

(1996) 01 BOM CK 0033

In the Bombay High Court

Case No : Writ Petition No. 3250 of 1991

Mahindra and Mahindra Ltd. and Another

APPELLANT

Vs

State Of Maharashtra and Others

RESPONDENT

Date of Decision : 22-01-1996

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 10, 10(1), 10(2), 12, 7
Industrial Disputes Act, 1947 — Section 2

Citation : (1996) 3 BomCR 439 : (1996) 74 FLR 2164 : (1997) 1 LLJ 900 :
(1996) 2 MhLj 21

Hon'ble Judges : G.R. Majithia, J;Devkant Trivedi, J

Bench : Division Bench

Advocate : C.U. Singh, instructed by M/s. Haresh Mehta and Co, for the
Appellant; R.J. Mane, for the Respondent

Judgement

G.R. Majithia, J.—Mahindra and Mahindra Ltd. - 1st Petitioner and its employee and shareholder Rajan Narayan - 2nd Petitioner - have challenged Maharashtra Government Notification dated March 26, 1991 prohibiting employment of contract labour in the process, operation and other work, namely, house-keeping and sweeping, in the establishment of 1st petitioner, in this petition under Article 226 of the Constitution of India.

2. It is contended by the petitioners in the Writ Petition that the 1st petitioner-company is engaged in the manufacture and sale of 2/4 wheel drive vehicles and automotive components; that the company employs a large number of workmen who are directly or indirectly connected with the manufacturing processes, or are employed to perform incidental functions, such as accounts, clerical jobs and sales; that the company also engages workmen to perform functions which are entirely unrelated to or unconnected with its manufacturing activities, such as house-keeping, sweeping, garden maintenance, etc.; that these tasks are neither incidental to the company's main functions; nor are its employees or supervisors trained to efficiently perform such functions; that the company gets such jobs done by specialised contractors who supply not only the expertise for the job but

also the requisite labour; that in the year 1979, the recognised union of the company's employees demanded that the house-keeping and lavatory cleaning functions be contracted out and that all company workmen engaged in these jobs be redeployed in other areas; that the company acceded to the request of the union and contract labour system was introduced for house-keeping and lavatory cleaning in or about the year 1979 or 1980; and that the General Industries Kamgar Union (respondent No. 3) demanded abolition of the contract labour system vide its letter dated January 20, 1984 and January 21, 1984.

The matter was examined by the State Advisory Labour Board who advised abolition of contract labour. The notification is, inter alia, challenged on the following grounds :

"(a) That the impugned Notification is ex facie misconceived, without jurisdiction and unsustainable in law, and therefore deserves to be quashed and set aside by this Honourable Court in the exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India.

(b) That the impugned Notification is ex facie bad in law and unsustainable, inasmuch as the various factors listed under sub-sections (1) and (2) of Section 10 were not even considered by the Government or the State Advisory Board before recommending abolition. Had the respondents cared to consider the requirements of Section 10(2) of the said Contract Labour Act, they would have realised that the primary factors which are required to be considered are the wage levels, benefits and service conditions obtaining for contract workmen in the establishment. It is only if these are found to be deficient with reference to wage levels and service conditions in the concerned region, that a further enquiry in respect of the factors set out in sub-section (2) of Section 10 can be embarked upon. In the instant case, neither the Board nor the Government cared to examine the service conditions of the contractors' workmen in the petitioners' factory, and the impugned Notification is therefore clearly vitiated;

(c) That indeed, the impugned Notification is wholly without jurisdiction and unsustainable inasmuch as the relevant preconditions for exercise of the power under Sections 10(1) were not made out. The 1st and 2nd respondents also acted without jurisdiction since they failed to examine the relevant and germane materials placed before them by the petitioners, and instead placed reliance upon patently irrelevant, extraneous and immaterial factors;

(d) That the Board as well as the State Government ex facie erred in abolishing contract labour in house-keeping and sweeping operations even though the wage levels, additional benefits, leave facilities and other service conditions of these contract workmen are far better than those prescribed by the Government itself, and are also far better than those paid to the vast majority of directly employed workmen in other units in the same region;

