
(2001) 10 GUJ CK 0050
In the Gujarat High Court

Case No : Special Civil Application No's. 7479 and 10180 of 1999 with Special Civil Application No's. 3463, 3474, 3490 and 3548 of 2001

Kakrapar Tribal Workers Association

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 09-10-2001

Acts Referred:

Constitution of India, 1950 — Article 226

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

Citation : (2001) 10 GUJ CK 0050

Hon'ble Judges : P.B. Majmudar, J

Bench : Single Bench

Advocate : Girish Patel, Assoc in Special Civil application No. 7479 of 1999, Girish Patel, Assoc in Special Civil application No. 10180 of 1999 and Girish Patel, Assoc in Special Civil application Nos. 3463 to 3747 of 2001 and 3490 to 3548 of 2001, for the Appellant; Mukesh R. Shah, for Respondents Nos. 1, 2, 3-5, J.D. Ajmera, for Respondents Nos. 2, 4-5, K.B. Puwar, for Respondent No. 6, V.N. Upadhyay, in Special Civil Application No. 7479 of 1999, Mukesh R. Shah, in Special Civil Application No. 10180 of 1999 and Mukesh R. Shah for Respondent No. 1 in Girish Patel, Assoc for Petitioner No. 1, for the Appearing Parties

Final Decision : Dismissed

Judgement

P.B. Majmudar, J.—Since these matters are pending at an admission stage since 1999, the same are admitted with the consent of the parties and are taken up for final hearing today. Rule. Service of rule is waived by Mr. M.R. Shah, Ld. Advocate for the respondent nos.1 to 5, and Mr. Ajmera, Ld. Advocate for the respondent no.6.

2. So far as Special Civil Application No. 7479 of 1999 is concerned, it has been filed by Kakrapar Tribal Workers' Association, through its General Secretary, with a prayer that the decision taken by the Government of India not to abolish the system of contract labour in the works and jobs of gardening/horticulture at the plant site of Kakrapar Atomic Power Station is in violation of Section 10 of the

Contract Labour (Regular and Abolition) Act, 1970 and is illegal, null and void. It is also prayed that the decision of the Government of India not to abolish the system of contract labour in the said Organisation in the works and jobs of gardening/horticulture of Kakrapar Atomic Power Station should be considered as arbitrary, discriminatory, irrational, unfair and unreasonable. It is also prayed that the services of the concerned workmen should not be terminated by the Management. It is also prayed that the Government of India should abolish the system of contract labour and so far as the work of gardening/horticulture is concerned, the said relief is claimed in so far as the workmen who are serving at the Plant site of the Kakrapar Atomic Power Station are concerned. So far as this petition is concerned, it is confined to 12 workers who were serving in nearby areas and now subsequently they have been asked to discharge their services in the township through the contractor. These 12 employees have been continued by the contractor in view of the earlier interim order passed by this Court and accordingly, these 12 workers are in service as on today and they are working in the township of the Corporation.

3. So far as Special Civil Application No. 10180 of 1999 is concerned, the Kakrapar Tribal Workers Association has filed this petition for declaration that the decision of the respondent Govt. of India not to abolish the system of contract labour in the works and jobs of house-keeping, gardening, horticulture, helping at the Anumala Township of the Kakrapar Atomic Power Station is in violation of Section 10 of the Contract Labour (Regulation & Abolition) Act, 1970 and similar prayers like prayers in earlier Special Civil Application No. 7479 of 1999 have also been made in this Special Civil Application. So far as this petition is concerned, the dispute is about 65 employees, who were, at the relevant time serving through the contractor in the township and doing the work of horticulture/housekeeping/gardening etc. It is prayed in each of these petitions that looking to the nature of the work, it is a fit case in which the State Government should have issued necessary notification, prohibiting contract labour, by passing appropriate notification u/s 10 of the Act. It is also prayed that the concerned employee should be treated to be employee of the principal employer and that the principal employer should not terminate their services. The decision of the Central Government by which it has been decided not to abolish the contract labour system is produced at Page 116 of Special Civil Application No. 7479 of 1999. The said decision is dated 16.12.1999. By the aforesaid decision, the Government of India, Ministry of Labour decided not to abolish the contract labour system. It has been provided in the said order that such contract workers should be paid an emolument at the rate of Basic pay plus Dearness Allowance as is paid to the lower department employee. It is also mentioned in the said order that in pursuance of the recommendations of the Board, the matter has been considered in detail by the Central Government and it has been decided to allow continuance of contract labour in works/jobs of house-keeping/helpers in the plant area of Kakrapar Atomic Power Station, Surat, Gujarat. So far as Special Civil Application No. 10180 of 1999 is concerned, similar type of order is

