
(2012) 08 MAD CK 0108

In the Madras High Court

Case No : Writ Appeal No"s. 1067 to 1070 of 2012

M/s. Karaikal Industries Forum

APPELLANT

Vs

Government of Puducherry

RESPONDENT

Date of Decision : 10-08-2012

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 10, 10(1), 10(2), 4

Citation : (2013) LabIC 70 : (2012) LLR 1156

Hon'ble Judges : M.Y. Eqbal, C.J;T.S. Sivagnanam, J

Bench : Division Bench

Advocate : A.L. Somayaji for Mr. G. Manivannan, for the Appellant; N. Mala, AGP, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Chief Justice & T.S. Sivagnanam, J.—These Appeals are directed against the common Judgment and order in W.P. Nos. 5202 to 5205 of 2012, dated 7.3.2012. The writ petitioners are the appellants in these appeals. The appellant in all these appeals is a Society registered under the provisions of the Societies Registration Act 1860 stated to have been founded with the objective to protect the interest of its members who are having industrial units in Karaikal. The matter arises under the Contract Labour (Regulation and abolition) Act 1970 (hereinafter referred to as the Act.) The prayer in the writ petitions were to quash Notifications issued by the Government of Puducherry in G.O.Ms. No. 19, G.O.Ms. No. 16, G.O.Ms. No. 21 and G.O.Ms. No. 18 all dated 24.8.2011, issued in exercise of powers conferred by sub section (1) of 10 of the Act. By G.O.Ms. No. 19, whereby the Government abolished Contract Labour in the process such as loading into furnaces, the furnace area and tapping in all manufacture of Basic Metal Industries (Production of MS Ingots from Scrap Iron) in the Union Territory of Puducherry. By G.O.Ms. No. 16, the Government abolished the engagement of Contract Labour in Chemical Industries involved in the process such as raw material storage, reaction section, burner section, Centrifuge section, drier

section, sieving section and packing section. By G.O.Ms. No. 21, the Government abolished the contract labour in respect of all Pharmaceutical Industries in the process of mixing, formulation and tableting. By G.O.Ms. No. 18, the Government abolished contract labour in respect of bottle making, granite cutting and polishing industries in respect of the processes like raw material sieving, raw material handling, ball mill mixing, furnace/kiln area, bottle making, drying section, and cutting/polishing of stones.

2. The appellants challenged the notifications by contending that the Government of Puducherry prohibited contract labour for the sole reason that engagement of contract labour may cause occupational diseases. The reasons assigned by the Government are baseless and contrary to the provisions of section 10 of the Act and in particular the stipulation u/s 10(2) has not been followed. Further, it is stated that the Government Orders which were impugned in the writ petitions have been passed in a casual manner without considering the relevant factors and mechanically without considering the relevant details. Further, there has been no discussion and deliberation of the issues and it is an omnibus notification.

3. The learned single Judge, held that there is no violation of any legal provisions, the State Advisory Board under the Act held meeting which also had representative of employers and unanimous recommendation was made for prohibiting contract labour in certain types of industries and the opinion of the committee was taken into consideration and it was noted that workers are being engaged in the areas likely to cause occupational diseases and also temperature exposures which are relevant considerations. The learned single Judge, after taking note of the Judgement of the Supreme Court in Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., dismissed the writ petitions by common order dated 7.3.2012. Aggrieved by such order, the Appellants have filed these Appeals.

4. Mr. A.L. Somayaji, learned senior counsel appearing for the appellants contended that occupational disease is not a relevant consideration for the purpose of issuing a notification u/s 10(1) of the Act and there are enactments like the Employees State Insurance Act and Factories Act which are earmarked enactments to take care of these issues and the same could hardly have been a reason to issue the notification. Reference was made to Section 10 of the Act and it is submitted that the procedure required to be followed u/s 10(2) was not adhered and therefore, the Notifications are liable to be set aside.

5. By placing reliance on the decision of the Supreme Court in Steel Authority of India Ltd, referred supra, it is submitted that an Omnibus notification as in the instant case does not reveal compliance of sub section 2 of section 10 and it is contrary to the mandate of section 10 of Act and the Notifications have been issued without application of mind.

