
(1997) 12 RAJ CK 0014

In the Rajasthan High Court

Case No : Civil Writ Petition No. 554 of 1986

J.K. Synthetics Ltd. and Another

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 10-12-1997

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 10, 12, 2, 3, 7
Industrial Disputes Act, 1947 — Section 2

Citation : (1998) 1 RLW 356 : (1998) 1 WLC 763 : (1997) 2 WLN 701

Hon'ble Judges : P.P. Naolekar, J

Bench : Single Bench

Judgement

P.P. Naolekar, J.—Petitioner No. 1 is public limited company registered under the Companies Act, 1956. Petitioner No. 2 is a unit of petitioner No. 1 engaged in the business of manufacturing Ordinary Portland Cement and Pozzolana Cement at Nimbahera, District Chittorgarh. Petitioner No. 2 has been registered u/s 7 of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as the Act of 1970). Petitioner No. 2 has been engaging contractors, who have been licensed u/s 12 of the Act of 1970 in the process of loading of filled cement bags in wagons/trucks wherein loaders, chutemen and bag arranger-cum- supplier are employed and in the work of sweeping/cleaning of spilled cement occurring in the process of packing and loading and unloading of other raw materials such as gunny bags, gypsum, coal etc. the petitioners have been engaging duly licensed contractors in the aforementioned work. As per the petitioners, the main idea of permitting contract labour in loading of cement is because of the fact that the work is not of a perennial nature and is not connected with the production of cement in which the petitioners are engaged. It is only after the manufacture of cement that the question of loading comes in. Since the position of availability of wagons/trucks is very uncertain, the loading and unloading operations are being allowed to be carried out by contract labour. If the petitioners are required to get the work of loading of cement done by employing workmen on its regular roll, wages and other amenities will have to be paid to such workmen even when no

loading work is available for them for days together on account of absence of orders, non-availability of wagons and trucks etc. Further, as the position of power supply in the state is also very uncertain, the employer has to produce the cement first with the help of available power and in such a situation if the employer is required to any on work through the workmen on his roll, he would be required to pay wages and other amenities even while the loading and unloading operations are not required. Prohibiting the employment of contract labour for carrying out loading and cleaning operations, the employer will not only be forced to undergo heavy expenditure but he will also be involved in various complications of grave nature which will ensue on account of frequent lay off, un-employment and labour unrest. It is further alleged that the Cement Manufacturers Association, Bombay representing the employers in the Cement Industry in the country and the Indian National Cement & Allied Workers Federation, Bombay- 4, representing the workmen employed in the cement industries in the country, by an agreement which was published by the Govt. of India in Gazette of India dated 1.1.1982 Part 11 Section 3(ii) referred several disputes between them for arbitration by the Board comprising Shri G. Ramanujam and Shri R.P. Nevatia. The said Board of Arbitrators after hearing all the concerned parties and after considering the relevant material gave the award and the Govt. of India published it in the gazette of India, Extra Ordinary Part II - Section 3(II) dated 20.7.1983. The relevant extracts are as under, which are still in force.

We therefore, direct accordingly that no contract labour shall be employed in the industry (including packing) and unloading operations as stated by the First Wage Board, any employer in the any other occupations, such labour shall be made regular departmental employees under the employers and made eligible to the same wages, D.A., bonus and other allowances under our Award as the other regular employees under the Employer, provided they give the corresponding workload obtaining for similar occupation in units near about, where their compeers are getting Wages Board rates. We further direct that all workers employed in the permitted occupations of loading (including packing) and unloading, shall be given the same wages, D.A., bonus and other benefits as are given to the regular employees of the company.

2. Inspite of the aforesaid situation in the cement industry, the notification dated 4.10.1985 was issued by the State Govt. in exercise of the powers conferred under Sub-section (1) of Section 10 of the Act of 1970. The said notification issued by the State Govt. shall come into force on expiry of three months from the date of publication of the notification in the official gazette. It is alleged by the petitioners that the notification issued by the State Govt. is not the appropriate government for issuance of the notification.

3. In reply of the State Govt. it is alleged that the notification was issued by the State Govt. after due consultation with the State Board taking into consideration the process of loading and unloading, sweeping and cleaning of cement bags is

incidental and necessary also for M/s. J.K. Cements, Nimbahera, the said process is of perennial nature, the said process is ordinarily be done through regular workmen in similar establishment and the process requires a considerable number of wholetime workmen. It is further alleged that by virtue of the notification issued by the Central Govt. on 8.12.1977, the State Govt. is an appropriate government to issue notification under the Act of 1970 and thus, the notification is valid.