passed by which it was decided not to abolish contract labour system. The aforesaid decision of the Central Government is challenged at the instance of the petitioner Union in these petitions. It is required to be noted that there is only a limited prayer in each of these petitions to the effect that the aforesaid order by which the Government has decided not to abolish contract labour system is an illegal order. There is no other prayer in the petition to the effect that the concerned workmen are discharging perennial type of work and at the time of hearing of these petitions, Mr.Yagnik, Ld. Advocate for the petitioners has fairly submitted that he is restricting his argument only to the limited point of the notification in question and that except asking the Central Government to issue notification prohibiting contract labour system. no other argument has been made. In view of the aforesaid submission of Mr.Yagnik, it is required to be considered whether the Central Government is justified in not prohibiting contract labour in the instant case and whether the decision arrived at by the Central Government is just and proper. This Court in these petitions therefore is not concerned whether the employees are discharging perennial type of work or the contract is a sham and camouflage.

4. It has been argued by Mr.Yagnik that before arriving at this decision, the Government has not properly considered the facts and circumstances of the case and that there is a procedural impropriety and there is a procedural defect in as far as the Government has not properly considered the submissions of the employee-workmen/Union representatives justifying their case for abolition of contract labour system from the Institutions. It is argued by Mr.Yagnik that the Advisory Board has not given any hearing to the petitioner Union before forming its opinion not to abolish contract labour system from the institution. Mr.Yagnik also further submitted that the petitioners have not been provided with the report of the Advisory Board and that has resulted into prejudice in so far as the petitioners could not properly represent their case justifying their demand for abolition of contract labour system from the institution and the right to challenge the said decision is adversely affected for want of the said important documents. As stated earlier, so far as the employees, on whose behalf SCA No. 10180 of 1999 is filed, are concerned, from day one, i.e. from the date on which the petition was filed, the concerned employees are not in service even through contractor and so far as the first petition is concerned, as stated earlier, by virtue of interim order of this Court, the concerned 12 workmen are continued by the contractor in the township.

5. It is not in dispute that before the Advisory Board submitted its report to the Central Government, a Sub-Committee was appointed to examine the question whether the contract labour system is required to be abolished from the Organisation. The copy of the report of the Sub-Committee is produced at Page 111. As per the said report, the Committee is constituted by the Central Advisory Contract Labour Board, Ministry of Labour, there was a preliminary discussion on 19.2.98 and thereafter the Committee visited Kakrapar Atomic Power Station on 20.2.98 and 21.2.98. The Committee had detailed discussions with the

