filed Civil Application No. 1514 of 1993 claiming privilege for not furnishing copy of the report of the Advisory Board. After hearing the parties, Division Bench of this Court (Coram: R.A. Mehta and B.S. Kapadia, JJ.) by order dated July 29, 1993 rejected the claim of the Government for withholding the document on the ground of claim of privilege. The Government was directed to produce the report and supply copies to the other side. By Civil Application No. 1635 of 1993 prayer was made to review the aforesaid order. The same Division Bench rejected the application for review by order dated August 16, 1993. We are told that the order of the High Court was challenged before the Hon'ble Supreme Court by GNFC. The Hon'ble Supreme Court has rejected the Special Leave Petition. The Supreme Court has made it clear that the finding of the High Court to the effect that the action of the Government was quasi-judicial only for the purpose of disposing of the matter at the interim stage before the High Court and the

petitioner was at liberty to raise the question again at the stage of final hearing. It also appears that in SLP (Civil) No. 14598-99 of 1993 filed by GNFC the Supreme Court passed order on October 1, 1993 dismissing the Special Leave Petitions. The Supreme Court has left it open to the petitioners to satisfy the High Court that only such portions in the document relevant to the petitioners' case and ensuing the controversy may be placed before the Court and not what is irrelevant for the purpose. The report of the Advisory Board is dated February 24, 1986. After the aforesaid order was passed by the Hon'ble Supreme Court, relevant part of the report of the Advisory Board has been placed on record and a copy of the same has been furnished to the petitioner-Union.

6. This petition and other cognate matters, i.e., Special Civil Applications Nos. 6265 of 1991, 325 of 1991, 6111 of 1991 and 3501 of 1992 were listed before another Division Bench (Coram: R.A. Mehta and B.J. Shethna, JJ.). On November 24, 1993 the aforesaid Division Bench passed the following order:

It is stated that almost all the matters under Contract Labour (Regulation and Abolition) Act were transferred to another Division Bench and these matters had remained with this Bench because they were treated as part heard. Since this Bench remains busy with admission matters, it is not possible to treat these matters as part heard and, therefore, they are directed to be treated as not part heard and since the other Division Bench has already decided the matters involving same questions, it is desirable that these matters may be placed before the other Division Bench taking up final hearing Labour Law matters. The Office is, therefore, directed to see that these matters are placed before the other Division Bench taking up final hearing Labour Law matters preferably by Tuesday, i.e., 30-11-1993.

In view of the aforesaid order all the four matters were placed before this Division Bench.

7. When the matters were called out it was submitted on behalf of the respondents that in some of the matters vires of Section 10 of the Act has not been challenged. Therefore, in view of the provisions of the High Court Rules, 1993 the matter will have to be placed before learned single Judge. As far as this matter is concerned there is challenge to the vires of Section 10 of the Act. Therefore, this matter remained before this Division Bench. Learned Counsel for respondent No. 2 raised preliminary point regarding entertainability of this petition by Division Bench when the matter was called out on March 8, 1994. It was submitted that challenge to the constitutional validity of the provisions of Section 10 of the Act was given up. Therefore, this matter is also required to be placed before the learned single Judge. After hearing the parties we passed the following order on March 8, 1994:

When the petition is called out it was stated on behalf of respondent No. 2 that the constitutional validity of Section 10 of the Contract Labour (Regulation & Abolition) Act, 1970 ("the Act" for short) was given up by the petitioner and,

therefore, the petition is required to be placed before learned single Judge taking up such matters. It is not disputed by the learned Counsel for the petitioner that the earlier he had made statement that he did not press the challenge to constitutional validity of the provisions of Section 10 of the Act. However, he submitted that if permitted he would like to press the relief with regard to the constitutional validity of Section 10 of the Act.

2. Learned Counsel for respondent No. 2 has objected to the permission being granted. We have heard all the learned Advocates on this point. The submissions made by the parties on this point will be dealt with while deciding the petition finally. In our opinion the petition, as it stands today, is entertainable by Division Bench. It is an undisputed position that no amendment deleting the prayer regarding constitutional validity of Section 10 of Contract Labour (Regulation and Abolition) Act, 1970 is carried out.