(e) That the recommendations of the 2nd respondent are unsupported by reasons, and constitute a non-speaking order which is clearly violative of the

Rule of Reason as also the fundamental principles of natural justice. It is well settled that any order or finding which causes prejudice or results in civil consequences for a party, must be speaking order which sets out the reasons which weighed with the authority concerned in coming to its conclusions. This requirement is even greater where a party contests the demand for abolition of contract labour, and such party not only files detailed submissions in support of its defence, but is also heard at the preliminary stages of the proceedings. In the absence of reasons which would establish the link between materials considered by the Board or Government and the conclusions arrived at by them, the impugned Notification is clearly vitiated;

(f) That the impugned Notification is also vitiated inasmuch as it is based upon recommendations of the State Advisory Board which were made in utter violation of the fundamental principles of natural justice. The petitioners' request for a short adjournment of the hearing scheduled on June 20, 1989 was refused, and proceedings before the Board were concluded, even though the petitioners had no notice of the meetings fixed on that day, and had learnt about the same by sheer chance. In the circumstances, denial of the request for adjournment and the Board's action of concluding the hearings ex parte are ex facie violative of natural justice as well as the petitioners' fundamental rights under Article 14 of the Constitution of India;

(g) That the impugned Notification is also ex facie unsustainable inasmuch as it is based upon recommendations which are vitiated by bias. Shri B. S. Dhume, President of the General Industries Kamgar Union, which raised the demand for abolition of contract labour, was also a Member of the State Advisory Board which entertained the said demand. In the circumstances, it is clear that there is a reasonable likelihood of bias, and that the recommendations are therefore unsustainable;

(h) That the findings of the State Contract Labour Advisory Board as well as the State Government are ex facie perverse, as no reasonable person could have come to the conclusions of the said authorities on the basis of the materials before them;

(i) That the impugned Notification, as well as the recommendations upon which it is based, suffer from utter non-application of mind to the relevant factors, and such non-application is patent on the face of the record;

(j) That the impugned Notification is clearly violative of the petitioners right to carry on business under Article 19(1)(g) of the Constitution of India. The aforesaid fundamental right can be fettered only by reasonable restrictions in accordance with law. In the instant case, the restriction placed on the petitioners' aforesaid fundamental right cannot be termed as reasonable, inasmuch as it seeks to abolish contract labour even though such labour was introduced at the behest of the recognised union of employees, and though such contract labour are paid wages and granted benefits which are far superior to

those paid to direct employees in the vast majority of industries. Abolition of contract labour in an industry which pays contract workmen at rates much higher than the prescribed minimum wage and ensures security of tenure with all consequent benefits such as bonus, provident funds, Employees State Insurance, gratuity and so on, is clearly contrary to the scheme of the Act, and therefore violative of the rights guaranteed under Article 19(1)(g);

(k) That in any event, and without prejudice to the foregoing contention, abolition of contract labour in an industry which pays contract workmen at rates in excess of what is paid to direct workmen in most other engineering units in the region, is ex facie discriminatory, unfair and violative of the petitioners' fundamental rights under Article 14 of the Constitution of India;

(l) That the recommendation of the 2nd respondent and the consequent Notification issued by the 1st respondent are ex facie bad at law and unsustainable inasmuch as the authorities concerned have completely failed to note that the contract labour system was introduced in house-keeping and sweeping processes by the petitioners at the behest of the recognised union of workmen. Having themselves sought and obtained the introduction of the contract labour system and thereby gained absorption of the erstwhile directly employed sweeping/house-keeping workmen in other departments and jobs, the workmen were clearly estopped from seeking absorption of the contract workmen in direct employment;

(m) That otherwise also, the impugned Notification is ex facie bad at law and on facts, and is liable to be quashed and set aside by this Honourable Court".

3. The extract from the recommendations of the State Contract Labour Advisory Board indicates that after giving opportunity of hearing to the union and the employer, and after considering the rival contentions, it proposed for abolition of contract labour in house-keeping and sweeping and declined to abolish contract labour system in the maintenance of gardens. After receipt of the recommendations of the Advisory Board, taking into consideration other factors, respondent No. 1 issued the notification under challenge.

4. Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (for short "the Act") reads as under :

"10.(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.

Explanation. - If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final."

A reading of this section indicates that it vests the appropriate Government with authority to prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment. Before doing so, the appropriate Government has to consult the Central or State Advisory Board, as the case may be, and to have regard to the conditions of service and benefits for the contract labour in that establishment and to the other relevant factors mentioned in Clauses (a) to (d) of sub-section (2) of Section 10 of the Act. The Central and the State Advisory Boards consists of representatives of the workmen, of the industry and of the contractor. Consultation with these Boards means that the representatives of the workmen, of the contractor and of the industry will have a voice in expressing their views, when the Board concerned is being consulted, with regard to the proposal to prohibit contract labour. Sub-section (2) lays down sufficient guidelines for deciding upon the question of abolition of contract labour in any process, operation or other work in any establishment and the appropriate Government, while taking action under this section will have an overall picture of the Industry carrying on single activity.

5. Where the Parliament purports to restrict judicial review by conferring powers on an authority in "subjective term" inasmuch as such authority is entitled to act when "it is satisfied" or when "it appears to it" or when "in its opinion" it thinks proper to act, the power of the Courts to examine as to whether such satisfaction or opinion is based on relevant considerations and has been made in good faith, is not ousted. In the instant case, we find that the State Government issued the Notification after consulting the State Advisory Contract Labour Board. The State Advisory Board gave opportunity of hearing to all the concerned parties and after careful assessment of the rival contentions, it proposed abolition of contract labour in the work of house-keeping and sweeping and declined the abolition in maintenance of gardens. The fact that the State Advisory Board did not accept the contention of the union to advise abolition of contract labour in the maintenance of gardens, points out that it was fully conscious of its obligations

under the statute. The State Advisory Board appears to be conscious that the object in engaging contract labour instead of direct employees is the monetary advantage by reducing expenditure. It advised abolition of contract labour where the conditions mentioned in Section 10(2) of the Act were fulfilled. The State Government has issued the notification after consulting the State Advisory Board and the person challenging the same has to bring on record the material on the basis of which it could be urged that the notification was issued on some extraneous consideration or without taking into account the relevant factors mentioned in Section 10(2) of the Act. No such material has been produced before us or referred to in the writ petition. In the Writ Petition, only general allegations have been made and no factual basis has been laid for challenging the notification abolishing contract labour system.

6. Learned counsel for the petitioner submitted that respondent No. 3 had no locus standi to move the appropriate authority for abolition of contract labour system in the plant of the petitioner. This plea is not taken in the Writ Petition. When the representative of respondent No. 3 participated in the deliberations before the State Advisory Board, no exception was taken by the representative of the petitioner. The objection at the argument stage cannot be permitted. Even otherwise, the Act does not prescribe the authority who has to move for abolition of contract labour system and the absorption of the contract employees in the service of the principal employer. The workmen of the contractor can raise such dispute since in raising such dispute the workmen concerned would be proceeding on the basis that they are in fact the workmen of the principal employer and not of the contractor. The workmen of the contractor are the members of respondent No. 3 - Union and they can act through the union and this is what precisely has been done.

7. Learned counsel for the petitioner then submitted that the notification does not indicate that the appropriate Government had taken into consideration the conditions of work and benefits provided for the contract labour in the establishment of the employer. This submission is devoid of merits. The notification specifically recites that the State Government after consulting the State Advisory Board and having regard to the condition of work and benefits provided for the contract labour and other relevant factors, such as those referred to in Clauses (a) to (d) (both inclusive) of sub-section (2) of Section 10, prohibits employment of contract labour in the process, operation and other work of house-keeping and sweeping, of the establishment of the employer. The language of the notification is suggestive that the appropriate Government has taken note of the relevant data while issuing the notification. No material has been placed before us except a bald assertion that the appropriate Government has not considered the conditions of work and benefits provided for the contract labour as enjoined under sub-section (2) of Section 10. The final act will be presumed to have been done in accordance with law till it is proved otherwise.