management of KAPS, with the contract labourers as well as with the representative of the contract labourer. The Committee had also made physical inspection and had examined the jobs/works handled by the contract labour. The Management had also given its views on the aforesaid subject. It has been found by the Sub-Committee as per its report that the Kakrapar Atomic Power Station, Surat is Fifth in the series of Atomic Power Stations in India and constitutes two units of 220 MWe Nuclear Reactors. The first unit started operation in May, 1993 and the second unit started in September, 1993. Both the plants are based on advanced technology and their commissioning involved massive efforts and considerable time. The man-power required for operation of the project for all regular and perennial activities connected with the maintenance of the plant has been studied and recommended by High-power Committee of Scientists and Technocrats constituted by the Department of Atomic Energy and approved by Indian Atomic Energy Commission. The Committee has also considered the number of employees serving through contract labour doing the works/jobs of house-keeping, material handling, grass-cutting, gardening/horticulture works etc. It has been found that out of 170 workmen, 100 are working in plant handling jobs of house-keeping and material handling and remaining 75 are employed in gardening/horticulture jobs, grass-cutting and house-keeping in colony etc. The Sub-Committee ultimately found that the Establishment is not engaging any contract labourers as attendants, ayas and riggers. The works/jobs of gardeners carrying out the jobs of gardening/grass cutting, horticulture and tea plantation etc. at plant site or at residential township are occasional/seasonal in nature and in no way the same are connected to the main process/activity of the establishment. The work/jobs of house-keeping in the residential township are required to be carried out by the allottees of the quarters and it is part-time in nature and as informed by the management, the work is likely to be taken over by the Gram Panchayat in near future and hence it is not of a perennial nature. It is also found that the works/jobs of house-keeping/helpers in the plant premises are available but the same is fluctuating in nature depending upon the exigencies of the work. It is also found that, at present, the number of days contract labour is employed approximately comes, on an average for 15 days in a month to each contract labourer. After considering the aforesaid facts and circumstances of the case and that too after physical verification of the Plant and site and after hearing the Management as well as the representative of the employees, the Sub-Committee submitted the aforesaid report to the Board. It is not in dispute that the copy of the said Sub-Committee was made available to the petitioner Union. It is required to be noted that on behalf of the petitioners, no comments were offered against the aforesaid report of the Sub-Committee. There is some dispute whether any personal hearing was given by the Advisory Board or not. It is the say of the petitioners that at the relevant time, the representative of the Union could not remain present before the Advisory Board on the day they were lastly asked to remain present. However, it is pointed out by Mr.M.R.Shah, Ld. Counsel for the respondent no.1 to 5 and Mr.Ajmera, Ld. Advocate appearing for the respondent no.6 that as a matter of fact, ample

opportunity was given and in fact the petitioner availed that opportunity by remaining present in the meeting of the Board held on 25.8.1998. At this stage, reference is required to be made to the affidavit in reply filed by one Anilkumar Sinha, Asst. Labour Commissioner (Central), Ahmedabad. In the said affidavit in reply, in Para 5 & 6, it is stated as under:-

"5. I say and submit that the reports of the Committee was placed before the 36th and 37th meeting of CACLB held on 13/5/98 and 24/25-8-98. I say and submit that CACLB after detailed discussion envisaged recommendation to the committee for allowing/continuing of contract labour in the jobs/works. I say and submit that the Govt. has accepted the recommendation of CACLB after applying its mind as the conditions set out in section 10(2) of the act were not satisfied. Accordingly decision of the Govt. was communicated vide reference dated 16.12.1998 not to prohibit the employment contract labour in the said jobs/work.

6. I say and submit that the decision of the Govt. of India is after considering with the provision of Section 10 of the Contract Labour (Regulation & Abolition) Act, 1970. I say and submit that the decision has been taken after due consultation with the CACLB. I say and submit that the works/jobs of the contract labour are occasional and seasonal in nature and not connected to the main process/activity of the establishment. I say and submit that in view of the fact that the jobs in the plant premises are not available on full time basis and fluctuating in nature in depending upon the exigencies of the work, the decision is reasonable, logical, valid and in accordance with law."

Though, of course, Mr.Yagnik for the petitioner seriously argued that no effective representation was allowed to be made as the Board had already taken decision and the so called hearing was merely a farce. It is required to be noted that the petitioner-Union was given copy of the Sub-Committee's report which the Union has never challenged by filing detailed representation before the Board. If there was any apprehension on the part of the petitioners that the Board is not likely to give them or provide them hearing, they could have submitted the same in writing. Apart from that, on behalf of Union of India, it has clearly been stated in the affidavit of the respondent that hearing was given by the Advisory Board and there is no reason for me to doubt the aforesaid affidavit in reply. In any case, since there are highly disputed questions of fact involved and when in the affidavit in reply, details have been given about such hearing, it is not possible for me to accept the say of Mr.Yagnik that the Advisory Board has not considered their case or no hearing was given. It is required to be noted that the report of the Board is based on the report of the Sub-Committee. The Sub-Committee has given detailed reasons for forming an opinion as to why the contract labour system is not required to be abolished. While exercising my powers under Article 226 of the Constitution of India, I am not exercising my appellate jurisdiction and I cannot reappreciate the facts and find out whether the recommendations of the Sub Committee, which were accepted by the Board, are proper or not, but even otherwise, considering the report of the Sub-Committee which ultimately was