6. We have heard the learned Senior counsel appearing for the petitioner and given our anxious consideration to the factual and legal contentions raised before

US.

7. Contract Labour (Regulation and Abolition) Act 1970 (hereinafter referred to as the Act), was enacted with a view to regulate the contract labour and to provide for its abolition in certain circumstances. Generally, it is considered that the practice of engaging Contract Labour is with a tendency to exploit resulting in unfair labour practices such as denial of minimum wages, proper working conditions etc.

8. As it was found that it was not possible to altogether eliminate engagement of contract labour, the Act was enacted for the continuation of contract labour wherever it becomes necessary and where it is not possible to have a permanent labour force. Thus, the Act seeks to broadly achieve two objectives namely to prohibit the employment of contract labour and to regulate the working conditions of the contract labour wherever such employment is not prohibited.

9. In *Gammon India Ltd., Vs. Union of India* [1974 1 SCC 96], the Supreme Court observed that the underlying policy of the Act is to abolish the Contract labour, wherever possible, and practicable, and where it cannot be abolished altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provision of essential amenities. It was further observed that is the reason why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by section 10 of the Act. The dominant idea of section 10 of the Act is to find out whether contract labour is necessary for the industry, trade, business, manufacture or occupation which is carried on in the establishment.

10. Section 10 of the Act deals with prohibition of employment of contract labour. Section 10(1) starts with a non-obstante clause and states that notwithstanding anything contained in the act the appropriate Government may, after consultation with the Central Board or a State Board, prohibit by Notification in the official gazettee, employment of contract labour in any process, operation or work in any establishment. In terms of sub section 2 of section 10, 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 as enumerated in clauses (a) to (d) of sub section 2 of Section 10.

11. As held by the Supreme Court in *BHEL WORKERS ASSOCIATION CASE* [AIR 1985 SC 405], the discretion exercisable by the appropriate Government u/s 10 of the Act in arriving at a decision to abolish or not to abolish contract labour in any establishment, is hedged in by several requirements. The first is the obligatory consultation with the Central Board/State Board and secondly, the requirement to have regard to the conditions of work and benefits, provided for the contract labour, in that establishment and other relevant factors indicated in clauses (a) to (d) of subsection 2 of section 10.

12. In these cases, what is required to be seen is whether there was consultation with the State Board and whether the factors required to be considered in terms of sub section 2 of section 10 were taken note of.

13. From the material papers filed in these Appeals, it is seen that the Government by Notification dated 3.9.2002, in G.O.Ms. No. 31, Labour Department, reconstituted the State Advisory Board in exercise of the powers conferred by section 4 of the Act, read with Rule 3 of the Pondicherry Contract Labour (Regulation and Abolition) Rules 1973. The State Advisory Board was chaired by the Hon'ble Labour Minister, the Secretary to the Government Labour Department, as its Vice Chairman, Commissioner of Labour Ex officio Member, the Labour Officer, as Member Secretary and Superintending Engineer of Public Works Department as Member. The Board further consisted of four members, representing the employers and four members representing the employees. It appears that the second meeting of the State Advisory Board was held in 2007, wherein decision was taken to constitute a committee to finalise the category of industries and the process/ operation/work carried out by the industries within six months for the purpose of advising the Government to issue a notification for prohibition of contract labour under the Act. The third meeting of the State Advisory Board was held during November 2009, in which the report of the Committee appears to have been placed for deliberation. From the Minutes of the Meeting it is seen that the employers and employees representatives were present and deliberated upon the report of the Committee and the State Advisory Board unanimously resolved to accept the report of the committee suggesting to prohibit certain categories of employment in eight types of industries and recommended the same to the Government for prohibition. The eight categories of industries, the process in which contract labour is to be prohibited and the reasons for prohibition as indicated in the tabular statement given below.

Sl. No.

Name of the Industry

Process in which contract labour is to be prohibited

Reasons for prohibition

1

Paper and Paper product Industries

a) Beater Section

b) Chest/Pulping Section

In these two sections dust are likely to cause Occupational diseases.

2

Petroleum product Industries

- a) Raw material unloading
- b) Pump House
- c) Filling Stations

There always exist fire Hazard. Only trained People must handle LPG.

