
(2015) 04 OHC CK 0002
In the Orissa High Court
Case No : O.J.C. No. 9630 of 1993

Patnaik Minerals (P) Limited

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 03-04-2015

Acts Referred:

Citation : (2015) 119 CutLT 1045

Hon'ble Judges : Biswanath Rath, J.

Bench : Single Bench

Advocate : Mr. Anup Kumar Bose, Assistant Solicitor General, for the Opposite Parties; M/s. A.K. Parija, Senior Counsel and S.P. Sarangi, Advocate, for the Petitioners

Final Decision : Allowed

Judgement

Biswanath Rath, J. - The Petitioner's in O.J.C.Nos.9632 of 1993 & 9632 of 1993 by filing the Writ Petition have challenged the notification dated 17.03.1993 issued by the Government of India, Ministry of Labour. In abolishing the contract labour system in the works specified in the said notification with effect from the date of publication of the notification as per the schedule therein, in exercise of power under Sub-Section(1) of Section 10 of the Contract Labour (Regulation & Abolition) Act, 1970. The Schedule involving Annexure-1 is quoted as hereunder:-

"(1) Raising of minerals including breaking, seizing sorting of limestone/dolomite & (2) Transportation of limestone & dolomite which includes loading into & unloading from trucks, dumper, conveyors & transportation from mine site to factory."

2. The Petitioner in OJC No.9630 of 1993 is a Company incorporated under the Companies Act, 1956 having its registered office at Rourkela dealing with limestone & dolomite mining in the district of Sundargarh whereas the Petitioner in OJC No.9632 of 1993 is also a registered partnership firm holding extensive limestone & dolomite mines at Alanda.

3. In assailing the impugned notification as appearing at Annexure-1 to both the Writ Petitions, the Petitioner in both the Writ Petitions have challenged the notification on the premises that in view of the definition of appropriate Government, as defined under the Contract Labour (Regulation & Abolition) Act, 1970 being adopting the definition as given under the "Industrial Disputes Act, 1947" appropriate Government in these two establishments so far it relates to transport activities is the State Government & so far as its mining activity, the notification has been brought in noncompliance of the mandatory requirements of Section 10(2) of the Act, 1970. Therefore, notification of prohibition as issued by the Central Government is bad in law. The Petitioner in both the Writ Petitions have specifically assailed the impugned notification on the premises of violation of mandatory requirements under Clauses-"b" "c" & "d" of Section 10(2) of the Contract Labour (Regulation & Abolition) Act, 1970 so as to not taking into consideration if the work undertaken therein is perennial in nature & if the work is ordinarily done through their regular workmen. In the establishment or establishments & whether it is sufficient to comprise considerable number of whole time workmen & there is also no opportunity of hearing to the particular establishment. Petitioner in both the Writ Petitions, therefore, contended that the whole action of the Central Government in the matter not only lacks jurisdiction but also is violative of mandatory compliances of the provisions contained in the Act, 1970. The Petitioners in both the Writ Petition thus want interference of this Hon"ble Court in the matter & declaring the impugned notification vide Annexure-1 in both the Writ Petitions as bad.

4. In substantiating their arguments, Counsels in both the Writ Petitions submitted that in a similar situation, challenging the previous notification dated 15.12.1979 published by the Central Government in Gazette of India dated 22.12.1979 prohibiting the employment of contract labour in lime stone, dolomite & manganese for the purpose of over burden removal of drilling & blasting. In O.J.C.No.919 of 1980, the Writ Petition was allowed by this Court by its Judgment dated 19.4.1989, as reported in (1989) 68 CLT 175 thereby quashing the notification standing on same footing.