4. Section 10 of the Act of 1970 authorises the appropriate Govt. after consultation with the Central Board or, as the case may be, a State Board to issue notification prohibiting employment of contract labour in any process, operation or other work in any establishment. Sub-section (2) of Section 10 requires that before issuing such a notification under Sub-section (1) in relation to an establishment, the appropriate Govt. shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as 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; 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; whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto; and whether it is sufficient to employ considerable number of whole time workmen. Therefore, it is necessary for the appropriate Govt. to satisfy that the work for which contract labour is employed, is incidental to and closely connected with the main activity of the industry and is of a perennial and permanent nature, the abolition of contract labour would be justified. Practice obtaining in other industries in or about the same area must also be taken into consideration. The Act of 1970 does not abolish contract labour totally as such but has provided for abolition by the appropriate Govt. in an appropriate case u/s 10. It is for the Govt. to decide whether the employment of the contract labour in any establishment should be abolished or not and has to decide after considering the matter required to consider under Sub-section (2) of Section 10. Although the discretion is with the appropriate Govt., it is to be demonstrated that the discretion is being exercised after the appropriate Govt. has satisfied taking into consideration the factors mentioned in Sub-section (2) of Section 10 of the Act of 1970. The reply submitted by the State does not indicate that all the factors relevant for issuance of notification prohibiting contract labour, have been taken into consideration. It does not show that the appropriate Govt. has given regard to the conditions of work and the benefits provided for the contract labour in the petitioner's establishment. Neither it has been shown on the basis of relevant material that the work in question is done ordinarily through regular workmen in that establishment or an establishment similar thereto nor it indicates that the work is sufficient requiring permanent employment of considerable number of whole time workmen. Apart from this, the petition was filed on 3.3.1986. This Court by order

dated 4.3.1986 has stayed the operation of the notification dated 4.10.1985. The stay was confirmed on 18.9.1986 with liberty to the respondents to move for vacation of the interim order after filing of reply. No application has been moved nor any order has been passed for vacating the stay and as a result of the order passed by this Court, the notification issued by the State Govt. is not in force from 4.3.1986 till today. It is a considerable long period. The circumstances the then existing must have gone change in the industry requiring fresh look over the matter again by the State Govt. The notification does not stand the test of the parameters laid down under Sub-section (2) of Section 10 of the Act of 1970 for exercising discretion by appropriate Govt.

5. As regards the second submission made by the petitioner that the State Govt. is not the appropriate authority for issuing notification under the Act of 1970, it may be seen that Section 2 of the Act of 1970 the definition clause defines "appropriate Government. "Appropriate Government" means (1) in relation to an establishment in respect of which the appropriate Govt. under the Industrial Disputes Act, 1947, is the Central Govt., the Central Govt.; and (ii) in relation to any other establishment, the Govt. of the State in which that other establishment is situate. A notification was issued by the Central Govt. on 8.11.1977 whereunder the Central Govt. in pursuance of Sub-section (1)(i) of Clause (a) of Section 2 of the Industrial Disputes Act, 1947 specified the industry engaged in the manufacture or production of cement, to be a controlled industry u/s 2 of the Industrial Disputes Act, 1947, the appropriate Government would be any industry carried on by or under the authority of the Central Govt. By virtue of the notification issued, the cement industry being specified as controlled industry the Centra] Govt. becomes an appropriate Govt. for the purpose of Industrial Disputes Act, 1947 for that industry. By virtue of Section 2 of the Act of 1970, the appropriate Govt. under the Industrial Disputes Act, 1947 shall be the appropriate Govt. for the purpose of the Act of 1970 and thus Central Govt. is the appropriate Govt. under the Act of 1970, but the matter does not rest here. The Central Govt. has further issued notification on 8.12.1977 whereby all powers exercisable by the Central Govt. under the Industrial Disputes Act, 1947 and the Rules made thereunder in relation to the cement industry has to be exercised also by the State Governments subject to the conditions that the Central Govt. shall continue to exercise all the powers under the Industrial Disputes Act, 1947 and the Rules made thereunder relating to mines and queries even where such mines and queries form part of the cement industry. By virtue of notification dated 8.12.1977 all powers exercisable by the Central Govt. under the Industrial Disputes Act, 1947 have also become exercisable by the State Govt. in relation to the cement industry. The net result of this notification is that the State Govt. is authorised to exercise all the powers under the Industrial Disputes Act, 1947 conjointly with the Central Govt. on account of this notification, the controlled industry specified by the Central Govt. u/s 2(a)(1) of the Industrial Disputes Act, 1947 in relation to the cement industry would be State Govt. alongwith the Central Govt., the powers of the Central Govt. being

delegated to the State Govt. under the Industrial Disputes Act, 1947. By virtue of the notification dated 8.12.1977 issued by the Central Govt., the appropriate Government shall also be the State Govt. within the meaning of Section 2 of the Act of 1970 and is competent to issue notification u/s 10 of the Act of 1970. The challenge to the jurisdiction or authority to issue notification u/s 10 does not stand scrutiny of law and the submission is rejected.

6. For the aforesaid reasons, although the State Govt. has an authority to issue notification u/s 10 of the Act 1970, the impugned notification dated 4.10.1985 (Annex. 1) fails and is hereby quashed. It is made clear that the decision of this case will not debar the State Govt. to issue fresh notification u/s 10 of the Act of 1970 in accordance with law.