

(2014) 08 SC CK 0073

In the Supreme Court Of India

Case No : Civil Appeal No. 8151 of 2014 (Arising out of SLP (C) No. 822 of 2013) and Civil Appeal No. 8152 of 2014 (Arising out of SLP (C) No. 23088 of 2014 and Arising out of SLP (C) CC No. 4627/2013)

Paradeep Phosphate Ltd.

APPELLANT

Vs

Paradeep Phosphate Mazdoor Union

RESPONDENT

Date of Decision : 26-08-2014

Acts Referred:

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

Citation : (2014) 143 FLR 241 : (2014) 4 JLJR 229 : (2014) 3 LLN 564 : (2014) 9 SCALE 684 : (2014) 10 SCJ 75 : (2014) 4 SCT 207

Hon'ble Judges : Sudhansu Jyoti Mukhopadhaya, J; Sharad Arvind Bobde, J

Bench : Division Bench

Judgement

JUDGMENT

Sudhansu Jyoti Mukhopadhaya, J.—Delay condoned. Leave granted.

2. The Division Bench of Orissa High Court, Cuttack by its impugned judgment dated 17th September, 2012 in O.J.C. No. 7464 of 2000 allowed the writ petition preferred by Respondents and directing the Appellant to enforce notification dated 28th April, 2000 issued by the State Government for abolition of the Contract Labour in respect of workers engaged in DAP Plant-cleaning of Granulation, dry section, cleaning in combustion chamber, etc. The Division Bench further directed the Appellant to regularize the workers engaged in the DAP plant.

The aforesaid judgment was challenged by the Appellant by filing a review petition. The same was heard and disposed of vide impugned order dated 20th December, 2012 by which the judgment dated 17th September, 2012 was modified to the extent that not all the workers engaged in DAP Plant but those who were engaged in cleaning of Granulation, dry section, cleaning in combustion chamber, were directed to be regularized. The aforesaid judgment and order passed in writ petition and review petition are under challenge in these

appeals.

3. The factual matrix of the case is as follows:

A writ petition being O.J.C. No. 7464 of 2000 was filed by the Respondents-Paradeep Phosphates Mazdoor Union and others (hereinafter referred to as the "Trade Union") seeking enforcement of Notification dated 28th April, 2000 issued by the State Government abolishing contract labour in respect of workers in DAP Plant-cleaning of Granulation, dry section, cleaning in combustion chamber, etc. The Respondents contended that the workers named therein were working in the DAP plant of the Appellant-M/s. Paradeep Phosphate Ltd. (hereinafter referred to as the "Company") for over 14 years uninterruptedly without any break in service. They had been engaged through contractors appointed for the purpose from time to time. The contractors were changed but the employees were continuing their work irrespective of change of contractors. In the meantime, those workers completed 15 years of service in the particular establishment. It was submitted that, the Trade Union took up the matter considering the fate of such persons and several other workers engaged in different establishments of the Company for prohibition of contract referring different establishments of the Company and for regularization of such employees in terms of Section 10(1) of the Contract Labour (Regulation and Abolition) Act, 1970. After much deliberation and in active participation of the Company, decision has been taken by the State Advisory Contract Labour Board in its 21st meeting dated 3rd June, 1999 and 10th June, 1999 for prohibiting contract labour system in 16 areas of the Company and the same was accordingly recommended by the State Advisory Board.

4. Meanwhile, the Government of Orissa through its Labour and Employment Department came out with a Notification dated 28th April, 2000 prohibiting employment of contract labour in the works in the Company particularly in the DAP Plant-cleaning of Granulation, dry section, cleaning in combustion chamber, etc. It was submitted that on behalf of the Trade Union that once there is a prohibition of competent authority for engaging contract labourers in a particular work in the particular establishment, the only course left with the establishment is to straight away treat the persons concerned as the regular employees of the particular establishment and the relationship between contractor and the contract labourers ceases automatically from the said moment when there is an order prohibiting employment of contract labour in particular work of a particular establishment. Thus, it was contended that the only course open for the management is to regularize the employees of the establishment who were working under the contractor.

5. It was brought to the notice of the High Court that on earlier occasions, another writ application was filed bearing O.J.C. No. 2751 of 2000 which was disposed of on 24th June, 2003 wherein the parties were common. The said writ application was disposed of by the High Court with the following observation:

7. There is no dispute that the State Advisory Contract Labour Board recommended to the State Government to abolish contract labour system in sixteen areas of Paradeep Phosphates Limited but in the Government notification dated 28.4.2000 only one area has been mentioned. On reading of the note and order of the Minister extracted above, we are inclined to hold that the Government has not fully considered the recommendation. Therefore, in the interest of justice, the matter needs reconsideration.

8. For the reasons aforesaid, we direct the State Government (opposite party No. 1) to reconsider the recommendation of the State Advisory Contract Labour Board with regard to abolition of contract labour in respect of 15 other areas left out by it and take appropriate decision according to law within four months of receipt of this order.

6. In spite of the aforesaid direction, no action has been taken. Later the aforesaid writ petition being O.J.C. No. 7464 of 2000 was preferred with the prayer as noticed above. In the said case, the Company appeared and filed a counter affidavit taking plea that the State Government is not appropriate government for the purpose of the Act and the notification issued by the State Government is not binding upon the Company and did not order for abolition of contract labour.

7. The High Court while observing that the Company failed to substantiate its stand that the undertaking is controlled by the Central Government, referred to the decision of this Court in Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., and held that the Central Government is not the appropriate Government in such cases. It was also noticed that this plea was not taken when the earlier writ petition was heard.

8. Similar pleas as were taken before the High Court have been taken by the Appellant and the contesting Respondents before this Court.

9. From the record, we find that when earlier writ application OJC No. 2751 of 2000 was disposed of by judgment dated 24th June, 2003, the High Court directed the Company to consider the recommendation of the State Advisory Contract Labour Board with regard to abolition of Contract Labour in respect of 15 other areas left out by it and to take appropriate decision according to law, though the Company was a party to the said writ application but no such plea was taken and the direction of the High Court reached finality.

10. Another Writ Petition being W.P. (c). No. 13791 of 2005 was also disposed of by the High Court on 5th July, 2012. In the said case similar question regarding implementation of the recommendation of the State Advisory Contract Labour Board was considered. In the said case also, the Appellant-Company neither contended nor raised the question that the State Government is not the appropriate government. The said writ petition was disposed of by the High Court on 5th July, 2012.

11. We are of the view that since the decisions in the aforesaid writ petitions have reached finality, such question cannot be re-agitated in another writ petition between same parties as the question will be hit by the principles of res judicata.

12. Now once the Notification dated 28th April, 2000 for abolition of contract labour in respect of the workers in DAP Plant--Cleaning of granulation dry section, cleaning in combustion chamber, etc. was issued, it was incumbent on the part of the Company to implement the same. Since it was not implemented, the High Court rightly directed to implement the same.

13. In view of the fact as noticed above, while we are not inclined to answer the question about the appropriate government in the present case, keep the same open for determination in an appropriate case. We find no reason to interfere with the impugned judgment and order by which the High Court directed the Appellant to implement the notification abolishing the contract labour and to regularize the service of the workmen.

14. We find no merit in these appeals, they are accordingly dismissed.