
(1999) 08 RAJ CK 0004

In the Rajasthan High Court

Case No : C.W.P. No's. 326, 486 and 489 of 1986

Mangalam Cement Ltd.

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 18-08-1999

Acts Referred:

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

Citation : (2000) 1 LLJ 505

Hon'ble Judges : J.C. Verma, J

Bench : Single Bench

Advocate : Mahendra Singh, for the Appellant; M.D. Agrawal, for the Respondent

Final Decision : Allowed

Judgement

J.C. Verma, J.—All the three writ petitioners are commonly aggrieved against the notification issued in the Government Gazette dated October 4, 1985 published in Rajasthan Gazette on December 5, 1985 under Sub-section (2) of Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as the Act) in regard to the employment of contract labour in Mangalam Cement Ltd., Associated Cement Company and Hindustan Sugar Mills Ltd. Udaipur Cement Works is a unit of Hindustan Sugar Mills. In the aforesaid notifications issued by the State Government, it was stated that in exercise of the powers conferred by Sub-section (i) of Section 10 of the Act, the State Government after considering the recommendations of the Rajasthan State Contract Labour Advisory Board had ordered that the employment of contract labour in the process of loading of filled cement bags in Wagons/Trucks and in the work of sweeping/cleaning of spilled cement occurring in the process of packing and loading shall be prohibited with effect from expiry of three months period from the date of publication of the notification in the official Gazette. Similarly, some other notifications were issued in this regard, in regard to some other cement factories including J.K. Cement Factory. Being aggrieved against

the said notification as published on December 5, 1985, the petitioners have filed the abovesaid writ petitions for the purpose of determining the common question, the facts are being taken from the writ petition No.486/86 Associated Cement Company Ltd. v. State of Rajasthan. The notification reads as under :

"G.S.R. 62--Whereas, the State Government has considered the factors laid down in Sub-section (2) of Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (Central Act 37 of 1970), in regard to the employment of contract labour in A.C.C. Cement Works, Lakheri in the process operation hereinafter mentioned :

Now therefore, in exercise of the powers conferred by Sub-section (i) of Section 10 of the said Act, the State Government after considering the recommendation of the Rajasthan State Contract Labour Advisory Board, hereby orders that the employment of contract labour in the following process operation in A.C.C. Cement works, Lakheri shall be prohibited with effect from expiry of three months period from the date of publication of the notification in the official Gazette:--

(i) in the process of loading of filled cement bags in Wagons/trucks, wherein loaders, chutemen and bag arranger cum supplier are employed (who supply empty gunny bags from stock kept on the packing floor to packing machines).

(ii) in the work of sweeping, cleaning of spilled cement occurring in the process of packing and loading (i.e. sweeping/cleaning in packing plant building, stacking and loading platforms)."

2. Apart from the various grounds of discrimination and other grounds, the common ground which is applicable to all the writ petitions as argued is that the State Government was not competent to issue such notification and had no authority what-so-ever; it is submitted that the said notification is void ab initio as it could only be issued by the appropriate Government as defined u/s 2(1)(a) of the Act and as such is not binding on any of the petitioners. To decide the points involved in the case, it is necessary to reproduce certain provisions of the Act, the definitions and various notifications, The relevant portion of Section 10 of the Act 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 benefit 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."

3. From the reading of Section 10(1) of the Act, it is clear that the notification is to be issued by the appropriate Government after consultation with the Central Board as the case may be, State Board.

4. The "Appropriate Government" has been defined to be the Central Government in respect of which the appropriate Government under the Industrial Disputes Act, 1947 is the Central Government. The definition of Section 2(a)(i) of the appropriate Government in the Act is as under:--

"(a) "appropriate Government" means,

(i) in relation to an establishment in respect of which the appropriate Government under the Industrial Disputes Act, 1947, is the Central Government,

(ii) in relation to any other establishment the Government of the State in which that other establishment is situate."

5. The appropriate Government has also been defined under the Industrial Disputes Act u/s 2(a) of the Act wherein certain industries had been mentioned and enumerated for the purpose of referring the dispute by the Central Government. It is provided in Section 2(a) of the Industrial Disputes Act that the Central Government is authorised to issue a notification in regard to certain industries which may be specified by it and in that situation the appropriate Government for referring the matters for Industrial Disputes Act is the Central Government. The relevant part of the definition u/s 2(a)(i) of the Industrial Disputes Act is as under :

2. Definition--In this Act, unless there is anything repugnant in the subject or

(a) "appropriate Government".

(i) in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government or by a railway company or

concerning any such controlled industry as may be specified in this behalf by the Central Government, (italicised by me).