3. As far as notice to the Attorney General is concerned, it is ordered that notice be issued to the Attorney General. Mr. H. M. Mehta learned Senior Central Government Standing Counsel appears with Mr. J.D. Ajmera, learned Additional Central Government Standing Counsel and waives service of notice to the Attorney General. The petition is ordered to proceed further.

After the aforesaid order was passed, we heard the learned Counsel for the petitioner at length. After the arguments of the learned Counsel for the petitioner was substantially over, on behalf of respondent No. 2 Civil Application No. 634 of 1994 was filed on March 15, 1994 praying to hold that the petition was required to be listed before learned single Judge of this High Court and to consider the contentions of the applicant on this question on merits and to dispose of the same by a speaking order. We directed that application to be heard together with the main petition. We have heard the learned Counsel for respondent No. 2 on this Civil Application during the course of final hearing of this petition. The Civil Application has been disposed of by order dated April 6, 1994. In substance, it is held that the civil application was for review of our order dated March 8, 1994. However, there was no specific prayer for review and no case for review was made out. Hence the civil application has been rejected by detailed order.

8. As stated in our order dated March 8, 1994 we deal with the points raised in support of the preliminary point as regards maintainability of petition by Division Bench.

9. Learned Counsel appearing for respondent No. 2 submitted that the challenge to constitutional validity of Section 10 of the Act was given up by learned Counsel for the petitioner. Therefore, it is submitted that the petition is required to be placed before learned single Judge taking up such matters. Learned Counsel for the petitioner submitted that he did state before another Division Bench that he did not press the prayer with regard to the constitutional validity of Section 10 of the Act. But he would like to press the challenge to the constitutional validity of Section 10 of the Act if he is permitted to argue this

point. Learned Counsel for respondent No. 2 submitted that no such permission should be granted. Even if the petitioner wishes to seek such permission, the petitioner must file application for amendment. In case such application for amendment is filed then also such application for amendment should be heard by a learned single Judge. In his submission Division Bench will not have jurisdiction to hear and decide the application for amendment.

10. The basis of the contention raised is the provisions of Rule 2(10) of the High Court Rules, 1993. This rule inter alia provides that applications under Article 226 of the Constitution of India except where vires of any provisions of statute are challenged may be disposed of by single Judge.

11. The learned Advocate General appearing for the State Government of Gujarat fairly stated that no amendment in the petition has been carried out. In view of this position he stated that as no amendment has been carried out the character of the petition remains the same as it was initially filed.

12. It is an undisputed position that prior to High Court Rules, 1993 came into force, all matters pertaining to labour legislations were being placed before Division Bench. However, this provision has been deleted from the new rules. Relevant part of Rule 2 of the High Court Rules, 1993 reads as follows:

2. Save as otherwise expressly provided by any law in force or by these rules, a single Judge may dispose of the following matters:

I. CIVIL

(1).... to

(9)....

(10) Applications under Article 226 of the Constitution of India except - (1) Those where vires of any provision of a statute are challenged.

Therefore, the question is whether the provisions of any statute are challenged in this petition or not. It is an undisputed position that the constitutional validity of the provisions of Section 10 of the Act has been challenged in this petition. Prayer in this behalf is in para 25(H) of the petition. It is inter alia prayed for declaring the provisions of Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 as unconstitutional and violative of Articles 14, 16 and 21 of the Constitution of India, illegal, null and void.

13. The preliminary point is raised on account of the fact that on earlier occasion when the matter came up for hearing before another Division Bench, the learned Counsel for the petitioner had made statement that he did not press the challenge to the constitutional validity of the provisions of Section 10 of the Act. The learned Counsel for the petitioner fairly conceded that he did make statement to the effect that he did not press the prayer with regard to the constitutional validity of Section 10 of the Act but he would like to press the challenge to the constitutional validity of Section 10 of the Act, if he is permitted

to argue the point. However, there is no such mention on the record of the petition. It is also an undisputed position that no such amendment has been carried out in the petition. Neither side is in a position to give the exact date on which the aforesaid statement was made. It is also an undisputed position that the learned Counsel for the petitioner admits that he had made the statement that he does not press the challenge to the constitutional validity of the provisions of Section 10 of the Act, but he would like to press for the relief as prayed for in para 25(H) of the petition.

