

(2012) 03 MAD CK 0088

In the Madras High Court

Case No : Writ Petition No's. 5202 to 5205 of 2012 and M.P. No's. 1, 2, 1, 2, 1, 2, 1 and 2 of 2012

M/s. Karaikal Industries Forum

APPELLANT

Vs

Government of Puducherry

RESPONDENT

Date of Decision : 07-03-2012

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 10, 10(1), 10(2), 21(4)
Contract Labour (Regulation and Abolition) Central Rules, 1971 — Rule 25
Employees State Insurance Act, 1948 — Section 10, 4
Provident Funds Act, 1925 — Section 4

Citation : (2012) 134 FLR 864 : (2012) 3 LLJ 288

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : S. Silambanan, SC for Mr. G. Manivannan, for the Appellant;

Final Decision : Dismissed

Judgement

Honorable Mr. Justice K. Chandru

1. In all these four writ petitions, the petitioner is the same, i.e., M/s. Karaikal Industries Forum, represented by its President. In these writ

petitions, the petitioner has chosen to challenge the G.O.Ms. No. 19/Lab/AIL/G/2011, G.O.Ms. No. 16/Lab/AIL/G/2011, G.O.Ms. No.

21/Lab/AIL/G/2011 and G.O.Ms. No. 18/Lab/AIL/G/2011, dated 24.08.2011 respectively.

2. By G.O.Ms. No. 19/Lab/AIL/G/2011 impugned in W.P. No. 5202 of 2012, the Union Territory of Puducherry had abolished the contract

labors in the process such as loading into furnace, furnace area and tapping in all manufacture of basic metal industries (production of MS Ingots

from Scrap Iron) in the Union Territory of Pududhcerry. The order was issued after accepting the advice of the State Contract Labor Advisory Board.

3. In W.P. No. 5203 of 2012, the challenge is to the G.O.Ms. No. 16/Lab/AIL/G/2011, in which the Union Territory of Pudhcherry had

abolished the engagement of contract labor in chemical industries involving in the process such as raw material storage, reactor section, burner

section, centrifuge section, dryer section, sieving section and packing section.

4. In W.P. No. 5204 of 2012, the challenge is to the G.O.Ms. No. 21/Lab/AIL/G/2011, wherein and by which the Union Territory of Puducherry

abolished the contract labor in respect of all Pharmaceutical industries in the process of mixing, formulation and tabulating. In W.P. No. 5205 of

2012, the challenge is to the order passed in G.O.Ms. No. 18/Lab/AIL/G/2011 in respect of bottle making, granite cutting and polishing industries

in respect of the processes like raw material sieving, raw material handling and ball mill mixing, furnace / Kiln area, bottle making, drying section

and cutting / polishing of stones.

5. In all these four writ petitions, identical contentions have been raised, i.e., their members are having industrial units. They are having regular

direct manpower to work in technical and skilled operations. As certain works which are of intermittent casual nature, contract labors were

employed through licensed contractor. The payment of wages and other service conditions are monitored by the principal employer, i.e., the

members of the petitioner association. The industrial units were also periodically inspected by the Inspector of Factories and by enforcement

officers of ESI and EPF Act. The workers who were engaged through the contractors were also having the benefits of the ESI and PF. But,

however, the Government of Puducherry by the impugned notifications had abolished the contract labors in the processes as set out above without

following the norms prescribed under the said Act. Even though it was stated that it was based upon the recommendations of the sub committee,

no details were forthcoming. The sole reason for prohibition was engagement of contract labor may cause occupational diseases to the contract

labors. The reason of the committee that exposures to extreme temperature and fine dust may cause occupational diseases is baseless and contrary

to the provisions of the Act, more particularly Section 10 of the Act. The consultation of the Government with the advisory board has not been

made and that mechanically the orders have been passed. Since the Government of Puducherry has not constituted a State Advisory Board in

terms of Section 4, any recommendation given by the sub-committee was not valid. The reason that it may likely to cause occupational diseases is

unwarranted. The Factories Act takes care of such a situation.

6. However, this court is not inclined to entertain the writ petitions. In the present case, there is no violation of any legal provisions. The State

Advisory Board under the Contract Labor (Regulation and Abolition) Act, 1970 in its meeting held on 25.11.2009, which also had a

representative of the employer, unanimously recommended prohibition of certain employment in eight types of industries. In paragraph 7 of the

minutes, it was stated as follows:

7. The members of the State Advisory Board unanimously resolved to accept the sub committee's report, suggesting to prohibit certain categories

of employment in eight types of industries as detailed below and to recommend the same to the Government for prohibition.

