

(2012) 09 OHC CK 0023
In the Orissa High Court
Case No : O.J.C. No. 7464 of 2000

Paradeep Phosphates Mazdoor Union and Another	APPELLANT
Vs	
State of Orissa and Another	RESPONDENT

Date of Decision : 17-09-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Contract Labour (Regulation and Abolition) Act, 1970 — Section 10(1)

Citation : (2013) 137 FLR 363

Hon'ble Judges : V.G. Gowda, C.J;S.K. Mishra, J

Bench : Division Bench

Advocate : S.K. Mishra, P.K. Mohapatra and R.R. Mishra, for the Appellant;
Ganeswar Rath, S. Mishra, A.K. Panda, S.R. Mohanty and T.K. Praharaj, for the Respondent

Final Decision : Allowed

Judgement

S.K. Mishra, J.—The Paradeep Phosphates Mazdoor Union represented through its General Secretary has filed this writ application seeking a direction from the Court to comply with the notification issued by the State Government on 28.4.2000 for abolition of contract labour in respect of the workers in DAP Plant-Cleaning of granulation dry section, cleaning in combustion chamber etc. The petitioner is a trade union representing the workers has taken up its cause and filed this writ application seeking enforcement of the aforesaid order and to give regular employment to the persons working in the said work of the establishment. Annexure-1 contends the names of the workers in DAP plant of opposite party No. 2 for over 14 years uninterruptedly without any break in service. They have been engaged through Contractors appointed for the purpose from time to time. It is further borne out from the records that though the Contractors have changed the employees are continuing the work irrespective of change of contractors. In the meantime, those persons have completed about 15 years of service in the particular establishment. Considering the fate of such persons and several such other workers engaged in different establishments of

opposite party, the Union took up the matter for prohibition of contract labour system in different establishment of the Paradeep Phosphates Ltd. and for regularisation 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 opposite party No. 2, decision has been taken by the State Advisory Contract Labour Board in its 21st meeting dated 3.6.1999 and 10.6.1999, wherein the State Advisory Board has already recommended for prohibition of Contract Labour system in 16 areas of opposite party No. 2.

While the matter stood thus, the Government of Orissa in Labour and Employment Department has already come out with a Notification dated 28.4.2000 prohibiting employment of contract labour in the works in Paradeep Phosphates Ltd., particularly in the DAP Plant. The Union submits that once there is a prohibition of competent authority for not engaging contract labourers in the 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 at the moment when there is an order prohibiting employment of contract labour in particular work of a particular establishment. Thus, the only course open for the management is to regularize the employees of the establishment, who are working under the Contractor. In spite of such an order of the Government of Orissa, opposite party No. 2 i.e. the Paradeep Phosphates Ltd. has not acted upon the same and has continued to treat them as a contract labourer and thereby they are being exploited and hence, this writ application.

Opposite party No. 2 has filed a detailed counter-affidavit. Two aspects that are raised in this case are: firstly, the State Government is not the appropriate Government for the purposes of the Act. It is contended that the Central Government is the appropriate Government and, as such, the Notification issued by the State Government is not binding upon the opposite party No. 2. Secondly, it is contended that all the works of the DAP plant has not been ordered for abolition of contract labour. It is, therefore, the stand of the opposite party No. 2 that the relief prayed for by the petitioner cannot be granted.

2. In the case of Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., the Supreme Court has held that while deciding the question as to which Government is the appropriate Government, it is to be kept in mind that the Central Government will be the appropriate Government under the CLRA Act and Industrial Disputes Act provides that the industry in question is carried on by a Central Government company/an undertaking under the authority of the Central Government. Such an authority, it is further ruled in the aforesaid case, may be conferred either by a Statute or by virtue of relationship of principal and agent or delegation of power. Where the authority is to carry on any industry for or on behalf of the Central Government is conferred on the Government company/any undertaking by the Statute under

which it is created, no further question arises. But, if it is not so, the question that arises is whether there is any conferment of authority on the Government company undertaking by the Central Government to carry on the industry in question. This is a question of fact to be ascertained on the facts and in the circumstances of each case.

3. Though it is averred by the opposite party No. 2 that the appropriate Government is the Central Government for being a control over the Undertaking, the same has not been demonstrated by the opposite party before the Court. It is also not the case of the opposite party No. 2 that the authority to carry on any industry for and on behalf of the Central Government is conferred by any statute under which the establishment has been created. Thus, it appears that the appropriate Government is not the Central Government in this case.

4. Additionally, it is brought to the notice of the Court that on earlier occasions, another writ application has been filed bearing O.J.C. No. 2751 of 2000, which was disposed of on 24.6.2003, wherein the present parties were also parties. This Court disposes of the said writ application with the following order:

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.

5. It is apparent from the record that the opposite party No. 3 has not taken stand that the State Government is not the appropriate Government in that case. Rather, the proprietary of the State Advisory Contract Labour Board was contested. Thereafter, in W.P. (C) No. 13791 of 2005, which was disposed of by this Court on 5.7.2012 and the selfsame question regarding the implementation of the recommendation of the State Advisory Contract Labour Board has been considered. In both the aforesaid writ applications, the opposite party neither contended nor any of the petitioners raised the question that the State Government is not the appropriate Government. Accordingly, this Court comes to the conclusion that the plea taken by the opposite party No. 2 that the appropriate Government is not the State Government is hit by the principles of res judicata as provided under Explanation IV of section 11 of the Code of Civil Procedure, 1908, Explanation IV provides that any matter which might and ought to have been made ground of defence or attack in such former suit shall be

deemed to have been a matter directly and substantially in issue in such suit. Therefore, this Court is of the opinion that the issue of appropriate Government and the contention that the Central Government is the appropriate Government is hit by the principles of res judicata. The second contention is that the said Notification vide Annexure-4 has not abolished all the workers of the DAP plant. It is borne out from Annexure-4 that the DAP plant-Cleaning of granulation dry section, cleaning in combustion chamber is perennial activity, which has been brought under the purview of prohibited categories of employment in the Act. Therefore, this Court directs that the opposite party No. 2 shall regularize the workers engaged in the DAP plant. Such a direction is based on the assumption in the sense that the job is done by a set of workers uninterruptedly for a period of 15 years or more, though it shall be presumed that such work is perennial in nature and the opposite party cannot take advantage of the labourers by engaging them through Contractors especially in view of Annexure-4.

Accordingly, the writ application is allowed. Opposite party No. 2 is directed to enforce the Annexure-4 with retrospective effect i.e. from the date of notification dated 28.4.2000 within a period of six weeks of communication of the order.