

(1994) 11 SHI CK 0022

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 61 of 1988

N.H.P.C. Workers" Union and Others

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 24-11-1994

Acts Referred:

Constitution of India, 1950 — Article 226, 32

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

Citation : (1994) ShimLC 4 Supp

Hon'ble Judges : Gulab C. Gupta, C.J;S.N. Phukan, J

Bench : Division Bench

Advocate : K.D. Sood, for the Appellant; Indar Singh, General for Respondents 1 and 2 and P.A. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Gulab C. Gupta, C.J.—The Petitioner is a Union of employees working under various contractors employed by Respondent No. 3 in its Chamera Project Phase I & II and claims that the contract labour system should be abolished. It appears that they had earlier filed a writ petition in this High Court (C.W.P. No 862 of 1986) complaining that the Board as contemplated u/s 10 of the Contract Labour (Regulation and Abolition) Act, 1970 has not been constituted by the Respondent-State Government and, therefore, decision to abolish the contract labour system in the project cannot be taken. It further appears that this Court gave an interim direction to the Respondents to constitute a Board and permit the same to consider the question in accordance with law. The Board was accordingly constituted and ultimately recommended to the Respondent-State Government that contract labour should be prohibited in cleaning and sweeping work in all residential colonies, repair and maintenance of roads and buildings and major and minor repairs of machinery, fabrication and erection works. The recommendations of the Board ultimately went for the consideration of the Respondent-State Government. The Cabinet, it appears, did not approve the said recommendations, but took the decision that the Labour Department of the State

Government should ensure that the minimum wages and facilities, which the contract labour is entitled either under the Minimum Wages Act or under other labour legislations should be made available to them. The Government also decided to issue instructions to the Labour Officers and Labour Inspectors to ensure strict compliance of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 (the Act for short). Consequent upon the said decision of the Cabinet, the Under Secretary (LEP) to the Government of Himachal Pradesh communicated the same to the High Court vide Annexure P-8. It is this decision of the State Government, which is under challenge in this writ petition under Article 226 of the Constitution of India.

2. The submission of the learned Counsel for the Petitioner appears to be that once the State Advisory Board constituted u/s 10 of the Act has recommended abolition of the contract labour system in certain processes at Chamera Project, the State Government should have accepted those recommendations and issued Notification abolishing the contract labour in those processes, as required u/s 10 of the Act. The question whether the State Government can be directed to issue Notification and to abolish the contract labour system in any particular process in the establishment is or is not within the jurisdiction of this Court under Article 226 of the Constitution is the first question requiring consideration of this Court. It appears that the question has received consideration of the Supreme Court earlier in *B.H.E.L. Workers Association, Hardwar and Others Vs. Union of India and Others*, wherein the matter arose in somewhat similar context and the writ petition was filed under Article 32 of the Constitution praying for a similar direction from the Supreme Court. The Court considering all the provisions of the Act held that "the Parliament has not abolished contract labour as such, but has provided for its abolition by the Central Government in appropriate cases u/s 10 of the Contract Labour (Regulation and Abolition) Act, 1970. It is not for the Court to enquire into the question and to decide whether the employment of the contract labour in any process, operation or other work in any establishment should be abolished or not. This is a matter for the decision of the Government after considering matters required to be considered u/s 10 of the Act". The matter has also been recently considered in *Dena Nath and others Vs. National Fertilisers Ltd. and others*, in the context of the demand of the Labour Union that the contract labour system should be abolished and the labourers employed by the contractor should be treated to be the workers of the principal employer. The Supreme Court again on consideration of the Act and Rules made thereunder held that the Act mainly regulates the employment of contract labour in certain establishments and provides for its abolition in certain circumstances. The Act does not provide for total abolition of contract labour, but provides for abolition by appropriate Government in appropriate cases u/s 10 of the Act. It is therefore, not for the Court to inquire into the question and decide whether the employment of contract labour in any process, operation or in any other work in any establishment should be abolished or not. It is a matter for the decision of the Government after considering the matter, as required to be considered u/s 10

of the Act. Therefore, in proceedings under Article 226 of the Constitution merely because contractor or the employer had violated any provision of the Act or the Rules, the Court could not issue any mandamus for deeming the contract labour as having become the employees of the principal employer. These cases, in our opinion, settle the controversy, and hence it is not within the jurisdiction of this Court to direct abolition of the contract labour system, as claimed by the Petitioner.

3. Then this Court also does not find any justification for the recommendations made by the State Advisory Board in the matter. Recommendations of the Advisory Board are mainly based on the fact that there are large scale violation of the provisions of the Act and Rules made thereunder. If that be so, the remedy lies in strengthening the enforcement machinery provided under the Act and thus ensure compliance of the Act and the rules. Abolition of the system for this reason alone, is not justified. Recommendations of the Advisory Board was, therefore, against the legislative intent and were rightly not accepted.

4. The Court finds no substance in the writ petition, which fails and is dismissed.