8. Learned counsel for the petitioner referred to the following judgments at the

Bar :

(i) Shramik Uttarsh Sabha Vs. Raymond Woolen Mills Ltd. and others, ; (ii) Maharashtra General Kamgar Union, Bombay Vs. Solid Containers Ltd. and others, ; (iii) Dena Nath and others Vs. National Fertilisers Ltd. and others, ; (iv) R.K. Panda and Others Vs. Steel Authority of India and Others, ; (v) Gujarat Electricity Board, Thermal Power Station, Ukai Vs. Hind Mazdoor Sabha and Others, and (vi) Union of India (UOI) Vs. Tarachand Gupta and Bros, .

(i) In Shramik Uttarsh Sabha's case, the Apex Court adjudicated upon the question of representation before the Industrial Court in complaints relating to unfair labour practices under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The Apex Court held that representative union can appear in proceedings relating to unfair labour practices other than those specified in Items 2 and 6 of the Schedule IV of the MRTU & PULP Act.

(ii) In Maharashtra General Kamgar Union's case, this Court, apart from other matters dealt with the question as to who has the right to file a complaint under the MRTU & PULP Act.

(iii) In Dena Nath's case, the Apex Court, dealt with the question that if the principal employer under the Contract Labour (Regulation and Abolition) Act, 1970 does not get registration u/s 7 of the Act and/or the contractor does not get a licence u/s 12 of the Act, whether the persons so employed by the principal employer through the contractor would be deemed to be the direct employees of the principal employer or not.

(iv) in R. K. Panda's case, the Apex Court examined the scope of the Contract Labour (Regulation and Abolition) Act, 1970 and held that the Act recognised contract labour and the framers of the Act never purported to abolish it in its entirety. The primary object was that there should be no exploitation of the contract labourers by the contractor of the establishment.

(v) In Gujarat Electricity Board's case, the Apex Court dealt with the scope and ambit of Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970. The Apex Court also examined as to under what circumstances the workmen of the ex-contractor can raise industrial dispute for abolition of contract labour by the principal employer. The Apex Court dealt with the definition of the term "industrial dispute" u/s 2(k) of the Industrial Disputes Act and held that since the workmen of the ex-contractor were asking for absorption by the principal employer, they could raise the industrial dispute. While dilating on this matter, the Apex Court observed that the workmen of the ex-contractor can raise a dispute. The Apex Court further observed that certain public sector undertakings were not abolishing contract labour system for pecuniary gains.

(vi) In Union of India's case, in para 21 of the Report, the Apex Court observed that the officer of the Customs Department should only take relevant factors into

consideration and not those factors which the officer had no right to take into consideration for determination of the dispute before him.

These decisions have no bearing or relevancy to the facts of the instant case. As observed earlier, in the instant case challenge has been made to the notification issued u/s 10 of the Act prohibiting employment of contract labour in the process, operation and other works specified in Column No. 3 of the Schedule to the notification. We have held earlier that the notification is perfectly legal and valid and no material has been produced before us from which it can even remotely be suggested that the notification had been issued without taking into account the relevant factors mentioned in sub-section (2) of Section 10 of the Act.

9. In fairness to the counsel, it has to be observed that the counsel referred to the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act for pointing out as to who can file a petition under that Act for reliefs envisaged thereunder. The provisions of that Act cannot be resorted to for determining the locus standi of persons or individuals for moving the appropriate Government for abolition of the contract labour system. Various Acts operate in different fields and the question of locus standi cannot be determined for the reliefs available under a statute by resorting to entirely different statutes operating in different fields.

10. For the reasons stated above, the Writ Petition fails and is dismissed. The Rule is discharged. No order as to costs.

11. In the facts and circumstances of this case, we think it proper to issue direction to the petitioner No. 1 to take steps for abolition of the contract labour system and for absorption of the workmen of the contractor in its service expeditiously. Petitioner No. 1 will take steps in this behalf in accordance with law within three months from today.