14. There is difference between seeking permission to delete a prayer and making statement that the petitioner did not press the prayer. In this case the learned Counsel for the petitioner states that he did not press the prayer, but he would like to argue the same point if permitted by the Court. Not to press a prayer does not amount to seeking amendment and deletion of the prayer. When a prayer is not pressed the character of the petition remains the same. In such a situation all that may be necessary for the Court would be to record the statement of the Counsel that he did not press the prayer and therefore, the Court may reject the prayer as having not been pressed. Therefore, the very basis of the contention that amendment was sought and the prayer was deleted does not exist. On this ground alone the preliminary point raised by the learned Counsel for respondent No. 2 is required to be rejected. However, we may also deal with this point on the basis that the prayer for amendment of the petition was made before another Division Bench.

15. As indicated hereinabove it is an admitted position that no amendment has been carried out in the petition. Therefore, the petition as it stands today is entertainable by Division Bench of this Court. As far as the oral statement made is concerned, the fact remains that there is nothing on the record to show that the Division Bench accepted the statement and granted permission to the petitioner to amend the petition accordingly. Even if it is assumed that the Division Bench before which the statement was made had granted such permission, no such permission is reduced into writing and no written order is passed. Even if it is further assumed that without there being nothing on record, such amendment was prayed for and it was granted, then also, the fact remains that amendment has not been carried out and the prayer challenging the constitutional validity of Section 10 of the Act remains on the record of the petition.

16. In this connection reference may be made to the provisions of Order 6 Rules 17 and 18 of the Civil Procedure Code. Rule 17 provides for amendment of pleadings. It empowers the Court to allow either party to alter or amend the pleadings at any stage of the proceedings in such manner and on such terms as may be just, provided such amendment may be necessary for the purpose of determining the real questions in controversy between the parties. Order 6 Rule 18 provides for the consequence of failure to amend after the order is passed by the Court. It reads as follows:

If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the Court.

17. As indicated hereinabove, even if it is assumed that the Court has granted the amendment as per the statement made by the learned Counsel for the petitioner, the amendment has not been carried out within 14 days. Be it noted that this matter remained before another Division Bench upto November 24, 1993 on which date the Division Bench passed order not to treat the matter as part heard and placed it before other Division Bench taking up such matters. This point is raised on March 8, 1994, i.e., obviously after a period of fourteen days from the date when the previous Division Bench passed order on November 24, 1993 and directed that the matter be not treated as part heard. As stated above, neither party is clear as to on which date the aforesaid statement of giving up the challenge to the constitutional validity of Section 10 of the Act was made. But it is obvious that if at all any such statement was made and if at all the Court passed order, it would be before November 24, 1993. Within 14 days, therefore, no such amendment has been made. Therefore, even if the petitioner wishes to delete the aforesaid prayer contained in para 25(H) of the petition, he shall have to seek permission of the Court for extension of time.

18. In the instant case, the petitioner does not seek such extension. On the contrary, the petitioner wishes to challenge the constitutional validity of the aforesaid provision. Therefore, it is evident that the petition as it stands is entertainable by Division Bench. As stated by the learned Counsel for the petitioner, at this stage there is no question of seeking amendment by the petitioner. On the contrary, petitioner wishes to pursue the petition as it stands today. Therefore, there is no question of sending down the matter to the learned single Judge. If the matter is sent down to the learned single Judge, the petition as it stands today, is not entertainable by learned single Judge. We may note here that the learned Advocate General fairly stated that as the amendment is not carried out, the character of the petition remains as it was initially filed and it remains the same all throughout till today. In view of the aforesaid position, the petition is entertainable by Division Bench and the preliminary point raised is rejected.