6. Counsel for the parties submits that vide notification dated November 8, 1977 published in the Gazette of India on November 8, 1977 the manufacture or production of cement industry has been declared as specified as controlled industry u/s 2(a)(1) of the Industrial Disputes Act read with Section 2 of the Industries (Development and Regulation) Act, 1951, copy of which notification has been attached as Annexure-3 to the writ petition. Annexure-3 is reproduced as under :

MINISTRY OF LABOUR

NOTIFICATION

New Delhi,

November 8, 1977

S. O. 757(E)--In pursuance of Sub-clause (i) of Clause (a) of Section 2 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby specifies, for the purposes of that sub clause, the controlled industry engaged in the manufacture or production of Cement, which has been declared as a controlled industry u/s 2 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

7. Reply has been filed on behalf of the respondents wherein it is stated that the impugned notification was issued by the State Government after consultation with the State Board.

8. In a similar matter, this Court in the case reported in J.K. Synthetics Ltd v. State of Rajasthan 1998 Lab IC 1854, on the point raised in regard to competency of the Central Government, held that in view of the notification dated December 8, 1977, all powers exercisable by the Central Government under the Industrial Disputes Act, 1947 were also made exercisable by the State Government in relation to the cement industry and the net result of this notification was that the State Government was authorised to exercise all powers under the Industrial Disputes Act, 1947 conjointly with the Central Government on account of this notification, the controlled industry specified by the Central Government u/s 2(a)(i) of the Industrial Disputes Act in relation to the cement industry would be State Government as well as the Central Government. All the notifications attached with the present writ petitions were the subject-matter in the abovesaid case of J. K. Synthetics. In view of the judgment of this Court and in view of the notification dated December 8, 1977 which is reproduced hereunder, no fault can be found in the impugned notification so far competency of the" notification is concerned.

"S.O. 826(E)--In exercise of the powers conferred by Section 39 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby directs that all

the powers exercisable by it under that Act and the Rules made thereunder shall, in relation to the Cement Industry be exercised also by all the State Governments, subject to the condition that the Central Government shall continue to exercise all the powers under the said Act and Rules made thereunder."

9. I have got no reasons to disagree with the judgment given by this Court in the case of J.K. Synthetics Ltd. (supra).

10. The second point taken by one of the writ petitioners is that there was no consultation with the Board, is to be rejected for the reason that it is mentioned in the notification itself that the impugned notification had been issued with the consultation of the respective Board and it is so stated in the written statement as well. The petitioners have not brought anything on record to show as to what was the source of their information to say that there was no consultation with the Board. It is settled law that the truth is attached and there is presumption of the truth of the official acts unless proved otherwise.

11. However, in the case of J. K. Synthetics (supra) even though the contention of the industry was rejected in regard to competency of the State Government to issue the notification u/s 10(2) of the Act, but the notification was quashed on the other ground of non-application of mind before issuing the notification by observing as under (at page 1856) :

"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 March 3, 1986. This Court by order dated March 4, 1986 has stayed the operation of the notification dated October 4, 1985. The stay was confirmed on September 18, 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 Government is not in force from March 4, 1986 till today. It is considerably a long period. The circumstances then existing must have undergone vast change in the industry requiring fresh look over the matter again by the State Government. 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 Government."

12. Similar reasons are applicable in all the three writ petitions. The notifications were stayed for a considerably long time of 13 years. As a matter of fact, there is no effective representation on behalf of the respondents. No one is present to assist the Court on behalf of the respondents nor any record has been produced to meet the attack made by the petitioners. Identical notification of the identical date and of the identical industries was set aside by this Court and the

petitioners do rely on that judgment of J. K. Synthetics Ltd. (supra). The impugned notifications are to be set aside on the same reasons as in the case of J.K. Synthetics (supra).

13. Yet another additional point has been taken by the counsel in Associated Cement Company Ltd., S. B. Civil Writ Petition No. 486/1 986. It is stated that despite the issuance of Annexure-4 conferring concurrent powers on the State of Rajasthan as well, the Associated Cement Company is saved from the notifications for the reasons mentioned in Annexure-4 itself that the Central Government shall continue to exercise the powers under the Industrial Disputes Act in regard to cement industries relating to the dispute between the employees who were members of the cement manufacturers Association, Express Building, Churchgate. Bombay and their Workmen represented by Indian National Cement and Allied Workers' Federation. Mazdoor Karyalaya. Congress House. Bombay in pursuance of the arbitration u/s 10(a) of the Act. For the reasons that I am setting aside the notifications as stated above, there is hardly any necessity to go into this aspect and the argument raised in the said writ petition by Shri M.D. Agrawal be not dealt with.

14. However, it is made clear that the State Government may issue a fresh notification, if so advised in accordance with law if the circumstances so warrant and in conformity with Section 10(2) and the clauses thereunder of the Act.

15. For the reasons mentioned above, all the three writ petitions are allowed. The impugned notifications are quashed. No order as to costs.