3

Chemical Industries

- a) Raw material storage
- b) Reactor section
- c) Burner section
- d) Centrifuge section
- e) Dryer section
- f) Sieving section
- g) Packing section

Exposure to Hazardous chemicals like Sulphur etc is likely to cause occupational health problems.

4

Rubber product Industries

- a) Mixing section
- b) Press section (MRF)
- c) Tyre finishing
- d) Lining section (Lebracs)
- e) Sand blasting (Lebracs)

These sections involve Dust which may cause Occupational diseases

5

Non-Metallic product Industries

- (i) Bottle Making
- (ii) Granite Cutting and polishing Industries
- a) Raw material sieving
- b) Raw material handling and Ball Mill mixing
- c) Furnace/Klin area

- d) Bottle making
- e) Drying section
- f) Cutting/polishing of stones

The exposure to extreme Temperature and Fine Dust which may cause occupational diseases.

6

Manufacture of basic Metal Industries (Production of MS Ingots from scrap iron)

- a) Loading into furnace
- b) Furnace area
- c) Tapping

The exposure to extreme Temperature and Fine Dust which may cause occupational diseases.

7

Textile Industries

- a) Blowing room
- b) Spinning section
- c) Yarning section of the Textile industries

Exposure to dust arising to these sections cause occupational diseases

8

Pharmaceutical Industries

- a) Mixing
- b) Formulation
- c) Tableting

The dust arising in these sections cause occupational diseases.

14. Pursuant to the recommendation of the State Advisory committee, the Government of Puducherry, having regard to the conditions of work and other benefits, provided for the contract labour and other factors specified in sub section 2 of section 10 prohibited employment of contract labour in specified processes/operations in respect of certain categories of industries, so to say, G.O.Ms. No. 19 dealt with Metal Industries and it prohibited contract labour in three process viz. Loading in the Furnace, Furnace Area and Tapping. G.O.Ms. No. 16, dealt with the Chemical Industries and contract labour was prohibited in the processes of raw material storage, reactor section, burner section, Centrifuge

section, drier section, sieving section and packing section.

15. Similarly, G.O.Ms. No. 21 dealt with Pharmaceutical industries and contract labour was prohibited in three processes, viz. Mixing, formulation and tableting. In G.O.Ms. No. 18, the Government considered the non-metallic product industries, bottle making industries and granite cutting and Polishing industries and prohibited contract labour in six process viz. raw material sieving, raw material handling and ball mill mixing, furnace/ klin area, bottle making, drying section and cutting and polishing of stones. Thus, the Government did not issue an omnibus notification banning contract labour in all industries under a particular category/process, rather the Government has taken into consideration the process, operation which is carried on in the particular type of industry and also considered that the type of processes identified were perennial in nature having regard to the nature of industry and then issued the notifications.

16. The learned Senior counsel by relying upon the decision of the Supreme Court in the case of Steel Authority of India Ltd., referred supra, submitted that the Notifications are contrary to the requirement u/s 10 of the Act and it is an omnibus notification and does not reveal compliance of section 10(2) of the Act.

17. That the notification which was subject matter of challenge in the proceedings before the Supreme Court was a notification issued by the Central Government, dated 9.12.1976. By the said Notification the Central Government after consultation with the Central Advisory Contract Labour Board, prohibited employment of Contract Labour for sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments, in respect of which the appropriate Government under the Act is the Central Government. The notification excluded certain type of cleaning activities from the purview of the prohibition. Undoubtedly, the said notification of the Central Government was an omnibus notification. It did not take note the relevant factors as mentioned in clauses (a) to (d) of sub section 2 of section 10 and therefore, the Supreme Court held that the said notification does not reveal compliance of section 10(2) and it is contrary to the postulates of section 10 of the Act.

18. As noticed above the notifications which were impugned in these cases are not such omnibus notification but, the Government after consulting the State Advisory Board which unanimously approved the committee's recommendations, and having due regard to the relevant factors under sub section (2) of section 10 of the Act have issued the same. Therefore, the decision in the case of Steel Authority of India cannot be applied the facts and circumstances of the hand. For all the above reason, we find no grounds to interfere with the order passed by the learned single judge, and accordingly, the Writ Appeals are dismissed. Consequently, connected miscellaneous petitions are closed.