19. The petitioner contends that as provided u/s 10 of the Act the appropriate Government has to take decision regarding prohibition of contract labour in any process, operation or any other work in any establishment after consultation with the Central Advisory Board or the State Advisory Board, as the case may be. It is submitted that in the instant case, the report of the Advisory Board is dated February 24, 1986. The Advisory Board consisted of nine members. It was headed by a retired Judge of this High Court, late Shri M.U. Shah. The Chairman

and four other members opined that the contract labour system in the security department of respondent No. 2-GNFC should be abolished, while four members, namely, Shri J. P. Vora, Shri N.B. Vora, Shri D.P. Amin and Shri B.B. Zariwala were of the opinion that contract labour system should not be prohibited. These four members are the representatives of the employer and the contractors. It may be noted that as required under the provisions of Section 4 of the Act, there should be representation of industry, contractors and the workmen on the Board. It is contended that when the Government took decision not to abolish contract labour system in security department, there was no other material before the Government except report of the Advisory Board. It is further contended that the Government has not considered the relevant factors enumerated in Section 10(2) of the Act. Therefore, it is submitted that the decision arrived at by the Government not to abolish contract labour system is not in accordance with law and it is based on extraneous considerations.

20. It is further submitted that consultation with the Board is not mere formality but it is mandatory as provided u/s 10(1) of the Act. Moreover, this consultation must be real, effective and meaningful. The provisions for the constitution and composition of the Board is such that the Board is required to be consulted in a meaningful and effective manner. The consultation should be on the following factors:

1. Conditions of work and benefits provided for the contract labour in that establishment and other relevant factors such as mentioned in Clause (a) to (d) of Section 10(2) of the Act;
2. 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;
3. 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 that is carried on in that establishment;
4. Whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;
5. Whether it is sufficient to employ considerable number of whole time workmen.

21. It is conceded that the Government is not bound to accept the report, but at the same time it is contended that the Government could not brush aside the report. If the Government wishes to ignore the report or take decision contrary to the recommendations made in the report there should be sound reasons for brushing aside the report. In the submission of the learned Counsel for the petitioner the process of decision making is vitiated. Therefore, the Court should interfere and quash and set aside the decision and give appropriate directions as prayed for.

22. The affidavit-in-reply of the Government discloses that it has carefully

considered the report. It has considered several other very important relevant factors affecting the security system. However, the "several other very important relevant factors" have not been articulated in the affidavit-in-reply. In paras 7, 8 and 9 of the affidavit-in-reply it is stated that respondent is a public limited company wherein the Government's shareholding is 26%. That it is concerned with manufacture of fertilizers which is vitally important for the economy of the nation. It is further stated that the Government has decided in policy that security of the joint sector companies and units controlled by the Government or where the Government is interested, should be entrusted to security force like Central Industrial Security Force, which would be manned by thoroughly trained professionals whose function would be to protect properties of such manufacturing units. In para 8 of the affidavit-in-reply it is further stated that needful is being done for the formation of such a force by the Government and that such a body force is likely to be formed in the near future. It is further, submitted that in the event of labour unrest, members of such a force would be more effective and reliable rather than a person who is a member of local Union who might be swayed with his feelings for his brother workers and while doing so might permit damage or loss to such units and therefore, the employees of such units are not to be entrusted with the work of security. It is also stated that the Government has taken decision in consultation with other departments like Industries, Mines and Energy Department, Home Department, Finance Department, Labour and Employment Department etc.

23. In the affidavit-in-reply filed on behalf of GNFC it is stated that it is engaged in fertilizer industry which requires expertise for totally different specialised field of security. It is stated that the security staff is required to be trained men of courage and integrity. Such persons are required to be carefully selected and properly trained before being posted to shoulder the responsibility of their jobs. This could be done by contractor engaged in providing such specialised service, that if the work is entrusted to the contractor, then the GNFC is not only saved from the task of selecting and training security personnel but is generally assured of professional and independent services. It is also contended that GNFC would be assured of better discipline since the contractors are expert and independent people and they exercise control at all levels and that operational exigencies are better served if the security personnel are independent and do not form part of the general labour force of the company. Details with regard to the contractors who were engaged has also been given. It is also contended that GNFC has taken steps to see that payment is made to the contractor's staff as per the provisions of the Act and the Rules. It is further submitted that employing regular security staff by GNFC would entail substantial training expenses as also will be a highly uneconomical and expensive proposition. Reference is made to the law enacted by the Maharashtra Government for providing independent security. The allegations made as regards employment through security staff during the year 1978 to 1983 and again 1983 to 1987 have been denied as incorrect.

