
(2009) 08 BOM CK 0012
In the Bombay High Court
Case No : Writ Petition No. 1673 of 1998

Pawan Hans Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 28-08-2009

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 10, 10(1), 10(2), 10(5)

Citation : (2010) 2 ALLMR 896 : (2010) 1 BomCR 495

Hon'ble Judges : Ketkar R.G., J;Deshmukh D.K., J

Bench : Division Bench

Advocate : Abhay Kulkarni, for the Appellant; Y.R. Mishra, for the Respondent

Final Decision : Allowed

Judgement

1. By this petition, the petitioner, which is a Government Company, challenges the Notification dated 4th July, 1997 issued by the Government of India in exercise of its power under Sub-section (1) of Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as the Act for the sake of brevity). By that Notification, the Central Government has prohibited the employment of contract labour in the works which are mentioned in the Notification on the establishment of petitioner Pawan Hans Ltd. With effect from the date of publication of the Notification. The works include-1) Canteen Services; 2) House Keeping; 3) Electrical Maintenance; 4) Plumbing; 5) Gardening and Horticulture and 6) Pump Operation. The learned Counsel appearing for petitioners attacked the validity of the Notification on two grounds. Firstly, according to him, the Central Government could not have taken into consideration the opinion expressed in favour of issuance of the Notification by a Committee constituted by the Central Advisory Contract Labour Board because when that Committee was constituted, the Central Government was not the appropriate Government in relation to the petitioners. The second contention raised is that the Notification is contrary to the law laid down by the Supreme

Court in its judgment in the case of Steel Authority of India Ltd. and Ors. v. National Union Waterfront Workers and Ors. reported in 2001 DGLS (soft) 1084 : 2001 (111) C.L.R. 349. We have heard the learned Counsel appearing for respondents.

2. For the purpose of considering the challenges raised to the Notification, in our opinion, it is necessary to see the provisions of Section 10 of the said Act. It reads as under:

10. Prohibition of employment of contract labour:

(1) Notwithstanding anything contained in this Act (but, subject to the provisions of Clause (c) of Sub-Section (5) of Section 1) the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.

(2) Before issuing any notification under Sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as-

(a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment;

(b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;

(c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;

(d) whether it is sufficient to employ considerable number of whole-time workmen.

It is clear from the provisions of Sub-section (1) of Section 10 that the appropriate Government can issue a Notification under that provision prohibiting employment of contract labour in any establishment after consultation with the Central Board or the State Board. So far as this aspect of the matter is concerned, in our opinion, in order to successfully contend that the process of consultation with the Central Board was not effective, the petitioners will have to disclose in the petition the date on which reference was made by the Central Government to the Board seeking its opinion in the matter of abolition of contract labour in relation to the establishment of the petitioners. So far as the present petition is concerned, the petitioners have placed on record the material which shows that the Board constituted a Committee in relation to abolition of contract labour on the establishment of the petitioners pursuant to the directions issued by this Court and that Committee submitted its report in support of issuance of

Notification. We do not have on record the date as to when the Central Government made reference to the Board seeking its opinion. We also do not have on record the date when the opinion was given by the Board to the Central Government. In our opinion, if the reference was made by the Central Government after it became appropriate Government in relation to the petitioners and even if it is assumed that while giving its advice the Board had taken into consideration the opinion submitted by the Committee constituted on the basis of directions issued by this Court, then also it cannot be said that the consultation with the Board was not effective. In our opinion, therefore, there is no substance in the first submission made on behalf of the petitioners.

3. So far as the second submission made by the learned Counsel appearing for petitioners is concerned, it is necessary first to refer to the Notification. The Notification dated 4th July, 1997 reads as under:

No. U-23013/12/93-LW. In exercise of the power conferred by Sub-section (1) of Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (37 of 1970), the Central Government, after consultation with the Central Advisory Contract Labour Board, hereby prohibits the employment of contract labour in the following works in the establishment of M/s. Pawan Hands Ltd., Mumbai with effect from the date of publication of this notification in the Official Gazette, namely:

1. Canteen Services
2. House Keeping
3. Electrical Maintenance
4. Plumbing
5. Gardening and Horticulture
6. Pump Operation

Perusal of that Notification shows that it prohibits the employment of contract labour in certain works on the establishment of the petitioners. It also shows that the Notification has been issued by the Central Government after consulting the Board. The Constitution Bench of the Supreme Court has considered the provisions of Section 10 of the said Act in its judgment in the case of Steel Authority of India Ltd. (supra). The observations made by the Supreme Court in paragraphs 51 and 52 of that judgment are relevant. They read as under:

51. Now, reading the definition of establishment in Section 10, the position that emerges is that before issuing notification under Sub-section (1) an appropriate Government is required to (i) consult the Central Board/State Board; (ii) consider the conditions of work and benefits provided for the contract labour and (iii) take note of the factors such as mentioned in Clauses (a) to (d) of sub-Section (2) of Section 10, referred to above, with reference to any office or department of the Government or local authority or any place where any industry, trade, business,

manufacture or occupation is carried on. These being the requirement of Section 10 of the Act, we shall examine whether the impugned notification fulfills these essentials.

