

(2003) 06 OHC CK 0002

In the Orissa High Court

Case No : Original Jurisdiction Case No. 2751 of 2000

Paradeep Phosphates Mazdoor Union

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 24-06-2003

Acts Referred:

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

Citation : (2003) 06 OHC CK 0002

Hon'ble Judges : R.K. Patra, J;M. Papanna, J

Bench : Division Bench

Advocate : B. Rath, J. Rath, M.K. Panda, M.K. Singhdeo, S.K. Jethy, S.K. Pattjoshi, K.K. Mohapatra, for the Appellant; R.N. Acharya, A.G.A. for opp. party Nos. 1 and 2, G. Rath, S. Mishra, A.K. Panda, S. Mohanty, J.K. Praharaj for opp.party No. 3, A. Deo, A.S.C., for opp. party No. 4, for the Respondent

Final Decision : Allowed

Judgement

R.K. Patra, J.—The Petitioner claims to be a recognised trade union affiliated to Indian National Trade Union Congress. It looks after the interest and causes of its members working in various fields under the Paradeep Phosphates Limited-opp. party No. 3. In this writ petition, it seeks a writ in the nature of mandamus directing the State Government of Orissa to issue notification u/s 10(1) of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as "the C.L.R.A. Act") prohibiting; employment of the contract labour in Paradeep Phosphates Limited as per the recommendation of the State Advisory Contract Labour Board at Annexure-4.

2. As averred in the writ petition, the case of the Petitioner in brief is that Paradeep Phosphates Limited was a Government of India establishment (now it is privatised) and is situated at Paradeep in the State of Orissa for carrying out different types of jobs. Since the Management ignored the demand of the Petitioner for regularisation of the contract labourers, it was compelled to move the "appropriate authority" under the C.L.R.A. Act for taking a decision

prohibiting employment of contract labour in certain types of jobs in Paradeep Phosphates Limited. Prior to taking up the matter of prohibition of contract labour, the State Advisory Contract Labour Board in its meeting held on 28.1.1997 and 26.7.1997 constituted a committee for making an enquiry and submit a report for the purpose of a decision by the State Advisory Contract Labour Board. The committee, accordingly, made an enquiry and submitted the report at Annexure-3 suggesting abolition of contract labour system in the following; areas:

Bagging Plant:

1. Bagging, Stitching, operating pay leaders, operating Silescape sealing.
2. Counting of filled bags for stocking in wagons.
3. Supervising the work of Mazdoor, Sardar, Telly Clerk, Slat workers and ancillary workers.
4. Mobilising the Mazdoors.
5. Cleaning, loading, unloading, stocking, counting of empty bags.
6. Cleaning of platforms.

House Keeping:

1. Maintenance work at Office Building, Medical, Sanitary installation.
2. Maintenance of General Store.

Dy. Amonium Plant:

1. Maintenance work.

Capital Plant:

1. Maintenance work.

Canteen:

1. Canteen Service.

Thereafter, the State Advisory Contract Labour Board on consideration of the matter submitted a report at Annexure-4 recommending prohibition of employment of contract labourers in the following 16 areas:

1. Bagging, stitching, counting and dispatch of packets by the rack or truck including loading and unloading of fertilizer packets, sterilization of these materials at the bagging floor and platform tally work and staking in the Bagging plant.
2. Up-keeping process, cleaning of Granulation dry Section, Weight Section, control room RMS, RMT, reclaim of conveyor belt, oil cleaning in combustion chamber up-keeping of Urea bags and MOP bags in DAP plant.

3. Opening and closing of valves in Off-site Plant.
4. Cleaning, House keeping, Draining in inside the Sulphuric Acid Plant.
5. Cleaning in Phosphoric Acid Plant.
6. Maintenance in Swerage Treatment Plant.
7. Railway Track Maintenance work.
8. DAP Spillage and material feeding works.
9. Pact Operation Reclaiming and stacking work.
10. SAP, DAP, Spillage Shifting works.
11. Sweeping and Cleaning inside the factory premises.
12. Drain Cleaning and Lime Dozing.
13. Mechanical Maintenance work.
14. Instrument maintenance including repair or broken damaged tools.
15. Water Treatment Plant, Painting, Air conditioner work, Plumbing works and mechanical work.
16. Fire and Safety Services.

Despite such recommendation, the State Government is dilly-dallying the matter in issuing necessary notification u/s 10(1) of the C.L.R.A. Act.

