
(1997) 10 PAT CK 0005
In the Patna High Court
Case No : C.W.J.C. No. 931 of 1986

Industrial Workers Association and another	APPELLANT
Vs	
The Union of India and Others	RESPONDENT

Date of Decision : 16-10-1997

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 10, 3

Citation : (1997) 10 PAT CK 0005

Hon'ble Judges : Dharmpal Sinha, J; B.P. Singh, J

Bench : Division Bench

Advocate : Rajeeva Sharma and Kunwar Narayan Jamuar, for the Appellant;

Final Decision : Dismissed

Judgement

B.P. Singh and Dharmpal Sinha, JJ.—Petitioner No. 1 in this writ petition is the Industrial Workers Association and petitioner No. 2 is a Member of the said Association, which claims to represent workers engaged in some of the Mica mines in Bihar. They have impugned the validity of the notification (Annexure-1) issued by the Government of India on 20th November, 1984, in exercise of the powers conferred by sub-section (1) of Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter to be referred to as "the Act"). The notification states that the Central Government after consultation with the Central Board prohibits the employment of contract labour in the works specified in the Schedule annexed thereto. The petitioners claim to represent workers engaged in mica mines and are aggrieved by that part of the notification, whereby contract labour in mica mines has been prohibited in so far as they relate to raising of mica, drilling and blasting, dewatering of mines, muck removal and processing of mica. The impugned notification has been challenged on the following grounds:

(i) The notification has been issued in violation of the provision of Section 10 of the Act, since it is made applicable to mica mines in general and does not relate to any particular mica mine or its establishment. The notification u/s 10 can

apply only to particular establishments mentioned therein, and not generally to mines from which a particular mineral is extracted.

(ii) The notification has been issued without any verification or finding as regards the condition of work or the benefit provided to the workmen in any particular establishment. The notification should have been issued only after verification of these facts and after making an enquiry applying the principles of natural justice.

(iii) The Central Advisory Board was not duly constituted in accordance with the provision of Section 3 of the Act.

2. So far as the first submission is concerned, the Act defines an establishment to mean (i) any office or department of the Government or a local authority, or (ii) any place where any industry, trade, business, manufacture or occupation is carried on. Section 10 provides that the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the official Gazette, employment of contract labour in any process, operation or other work in any establishment. The submission urged before us is that in respect of each establishment, meaning thereby, each distinct unit, where contract workers are engaged, the Central Government must issue a separate notification. Counsel submitted that there are large number of mica mines in the State of Bihar and therefore the use of the word "establishment" in Section 10 must mean a distinct establishment. Therefore in respect of each unit, a separate notification must be issued by the appropriate Government, having regard to the provision of Section 10 of the Act. We are not inclined to accept the submission because establishment" has been defined in wide, terms and includes any place where any industry, trade, business, manufacture or occupation is carried on. In our view mica mines is covered by the term "establishment" because the mining industry is carried on at such place. They are, therefore, an establishment within the meaning of the Act. We do not subscribe to the view that u/s 10 of the Act the appropriate Government is required to issue a separate notification in respect of each and every unit of mica industry where contract labour is employed. Section 10 enables the appropriate Government to issue a notification prohibiting employment of contract labour in any process, operation or other work in any establishment, meaning thereby any place or places where the activities enumerated therein are carried out. The first submission must, therefore, be rejected.

3. The second submission is also without force, it is not the case of the petitioners that the Central Board constituted under the Act was not consulted by the appropriate Government before issuance of the impugned notification. It was, however, submitted before us that there is nothing to show that the matters specified in sub-section (2) of Section 10 of the Act were considered before a decision was taken by the appropriate Government to issue the notification.

Sub-section (2) of Section 10 enjoins upon the appropriate Government to have regard to the conditions of work and benefits provided for the contract labour in

any establishment, and also to have regard to other relevant factors enumerated in sub-clauses (a), (b), (c) and (d) of sub-section (2) of Section 10.

There is no averment in the writ petition that the matters enumerated in subsection (2) of Section 10 were not considered by the appropriate Government before issuance of the notification u/s 10 of the Act. In fact, it is admitted that a sub-committee had gone into the matter and had submitted a report to the Central Board. The matter was discussed by the Central Board, which approved many of the recommendations made by the sub-committee. It is not the case of the petitioners that the Central Government had not held consultation with the Central Board before issuance of the impugned notification. In absence of such averments, it cannot be said that the Central Government issued the notification without having regard to the provisions of sub-section(2) of Section 10 of the Act.

4. The third submission must also be rejected. It was submitted that the Central Board was not duly constituted in accordance with the provision of Section 3 of the Act. In fact, there is no such averment in the writ petition, but however, it has been stated that a sub-committee had been appointed by the Central Government, which made a study of the conditions obtaining and the problems relating to the mines, including mica mines and had submitted a report, which was considered by the Central Advisory Board. The said subcommittee, it is submitted, did not contain members representing workmen in the mica mines. Assuming it to be so it cannot be said that for that reason the Central Advisory Board was not duly constituted in accordance with the provision of Section 3 of the Act. The Act itself provides for constitution of the Central Advisory Board and the proportion in which members representing the Government, the Railways, the Coal Industry, the Mining Industry, the contractors and the workmen etc. must be represented. It has been averred that no representative of workmen was included by the Central Government as member of the sub-committee. The mere fact that the sub-committee, which made a detailed study of the conditions of the workmen and employment of contract labour in mines, including mica mines, did not include a representative of workmen, does not vitiate the constitution of the Central Advisory Board. There is nothing in Section 3 providing that such a committee shall compulsorily include a representative of workmen. In absence of any factual averment that the Central Advisory Board was not constituted in accordance with the provision of Section 3 of the Act, we must reject the submission that the Central Advisory Board was not duly constituted.

5. We may also notice the submission urged on behalf of the petitioners that a regular enquiry should have been made by the Central Government after affording opportunity to all interested parties and a finding should have been recorded on the matters specified in sub-section(2) of Section 10. We are of the view that the law does not require that an enquiry should be made in any particular manner. The matter has to be considered by the Central Advisory Board in consultation with which the Central Government must act. The Central

Advisory Board consists of representatives of different industries as also their workmen and concerned contractors. The section itself provides the guideline for the guidance of the Central Government and the Central Advisory Board who are required to consider relevant matters specified therein. The legislature has not provided any particular procedure to be followed, and having regard to the constitution of the Central Advisory Board, all concerned industries and their workmen and contractors are duly represented. This ensures a fair consideration of all matters in the light of the guideline provided by the law itself. Fairness in action is therefore achieved. Moreover, the issuance of a notification under subsection (1) of Section 10 of the Act is an exercise of power legislative in character and, therefore, principles of natural justice are not attracted. We, therefore, reject this submission. Since we do not find merit in any of the submissions urged before us by the counsel "for the petitioners, this writ petition is dismissed. There will be no order as to cost.