24. Learned Counsel for respondent No. 2 submitted that no copy of the implied decision of the Government is annexed to the petition. Therefore, in his submission there is no decision of the Government and hence the petition is not maintainable in view of the decision of the Supreme Court in the case of *Surinder Singh v. Central Government*, reported in AIR 1986 SC 2166. The submission cannot be accepted. In the affidavit-in-reply filed on behalf of the Government it is admitted that the Government has taken decision not to prohibit contract labour system in the security department of GNFC. The decision has been taken in response to the demand made by the Union. The decision is reflected in the impugned notification Annexure-M. Be it noted that this contention is not raised on behalf of the Government. Therefore, the contention that the petition is not maintainable as there is no copy of the decision on record has no merits and the same is rejected.

25. In the instant case, it is not necessary to deal with various other aspects of the case inasmuch as the petition is capable of being disposed of on the short ground as to whether there was full and meaningful consultation with the Advisory Board before the Government took the impugned decision. It is an admitted position that the Government has taken into consideration other material over and above the report of the Advisory Board. The said material is in the form of consultation with the other Departments like Industries, Mines and Energy Department, Home Department, Finance Department, Labour and Employment Department, etc. The case of the Government is that it has taken a policy decision that security of the joint sector companies and units controlled by the Government or where the Government is interested should be entrusted to security force like Central Industrial Security Force. It is further stated that needful is being done for the formation of such force by the Government. It is also the case of the Government that in the event of labour unrest members of such force would be more effective and reliable rather than the persons who are members of the local Union.

26. It was specifically asked to the learned Counsel representing the State Government by the Court as to when the policy decision is taken by the State Government to create security force. No particulars regarding policy decision has been given to the Court. It is not made clear as to whether any such policy decision is taken and if it has been taken when and what exactly is the policy decision. However, it is an admitted position that till now no such security force has been formed. It is also an admitted position that these factors have not been placed before the Advisory Board by the Government. It was stated at the Bar that the Government took into consideration the Labour Commissioner's report dated March 21, 1987. In this report it was stated that security is not directly or indirectly the main activity of the Company. That in the national interest security should be handed over to special agency. Another document taken into consideration was that of the Department of Industries and Mines, dated nil and the Sub-Committee Report dated April 24, 1990. This material has not been placed on record. But we believe the statement that the Government has taken

into consideration the aforesaid material before taking the impugned decision not to prohibit contract labour system in relation to security staff of respondent No. 2. However, it is also an undisputed position that this material has not been placed before the Advisory Board and there was no dialogue with the Advisory Board on the basis of this material.

27. As far as the requirement of consultation with the Advisory Board is concerned, reference may be made to the decision of the Supreme Court in the case of *Vegoils Private Limited Vs. The Workmen*, . After referring to the scheme of the Act and the provisions of Section 10 of the Act, in para 31 of the reported decision the Supreme Court observed as follows:

The following points emerge from Section 10 : (1) The appropriate Government has power to prohibit the employment of contract labour in any process, operation or other work in any establishment; (2) Before issuing a notification prohibiting contract labour, the appropriate Government has to consult the Central or State Board, as the case may be, which we have already pointed out, comprises of the representatives of the workmen, contractor and the industry; (3) Before issuing any notification under Sub-section (1), prohibiting the employment of contract labour, the appropriate Government is bound to have regard not only to the conditions of work and benefits provided for the contract labour in a particular establishment, but also other relevant factors enumerated in Clauses (a) to (d) of Sub-section (2); and (4) under the Explanation which really relates to CI. (b) the decision of the appropriate Government on the question whether any process, operation or other work is of perennial nature, shall be final.

(Emphasis supplied) Thus, it is obvious that the consultation with the Advisory Board is mandatory. Therefore, in the instant case, can it be said that there was effective and meaningful consultation with the Advisory Board?