5. Per contra, the Opp. Party, the Regional Labour Commissioner (Central) on its appearance in the matter filed a common set of counter inter alia contending therein that the Contract labour. In operations mentioned in notification dated 17.3.1993 as appearing at Annexure-1 of the present Writ Petitions are not the same as involved in the Notification dated 15.12.1979. Therefore, the principle enunciated in disposal of O.J.C.No.919 of 1980 has no application to the present case. Further, before issuing notification dated 17.3.1993 vide Annexure-1, the requirement of Sections 10 (1) & 10(2) of the Act are complied with, the Central Advisory Contract labour Board was duly consulted & keeping in view their recommendation, the employment of contract labour in works specified in the schedule to Annexure-1 was issued. The Opp. Party further contended that similar challenges were also made in O.J.C. No. 372 to 376 of 1985, 388 of 1985, 424 of 1985 & 690 of 1986 with regard to vires of Section 10 of the Act & also

the notification dated 20.11.1984 relating to prohibition of employment in Chromite Mines wherein this Court by its Judgment dated 20.11.1990 held the provisions contained in Section 10 of the Act is valid &, thereby, declared the notification also valid. Relying the decision of Hon"ble Supreme Court rendered in the case of Standard Vacuum Refining Co, of India v. Its workmen, AIR 1980 SC 948 & also the dictum of the Hon"ble Supreme Court in the matter of Sambhu Motal Works v. Their Workmen, (1996)(1) LLJ 717 (SC) & another matter in between National Iron & Steel Co. Ltd. v. State of West Bengal, AIR 1967 SC 1206, the Opp. Party contended that the Hon"ble Supreme Court, time & again approved such action of the Union of India in abolishing engagement of contract labours in the particular type of workings. Further it also justified its action on the premises that such actions are being taken as a matter of socio-economic developments, which are vulnerable to exploitation concerning the workers & the prohibition order is also clearly in terms of the provisions contained in Contract Labour (Regulation & Abolition) Act 1970 which authorizes the Government to regulate the contract labour in certain establishments & prohibiting such engagements in certain circumstances. The decision is taken following the opinion of a Central Board comprising of very competent persons & it is, therefore, contended that such actions cannot be found faulted. It is on the above premises, the Opp. Party claimed that both the Writ Petitions have no substance & therefore both the Writ Petitions be dismissed.

Thus the question arises for decision is as follows :-

(1) Whether the appropriate Government so far it relates to Petitioner establishments is Central Government or State Government?

(2) Whether there has been violation of mandatory compliance u/s. 10(1) of the Contract Labour (Regulation & Abolition), Act. 1970?

Before proceeding to deal with the case at hand, it is, at this stage, necessary to refer to the provisions as contained. In Section 2 (a) of the Contract Labour (Regulation & Abolition) Act, 1970, which is quoted as herein below:

"appropriate government" means-

(I) in relation to an establishment in respect of which the appropriate government under the Industrial Disputes Act, 1947 (14 of 1947), is the Central Government, the Central Government;

(ii) in relation to any other establishment, the Government of the State in which that other establishment is situate;]

Similarly, Section 2(a) of the Industrial Disputes Act, 1947" defining appropriate Government & relevant for purpose of decision of this case is also quoted as herein below:

(a) "appropriate government" means-

(i) In relation to any industrial disputes concerning 3[***] any industry carried

on by or under the authority of the Central Government. 4[***] or by a railway company 5[or concerning any such controlled industry as may be specified in this behalf by the Central Government] 6[***] or in relation to an industrial dispute concerning 7[8 [9[10[a Dock Labor Board established under Section 5A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), or the 11[the Industrial Finance Corporation of India Limited formed & registered under the Companies Act, 1956), or the Employees' State Insurance Corporation established under Section 3 of the Employees' State Insurance Act, 1948 (34 of 1948), or the Board of Trustees constituted under Section 3A of the Coal Mines Provident Fund & Miscellaneous Provisions Act, 1948 (46 of 1948), or the Central Board of Trustees & the State Boards of Trustees constituted under Section 5A & Section 5B, respectively, of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 (19 of 1952), 12[***], or the Life Insurance Corporation of India established under Section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956), or 13 [the Oil & Natural Gas Corporation Limited registered under the Companies Act. 1956, or the Deposit Insurance & Credit Guarantee Corporation established under Section 3 of the Deposit Insurance & Credit Guarantee Corporations Act. 1961 (47 of 1961), or the Central Warehousing Corporation established under Section 3 of the Warehousing Corporation Act, 1962 (58 of 1962), or the Unit Trust of India established under Section 3 of the Unit Trust of India Act. 1963 (52 of 1963), or the Food Corporation of India established under Section 3, or a Board of Management established for two or more contiguous States under Section 16 of the Food Corporation Act, 1964 (37 of 1964), or 14 [the Airports Authority of India constituted under Section 3 of the Airports Authority of India Act, 1994] or a Regional Rural Bank established under Section 3 of the Regional Rural Banks Act, 1976 (21 of 1976), or the Export Credit & Guarantee Corporation Limited or the Industrial Reconstruction Corporation of India Limited. 15 [the National Housing Bank established under Section 3 of the National Housing Bank Act, 1987 (53 of 1987)], or the Banking Service Commission established under Section 3 of the Banking Service Commission Act, 1975 or 16 [17 an air transport service, or a banking or an insurance company], a mine, an oil-field.] 16 [a Cantonment Board,] or a major port, the Central Government, &]