52. The impugned notification issued by the Central Government on December 9, 1976, reads as under:

S.O. 779(E) 8/9.12.76 in exercise of the power conferred by Sub-section (1) of Section 10 of the Contract Labour (Regulation and Abolition) Act 1970 (37 of 1970) the Central Government after consultation with the Central Advisory Contract Labour Board hereby prohibits employment of contract labour on and from the 1st March 1977, for sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishment in respect of which the appropriate Government under the said Act is the Central Government.

Provided that this notification shall not only apply to the outside cleaning and other maintenance operations of multistoried buildings where such cleaning or maintenance operations cannot be carried out except with specialised experience.

A glance through the said notification, makes it manifest that with effect from March 1, 1977, it prohibits employment of contract labour for sweeping, cleaning, dusting and watching of buildings, owned or occupied by establishment in respect of which the appropriate Government under the said Act is the Central Government. This clearly indicates that the Central Government had not adverted to any of the essentials, referred to above, except the requirement of consultation with the Central Advisory Board. Consideration of the factors mentioned above has to be in respect of each establishment, whether individually or collectively, in respect of which notification under Sub-section (1) of Section 10 is proposed to be issued. The impugned notification apart from being an omnibus notification does not reveal compliance of Sub-section (2) of Section 10. This is ex facie contrary to the postulates of Section 10 of the Act. Besides it also exhibits non-application of mind by the Central Government. We are, therefore, unable to sustain the said impugned notification dated December 9, 1976 issued by the Central Government.

These observations were made by the Supreme Court while considering the point whether the Notification dated 9th December, 1996 issued by the Central Government u/s 10(1) of the said Act is valid and applies to all Central Government Companies.

Perusal of paragraphs 51 and 52 from the judgment of the Supreme Court in the case of Steel Authority of India shows that apart from consulting the Board, the Central Government has to consider the conditions of work and benefits provided for the contract labour. It has also to take note of the factors which are mentioned in Clauses (a) to (d) of Sub-Section (1) of Section 10 of the said Act. The Supreme Court quotes the Notification dated 9th December, 1976 verbatim and then the Supreme Court has observed that the Notification indicates that the Central Government has not adverted any of the essentials referred to by the

Supreme Court in paragraph 51 except the requirement of consultation with the Board. The Supreme Court has observed that the factors mentioned in paragraph 51 of the judgment have to be applied in respect of each establishment, whether individually or collectively, in respect of which Notification under Sub-section (1) of Section 10 of the said Act is proposed to be issued. Thus, the Supreme Court has held that the Notification on the face of it must indicate that the factors mentioned in paragraph 51 of its judgment have been considered by the appropriate Government while issuing the Notification. In the present case also, the Notification dated 4th July, 1997 on the face of it only shows that the Central Government, before issuing the Notification, had consulted the Board, other requirement's mentioned in paragraph 51 of the Supreme Court judgment for a valid Notification have not been complied with. Then we find that the Supreme Court in paragraph 121(2)(b) has observed thus:

121(2)(b). inasmuch as the impugned notification issued by the Central Government on December 9, 1976 does not satisfy the aforesaid requirements of Section 10, it is quashed but we do so prospectively i.e. From the date of this judgment and subject to the clarification that on the basis of this judgment no order passed or no action taken giving effect to the said notification on or before the date of this judgment, shall be called in question in any Tribunal or Court including a High Court if it has otherwise attained finality and/or it has been implemented.

The Supreme Court has set aside the Notification dated 9th December, 1976 for non-compliance of the requirements mentioned in Section 10(1) of the said Act, but it did it prospectively. Though from the judgment of the Supreme Court it appears that no reasons have been given by the Supreme Court for applying the doctrine of prospective ruling, it appears that the Supreme Court might have applied the doctrine of prospective ruling because as a result of the judgment of the Supreme Court in the Air India's case, which is referred to in the judgment of the Steel Authority of India Ltd. {supra}, a number of contract labors had been absorbed by the Air India. Firstly, the doctrine of prospective ruling is not available to us and secondly, in the present case, because of the operation of the interim order, none of the contract labour has been absorbed in the services of the petitioners. In the result therefore, the present petition succeeds and is allowed, the Notification dated 4th July 1997 impugned in the petition is set aside. Rule is made absolute accordingly with no order as to costs. Parties to act on the copy of this order duly authenticated by the Associate/Private Secretary of this Court. Certified copy expedited.