28. The term "consultation" has come up for consideration before the Supreme Court and different High Courts in various decisions. The latest decision on the point is the case of *Supreme Court Advocates-on-Record Association and another Vs. Union of India*, . In the said decision the Supreme Court has referred to Division Bench judgment of the Madras High Court in the case of *R. Pushpam and Another Vs. The State of Madras and Another*, , which considered the expression "after consulting the Municipal Council" occurring in Section 3 of the Madras District Municipalities Act, 1920. In the said decision the Madras High Court has observed as follows:

The word "consult" implies a conference of two or more persons or an impart of two or more minds in respect of a topic in order to enable them to evolve a correct, or at least, a satisfactory solution. Such a consultation may take place at a conference table or through correspondence. The form is not material but the substance is important. It is necessary that the consultation shall be directed to the essential points and to the core of the subject involved in the discussions.

The consultation must enable the consultor to consider the pros and cons of the question before coming to a decision. A person consults another to be elucidated on the subject-matter of the consultation. A consultation may be between an uninformed person and an expert or between two experts. A patient consults a doctor; a client consults his lawyer; two lawyers or two doctors may hold consultations between themselves. In either case, the final decision is with the consultor, but he will not generally ignore the advice except for good reasons. So too in the case of a public authority. Many instances may be found in statutes when an authority entrusted with a duty is directed to perform the same in consultation with another authority which is qualified to give advice in respect of that duty. It is true that the final order is made and the ultimate responsibility rests with the former authority. But it will not, and cannot be, a performance of duty if no consultation is made, and even if made, is only in formal compliance with the provisions. In either case the order is not made in compliance with the provisions of the Act.

After referring to the aforesaid decision of Madras High Court and other decisions of the Supreme Court and foreign Courts, the Supreme Court has in the case of Supreme Court Advocates-on-Record Association (*supra*) observed in para 160 of the reported decision as follows:

The essence of the various decisions of this Court, High Courts as well as foreign Courts is that when we give a liberal construction to a word used in a statute particularly in the Constitution, we must first of all take note of the relevant and significant context in which that word is used and then interpret that word in that context with meaningful purpose. If the construction of the word is made only in literal or lexical meaning, then there is every possibility of missing the real intent of the provisions.

In view of the aforesaid settled legal position, the expression "after consultation" occurring in Section 10(1) of the Act is required to be given its meaning after taking into consideration the context in which the same is used.

29. It may be noted that before the Contract Labour (Regulation and Abolition) Act, 1970 was enacted dispute as to whether contract labour system should be abolished or not were being referred to the Industrial Courts under the provisions of the Industrial Disputes Act, 1947. It is obvious that the object of consultation with the Advisory Board is not merely to collect information and seek advice. If the information is to be collected, the Government could have collected information through its own department and other agencies. Constitution of the Board as provided under Sections 3 and 4 of the Act and the relevant rules shows that it should represent different interests; that it is required to collect information from different interests and it is also required to consider the views that may have been expressed by different interests. It is after collecting such information and after hearing various interests and after taking other necessary steps the Advisory Board prepares its reports. As held by the Supreme Court in the case of *Vegoils* (*supra*) such consultation is mandatory. It may be noted that

after enactment of the Act, the adjudicatory process by which the workmen could demand abolition of contract labour by raising industrial dispute has been dispensed with. In this context the expression "after consultation with the Central Board or, as the case may be, a State Board" occurring in Section 10(1) of the Act is required to be understood and given its true content and meaning.

30. In view of the above discussion, the word "consult" implies the following:

(1) a conference of two or more persons or an impact of two or more minds in respect of a topic in order to enable them to evolve a correct, or at least, satisfactory solution ;

(2) such consultation may take place at a conference table or through correspondence;

(3) the form of consultation is not material, but the substance is important;

(4) consultation should be directed to the essential points and to the core of the subjects involved in the petition;

(5) the consultation must enable the consultor to consider the pros and cons of the question before coming to a decision;

(6) The final decision is with the consultor. But in case of a public authority the final order is made and the ultimate responsibility rests with the public authority entrusted with duty to perform the same in consultation with another authority;

(7) It cannot be said to be a performance of duty if no consultation is made and even if made is only in formal compliance with the provision;

(8) In either case, i.e., in case where no consultation is made or there is mere formal consultation, the order is not made in compliance with the provisions of the Act.