3. The Paradeep Phosphates Limited (opp. party No. 3) has filed counter affidavit. According to it, the Central Government is claiming itself to be the "appropriate Government" in respect of C.L.R.A. Act for Paradeep Phosphates Limited and at the same time the State Government of Orissa is also claiming itself to be the "appropriate Government". On 11.3.1999 the Paradeep Phosphates Limited wrote to the Labour Commissioner, Government of Orissa requesting him to conform with regard to the "appropriate Government" in respect of C.L.R.A. Act, but no reply was received from the Labour Commissioner. On the other hand, the State Advisory Contract Labour Board submitted its report recommending abolition of contract labour system in the areas mentioned therein. The State Government in the Labour and Employment Department considered the said recommendation and issued notification dated 28.4.2000 in exercise of power u/s 10(1) of C.L.R.A. Act prohibiting the employment of contract labour in the establishment of Paradeep Phosphates Limited in respect of the work "DAP Plant- Cleaning of granulation dry Section, cleaning in combustion chamber." It is pleaded by the Paradeep Phosphates Limited in its counter that in view of the above notification, the writ petition has become infructuous.

The State Government has filed counter affidavit asserting that it is the

appropriate Government, and has issued the above notification dated 28.4.2000.

4. The first question that arises for consideration is with regard to Paradeep Phosphates Limited, which is the "appropriate Government" as defined in Section 2(1)(a) of the C.L.R.A. Act. It is conceded at the Bar by learned Counsel for parties that in view of the judgment of the Constitution Bench of the Supreme Court in Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., the "appropriate Government" would be the State Government with regard to the Paradeep Phosphates Limited. Besides the above fair concession, we may also note that in the meantime the Paradeep Phosphates Limited has been privatised with effect from 1.3.2002. Therefore, the "appropriate Government" would be none other than the State Government of Orissa.

5. Shri Rath for the Petitioner, however, contended that although the State Government issued the notification dated 28.4.2000 u/s 10(1) of the C.L.R.A. Act prohibiting employment of contract labour in respect of Paradeep Phosphates Limited, it is confined to only one area i.e. "DAP Plant-Cleaning of granulation dry Section, cleaning in combustion chamber", whereas the State Advisory Contract Labour Board in its recommendation suggested for abolition of contract Labour in sixteen different areas including the one mentioned in the notification dated 28.4.2000. According to the learned Counsel, the State Government has not applied its mind to the said recommendation and erroneously proceeded as if the recommendation was confined to only one area. Shri Ganeswar Rath, learned Counsel appearing for opposite party No. 3 refuted the above submission and contended that the Government considered the entire report, but thought it appropriate to prohibit employment of contract labour in respect of one area mentioned in the notification dated 28.4.2000.

6. On our direction, the learned State Counsel has produced the relevant Government file of the Labour and Employment Department. We have perused the file. For the sake of appreciation, we may extract the relevant portion:

This is regarding abolition of Contract Labour in the Industries as recommended by the State Advisory Contract Labour Board in its 21st meeting.

The Board has submitted its report after their field visit and a detailed study by its Sub-Committee in respect of (1) M/s. IDL Industries Ltd. (Explosive Division), Rourkela, (2) OCL Refractory Works, Rajgangpur, (3) M/s. L. and T., Kansbahal and (4) PPL, Paradeep.

After going through the report of the Board, necessary provisions of law and the objections submitted by the respective Industries, State Government may kindly take view if the contract labour should be abolished in the following works and processes hence-forward.

M/s. IDL Industries Ltd., RKL.

.. . . .

M/s. OCL Refractory Works, Rajgangpur

.. . . .

M/s. L. and T. Kansbahal.

.. . . .

Paradeep Phosphates Ltd., Paradeep.

(i) DAP Plant- DI-Ammonia Phosphates Plant is briefly called as DAP Plant. The objectives of these plants relate to up keeping process cleaning of Granulation Dry Section, weight Section, control room, RMS, RMT, reclaim of conveyor, oil cleaning in combustion chamber up-keeping of Urea bag and MOP bag. These works are of regular in nature and are indispensable for running of the plant. These works are also incidental to manufacturing process and there is justification of engagements of whole time worker in these jobs. In view of this, out of the above works, cleaning of Granulation dry Section, cleaning in combustion chamber, justifies and meets the requirements provided u/s 10(2) of the Contract Labour (R & A) Act and there is full justification for abolition of contract labour.

Orders of Government may kindly be taken in the matter.

Sd/- A.K. Tripathy, Principal Secretary to Govt. Labour and Employment Deptt.
dt. 04-1-2000

Minister, L and E

As proposed.

Sd/- Illegible Minister, Labour and Employment, Orissa.

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.

The writ petition is allowed.

M. Papanna, J.

9. I agree.