accepted by the Board, I am satisfied that adequate reasons have been given by the Sub Committee and on that basis, the Board had formed its opinion. In my view, therefore, when the Sub-Committee's report was made available to the petitioner Union and ultimately when after hearing the concerned parties, the Advisory Board has formed its opinion not to abolish the contract labour system from the Institution, it cannot be said that the said decision is illegal or arbitrary, as ultimately the Central Government has accepted the aforesaid report in toto. The Central Government has also stated in the order that after considering the report in detail, the Central Government has taken the decision not to abolish contract labour system. In fact, the Central Government has also directed the Management to give benefit of pay scale as mentioned in the order. In view of the aforesaid reasons, I do not find any substance in the argument of Mr.Yagnik to the effect that the petitioner Union was not given any hearing by the Board or that proper opportunity was not given to the Association to represent their case before the Board.

6. It was then contended by Mr.Yagnik that the copy of the report of the Board was not made available to him. It is required to be noted that even though these petitions are pending since 1999, no such averment is made in these petitions and there is nothing on record to show that any such demand was made. Even otherwise, the decision of the Board is based on the report of the Sub Committee and the Sub-Committee's report was accepted by the Central Government in toto. When the report of the Sub-Committee was made available to the petitioner-Union, and ultimately, when the recommendation of the Board was based on the Report of the Sub-Committee, it is not much relevant whether the report of the Board was made available to the petitioner or not. The petitioner Union has also not objected non-supply of the Report of the Board at any point of time in the past and even in the petition, no such contention is raised. The argument is raised for the first time at the time of hearing of this petition. It, therefore, cannot be said that any prejudice is caused to the petitioner by not giving the petitioner a copy of the report of the Board. I, therefore, do not find any substance in the argument of Mr.Yagnik.

7. Mr.Ajmera, appearing for the Institution, has stated that the tribals, who have lost their lands, have formed their society and the aforesaid members of the society have been given the contract in the township for the purpose of cleaning, sweeping, gardening etc. Over and above the aforesaid society which has been given this work, some other contractors are also sending their employees for doing the aforesaid work. Under the aforesaid circumstances and considering the reasoning given by the Sub Committee as well as considering the reasoning given by the Central Government in taking decision not to abolish contract labour system, it cannot be said that the said decision is bad in law in any manner. It is argued by Mr.M.R.Shah that if the contract labour system is abolished, then it would result in unemployment as there is no adequate work, which can be provided to all the employees, who are, at present, serving through the contract labour and, accordingly, many labourers will be deprived of the work. This aspect

has also been taken into consideration by the Central Government at the time of arriving at the decision for not abolishing the contract labour system.

8. Considering the aforesaid facts and circumstances, therefore, it cannot be said that the decision of the Central Government in deciding not to abolish the contract labour system is vitiated in any manner worth the name. In fact, more than adequate attempt was made to find out the truth and reality by the Advisory Board and to find out whether the contract labour system was required to be abolished. A Sub Committee was formed, site was visited, say of the workers and management was taken into consideration and after physical verification of the work in question, ultimately, the report was submitted. In my view, therefore, the decision of the Central Government is based on the recommendations of the Sub-Committee's report, and on that basis, ultimately, if the Board has formed its opinion not to abolish the contract labour system, it cannot be said to be illegal or arbitrary or cannot be said to have been vitiated in any manner.

9. Mr.Yagnik further argued that the Central Government has not taken independent decision and the order of the Central Government is cryptic in nature. This argument is required to be noted only for rejection as the order of the Central Government is very clear. Mr.Yagnik has cited certain judgements to substantiate his say that while issuing notification u/s 10(1) of the Act, certain aspects are required to be borne in mind by the Board. At this juncture, reference is required to be made to Section 10 of the Act, which reads as under:-

"10. Prohibition of employment of contract labour (1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.

(2) Before issuing any notification under sub-Section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as -

(a) Whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment;

(b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;

(c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;

(d) whether it is sufficient to employ considerable number of whole time workmen."