31. In the instant case, what emerges from the record is that the Government has decided not to abolish the contract labour system in the security staff of respondent No. 2 - Company mainly for the reason that it had taken policy decision to create a security force. It is also the case of the Government that needful was being done for the formation of such force by the Government. In the opinion of the Government such force would be more effective and reliable than the employee who may be member of local Union and might be swayed with the feelings for his brother workers, and may permit damage or loss to the property of the establishment of vital importance to the nation's economy. As indicated hereinabove, no such policy decision is placed on record of this petition. No particulars with regard to this policy decision are placed on record of the petition. Therefore, adverse inference can legitimately be drawn against the Government to the effect that there is no such policy decision and if any such policy decision is there and the details with regard to the same are placed before the Court it would be adverse to the respondents. On this ground alone the decision of the Government not to abolish contract labour system in respect of

security staff of respondent No. 2 -Company is required to be quashed and set aside. Moreover, this alleged policy decision and the particulars with regard to the policy decision are not placed before the Advisory Board. There is no dialogue with the Board, much less any meaningful dialogue on this aspect. The views of the Advisory Board have never been ascertained by pointing out that the Government has taken such a policy decision. There is no interaction of views and thoughts on this point. There is no mutual exchange of thoughts between the Government and the Advisory Board on this alleged policy decision. Therefore, in facts and circumstances of the case, in substance, there is no consultation at all with the Board. In view of this position, the decision arrived at by the Government cannot be said to be in accordance with law and the same is required to be quashed and set aside.

32. It is contended on behalf of the respondents that mandamus under Article 226 of the Constitution of India may be issued when there is failure to perform duty. In this case the Government has performed its duty and the Government has exercised its power u/s 10 of the Act. Therefore, there is no failure to perform the duty and to exercise the power. It is further contended that the function to be performed by the Government u/s 10 of the Act is quasi-legislative function and therefore, the Court cannot direct the Government to exercise the power in particular fashion.

33. It is difficult to agree with the submission made on behalf of the respondents. The Government is enjoined with a duty to take decision as to whether contract labour system should be prohibited in any establishment in relation to certain operations in any process, operation or any other work in any establishment. The Government is required to perform its duty in accordance with law. Once the Court finds that the duty has not been performed in accordance with law, the decision of the Government can be struck down and the Government can be directed to perform the duty in accordance with law. Whether the function is quasi-legislative or quasi-judicial is immaterial. Whenever there is failure to perform duty in accordance with law, mandamus can be issued. Hence the argument that the Court cannot issue mandamus in the instant case is rejected.

34. This brings us to the question with regard to constitutional validity of Section 10 of the Act. In our opinion consideration of this question would be academic inasmuch as we have held that the decision arrived at by the Government is not in accordance with law. Therefore, the appropriate relief in this behalf is to be granted. Moreover, the question has been concluded by Division Bench judgment of this High Court in the case of South Gujarat Textile Processors' Association v. State of Gujarat, reported in 1994 (1) GLH 94. Therein this Court has held that the constitutional validity of the entire Act has been upheld by the Supreme Court. Therefore, now it is not open to this Court to go into the constitutional validity of a specific provision of the Act. Though both the sides have argued on this point at length we do not think that it is open to this Court to go into the

question of constitutional validity of this particular provision in view of the pronouncement of the Supreme Court and in view of the decision of this Court in the case of South Gujarat Textile Processors Association (supra) wherein the decisions of the Supreme Court in this behalf have been referred to and relied upon. Simply because the question was not raised before the Supreme Court by the workmen it cannot be said that the constitutional validity of the particular provision can be challenged by the workmen before the High Court.