Sl. No. Name of the Industry Process in which contract labor is to be Reasons for prohibition

prohibited

1 Paper and Paper product Industries a) Beater Section In these two sections dust are likely to cause

Occupational diseases.

b) Chest/Pulping Section

2 Petroleum product Industries a) Raw material unloading There always exist fire Hazard. Only trained

People must handle LPG.

b) Pump House

c) Filling Stations

3 Chemical Industries a) Raw material storage Exposure to Hazardous chemicals like Sulphur

etc is likely to cause occupational health

b) Reactor section problems.

- c) Burner section
- d) Centrifuge section
- e) Dryer section
- f) Sieving section
- g) Packing section

4 Rubber product Industries a) Mixing section These sections involve Dust which may cause

Occupational diseases

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

5 Non-Metallic product Industries a) Raw material sieving The exposure to extreme Temperature and

(i) Bottle Making (ii) Granite Cutting Fine Dust which may cause occupational and polishing Industries b) Raw material handling and Ball Mill mixing diseases.

- c) Furnace / Klin area
- d) Bottle making
- e) Drying section
- f) Cutting / polishing of stones

6 Manufacture of basic Metal a) Loading into furnace The exposure to extreme Temperature and

Industries (Production of MS Ingots Fine Dust which may cause occupational from scrap iron) b) Furnace area diseases.

- c) Tapping

7 Textile Industries a) Blowing room Exposure to dust arising to these sections cause occupational diseases

- b) Spinning section
- c) Yarning section of the Textile industries

8 Pharmaceutical Industries a) Mixing The dust arising in these sections cause occupational diseases.

b) Formulation

c) Tabulating

7. It is pursuant to the minutes of the meeting of the Board, which was constituted by G.O.Ms. No. 31/Lab/G/2002, Labor Department, dated

03.09.2002, the Puducherry Government accepting the same had abolished the contract labor in the processes set out above. It is not clear as to

how the petitioner can challenge the same especially when the Act enables the Government to abolish the contract labor in any process after

following the procedure u/s 10 of the Contract Labor (Regulation and Abolition) Act, 1970.

8. Section 10(2) of the Act reads as follows:

10.Prohibition of employment of contract labor.

(1)....

(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 labor 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 workman 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.

(Emphasis added)

9. In the present case, even as per the admission of the petitioner in the affidavit that in the place of regular workmen, due to intermittent vacancies,

the contract labors were engaged, thereby proving that they were engaged to replace the regular workers though intermittently. Secondly, the

Advisory Board comprising of the management representative and workers representatives, was unanimous in making the recommendation. The

opinion of the committee was that the workers are being engaged in the areas where it is likely to cause occupational diseases and also

temperature exposures, will not make the order invalid and that these are very much relevant considerations. Since the contract laborers were

always used with a view to deny them providing wages and that the members of the petitioner association cannot be said to be aggrieved persons

because if wages are not paid by contractor, u/s 21(4), the obligation is on the principal employer to pay wages. Further, under Rule 25(v) of the

Contract Labor Central Rules, if the work is similar nature, the contract labors are bound to be paid the same wages as that of the employees of

the principal employer.

10. The Act contemplates two methods in dealing with the contract labors, i.e., (1)regulating the terms and conditions and (2)abolition of contract

labors. But the only pre-requisite is that for abolition, the Advisory Board will have to recommend the same. This court is not concerned with the

composition of the advisory board since the advisory boards represents the employer's interests also. In the present case, the contention that they

did not really represent the employer's interest cannot be considered as ultimately every employer cannot be accommodated in the advisory

board. The recommendation of the board is not clearly binding on the Government. Ultimately, it is for the Government to decide the abolition of

the contract labor.

11. The Supreme Court vide its judgment in Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and

Others etc. etc., has held that one of the course open to seek for abolition of the contract labor is through the mechanism provided u/s 10(1).

Therefore, the abolition made in these cases cannot be thwarted by the writ petitioner. Ultimately, the employer's power to carry out the trade is

subjected to reasonable restrictions. The Contract Labor (Regulation and Abolition) Act is one such enactment conceived with a view to uplift the

contract laborers in the unorganized work. By abolition, it is not as if the

petitioner is directed to close their industries. Therefore, this court is not inclined to interfere with the impugned orders. Accordingly, all the writ petitions will stand dismissed. No costs. Consequently connected miscellaneous petitions stand closed.