It is required to be noted that this is not a case where it is decided to abolish contract labour system by issuance of notification. This is a case in which ultimately it has been decided not to abolish contract labour system and before taking such decision, appropriate care is taken in the matter after proper investigation and visit of the site and on the basis of the recommendations of the Sub Committee, the Advisory Board gave its opinion not to abolish contract labour system and that opinion was accepted by the Central Government. The decision, which Mr.Yagnik relied on, therefore, has no relevance to the facts of the present case. As stated earlier, since this petition is confined only to the aforesaid fact of abolition of contract labour system and since no other point is involved in these petitions, I find no substance in the aforesaid argument of Mr.Yagnik. When this Court suggested whether the petitioners would like to approach the appropriate forum under the Industrial Law, Mr.Yagnik submitted that the petitioner Union is not willing to approach the forum under the Industrial Law, as, according to him, the petitioner-Union is interested only in abolishing the contract labour system. Mr.Yagnik has also further submitted that it is not his case that the contract labour system in question is sham or bogus or the employees, who are recruited by such contractor, are discharging perennial type of work. In view of the aforesaid argument of Mr.Yagnik, it is not necessary to give any direction asking the petitioner Union to approach the Forum under the Industrial Disputes Act and in view of the statement of Mr.Yagnik, that the contract labour system is not sham or bogus, it is not necessary to ask them to approach the appropriate Forum available under the Industrial Disputes Act. Since, I do not find any substance in the argument of Mr.Yagnik that the Government should reexamine the case of issuance of notification for abolishing the contract labour system, no relief can be given to the petitioners.

10. Before parting with this judgement, reference is required to be made to 2 judgements cited by Mr.Yagnik. One of the judgements is of the Learned Single Judge in the case of Gujarat Narmada Valley Fertilizers Co. Ltd. Vs. State of Gujarat and Others, . This Court, while deciding the question whether the notification for abolition of contract labour system was properly issued or not, has observed in Para 40 as under:-

"40. Another ground raised by the petitioners challenging the notification is that it has been issued in breach of principles of natural justice. It was urged that though the petitioners were given an opportunity of hearing before the Advisory Board in which they had participated also but as the ultimate decision making authority is the State Government hearing by the Advisory Board and decision by the State Government does not satisfy the test of a fair opportunity of hearing. It was urged that an opportunity of hearing is necessarily required to be given to the petitioner as notification acts adversely to the petitioners" interest and once that is established the hearing must be by the person who is entrusted to take decision and not by the consultative body."

In my view, the said decision has no applicability to the facts of the case, firstly,

because that was a case where notification prohibiting contract labour system was issued by the Government. At the time of issuing notification certain facts were not considered at all. In the instant case, this is a case where a decision was taken by the Central Government not to abolish contract labour system. The said decision was taken on the basis of rational material available on record, which I have already discussed earlier.

Even the Honourable Supreme Court in the case of Steel Authority of India Ltd. & Ors. V. National Union Water Front Workers & Ors reported in JT 2001 (7) SC 268, held as under:-

"Neither Section 10 of the CLRA Act nor any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by appropriate Government under Sub-section (1) of Section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order absorption of the contract labour working in the concerned establishment."

Mr.Yagnik has also relied upon the judgement of the Division Bench of this Court given in Special Civil Application No. 6265 of 1991 wherein this Court has taken the view that the relevant material should be available. In that case, at the time of arguments, when the report of the Advisory Board was asked for, the Government had claimed privilege and this Court made an order that report should be made available. In the instant case, no such prayer was made and no application was made even till today, and, as stated earlier, the report of the Board is based on the Sub Committee report, which is a detailed report, and a copy of the same has been given to the petitioner-Union long back. The petitioner-Union was itself satisfied by the said report as they have not lodged any objection. It seems that they were convinced about the reasonings given by the Sub Committee. I, therefore, do not find any substance and, therefore, the said observations in the said judgement do not come to the rescue of the petitioner-Union.

Initially, the Special Civil Applications were filed by the Union challenging the action of the Government in not abolishing the contract labour system. Subsequently, one page petitions were filed and accordingly, all the above petitioners are heard together and disposed of. The petitions are devoid of merits and are accordingly rejected. Interim relief granted earlier shall stand vacated. No order as to costs.