35. It was contended that once the Government takes decision to abolish contract labour system in a particular operation, the principal employer would snap the contract with the contractor. This will result into unemployment of the employees who may have been engaged through the contractor. The workmen demand abolition of contract labour system for improvement of their conditions of service. They do not demand abolition of contract labour system so as to invite economic death. Therefore, it is submitted that Section 10 of the Act which empowers the Government to prohibit contract labour is violative of Articles 14 & 21 of the Constitution of India. It is also contended that from this aspect the question has not been argued before the Supreme Court or before this High Court in earlier decision. But that is not the ground on which we can examine the constitutional validity of the provisions of Section 10 of the Act, in as much as the Hon"ble Supreme Court has upheld the constitutional validity of the entire Act. However, without expressing any firm opinion on the contention raised by the learned Counsel for the petitioner, we would like to observe that if the entire Act and the Scheme thereof is read in proper context with the object for which the Act is enacted, it would be difficult to agree with the contention raised by the learned Counsel for the petitioner. Here reference may be made to a decision of the Supreme Court in the case of Sankar Mukherjee and Others Vs. Union of India (UOI) and Others, . The Hon"ble Supreme Court has observed that in The Standard-vacuum Refining Co. of India Ltd. Vs. Its Workmen and Others, and Catering Cleaners of Southern Railway Vs. Union of India (UOI) and Another, the Supreme Court has disapproved the system of contract labour holding it to be "archaic", "primitive" and of "baneful nature". It is further observed that the system, which is nothing but an improved version of bounded-labour, is sought to be abolished by the Act. The Act is an important piece of social legislation for the welfare of labourers and has to be liberally construed. Keeping these observations in mind, the provisions of the Act and particularly the powers conferred upon the Government u/s 10 of the Act are required to be considered.

36. Before the Act was enacted the disputes as to whether the employees engaged by the contractors should be considered the direct employees of the principal employer or not were being referred to and decided by the forums created under the Industrial Disputes Act, 1947. This historical background and the principle that the authority which has been conferred with power to do certain things has also the power to take all other ancillary and necessary actions which would serve the purpose for which the power has been conferred, are to be kept in mind. If the question is examined from this perspective, it can be

reasonably said that the Government will have the power to direct the principal employer to absorb the employees engaged by the contractor. Therefore, while passing the order prohibiting the contract labour the Government can very well give suitable directions to protect the interests of the workmen. If Section 10 and the provisions of the Act, are not read in this fashion, the very purpose of the Act would be frustrated. However, we may make it clear that we are not expressing any firm opinion on this question since we are not deciding the question with regard to the constitutional validity of the provisions of Section 10(1) of the Act.

37. In above view of the matter, the prayer with regard to declaration that the provisions of Section 10 of the Act be declared as violative of the provisions of Articles 14, 16 and 21 of the Constitution of India is rejected.

38. We may note that both the sides have referred to various decisions during the course of argument. But in the view which we are taking and the direction which we are giving hereinbelow, we do not think it necessary to refer to and consider all the decisions cited during the course of argument. It may be noted that the judgment has been dictated in open Court. When the judgment was dictated no learned Advocate except Mr. H.V. Chhatrapati was present in Court. It may be noted that Mr. H.V. Chhatrapati was not present during the course of the argument of the case. Therefore, we take it that neither side is keen to see that any particular authority or any specific point is discussed by the Court.

39. On behalf of the petitioner it is prayed that the Government be directed to issue orders to GNFC - respondent No. 2 to absorb the members of the security staff as permanent workmen. It may be noted that the petitioner has already raised industrial dispute claiming that the members of the security staff should be treated as permanent. Moreover, consideration of this prayer would require examination of disputed questions of facts. Therefore, in our opinion it would not be proper to grant this relief in this petition under Article 226 of the Constitution of India.

40. In the result, the petition is partly allowed. The decision of the Government not to abolish the contract labour system in respect of security staff of respondent No. 2 -GNFC is quashed and set aside. The Government is directed to re-examine and reconsider its decision in accordance with law, preferably before 31st March, 1995. The prayer for directing the Government to issue order to GNFC-respondent No. 2 to absorb the members of the security staff as permanent workmen is refused. It will be open to State Government to consider this issue afresh. However, respondent No. 2-GNFC and respondent No. 6-Contractor are directed not to terminate the services of the members of security staff either directly or through the device of termination of contract labour system or by changing the contractor till the Government takes decision as per the direction given by this Court. If the decision of the Government is against the petitioner-Union, respondent No. 2-GNFC and respondent No. 6-Contractor shall not implement the same and shall not terminate the services of the workmen concerned for a period of one month from the date of communication of the

decision to the petitioner. The prayer with regard to constitutional validity of Section 10 of the Act is rejected. Rule made absolute to the aforesaid extent with no order as to costs.