(II) In relation to any other industrial dispute, including the State Public Sector undertaking, subsidiary companies set up by the Principal undertaking & autonomous bodies owned or controlled by the State Government, the State Government;

From the reading of the definition of "Appropriate Government" so far as the Contract Labour (Regulation & Abolition) Act, 1970 read with definition of appropriate Government at Section 2(a) of the Industrial Disputes Act, 1947 is concerned makes it clear that the Petitioner establishments do not come under the purview of Section 2(a)(i) of the Industrial Dispute, Act, 1947 rather it falls to the trap of Section 2(a)(ii) of the Industrial Dispute, Act, 1947.

6. The definition of establishment as defined under Section 2(e) of the Central Labour (Regulation & Abolition Act, 1970 is concerned, the same reads as follows:

(e) "establishment" means-

(i) any office or department of the Government or a local authority, or any place Where any industry, trade, business, manufacture or occupation is carried on;

(ii) Reading of this definition makes it clear that both the Petitioner establishments being industrial establishments & having trade in particular items, are undoubtedly the establishments under the Contract Labour (Regulation & Abolition Act, 1970. Now coming to answer on the question as to who will be the appropriate Government in relation to such establishments one has to deal with the definition of "appropriate Government", as under Section 2(a) of the Contract Labour (Regulation & Abolition Act, 1970 read along with definition of Appropriate Government vide Industrial Development Act, 1947.

7. Reading of both the above definition & as discussed herein above, it is made clear that Petitioner establishments are not covered under Section 2(a) (i) of the Industrial Disputes Act rather comes under Section 2(a) (ii) of the said Act. Hence State Government is the appropriate Government in relation to the Petitioner establishments for all purposes. Consequently since the impugned notification vide Annexure-1 is a notification by the Central Government, it has the application to the establishments coming within the establishments which are covered under Section 2 (a) (i) of the Industrial Disputes Act, 1947 & in terms of Section 2 (a) (i) of the Contract Labour (Regulation & Abolition) Act, 1970, the Petitioner establishments in both the cases being the establishments governed under the State as the appropriate Government, the notification under Annexure-1 is not applicable to the Petitioner establishment. In both the Writ Petitions. It is needless to indicate here that Section-10 of the Contract Labour (Regulation & Abolition) Act, 1970 empowers the appropriate Government in exercise of powers indicated therein may bring a notification prohibiting the employment of Contract Labour in any process, operation or other work in any establishment. The State Government being an appropriate Government unless & until the State Government brings a notification parallel to the notification to Annexure-1, both the Petitioner organization cannot be prohibited from engaging Contract Labour in any process, operation or other work in their establishments. Since this Court has held the notification vide Annexure-1 is not applicable to the Petitioner establishment in both the Writ Petitions, it is not necessary to travel to question No.2 as it becomes an academic.

8. All the Writ Petitions are therefore allowed. The notification vide Annexure-1 so far its applicability to the Petitioner establishment in both the Writ Petitions is held to be bad in law. In the circumstances, it is made clear that the direction in the Writ Petitions referred to herein above shall not preclude the State Government for bringing similar notifications prohibiting working of Contract Labour in such establishments following the mandatory requirements under

Section 10 (2) of the Contract Labour (Regulation & Abolition) Act, 1970.
However, there shall be no order as to cost.