
(2001) 02 MAD CK 0082

In the Madras High Court

Case No : Writ Petition No. 16450 of 2000, W.M.P. No. 23861 of 2000

Printing and General Workers Union

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 08-02-2001

Acts Referred:

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

Citation : (2001) 89 FLR 512 : (2001) 1 LLJ 1578

Hon'ble Judges : K. Raviraja Pandian, J

Bench : Single Bench

Advocate : K.M. Ramesh, for the Appellant; N.R. Natarajan, Addl. CGSC, S. Ravindran and T.S. Gopalan, for the Respondent

Final Decision : Dismissed

Judgement

Raviraja Pandian, J.—In the above writ petition, the petitioner Printing and General Workers Union represented by its President seeks this Court to issue writ of mandamus directing the second respondent herein namely, The National Small Industries Corporation. Ltd., to implement the notification bearing No. S.O. 779(F), dated December 9, 1976 issued by the Government of India and consequently direct the second respondent to absorb and regularise the services of the contract workmen employed as security and watch and ward whose names are appended with the writ petition.

2. The said claim is based on the notification issued as supplement to the Contract Labour (Regulation and Abolition) Act, 1970 dated December 9, 1976. By the said notification, the Central Government issued directions by exercising the power under Sub-section (1) of Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970, prohibition the employment of contract labour on and from March 1, 1977 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. The notification further provides that the said notification shall not apply to the

outside cleaning and other maintenance operations of multi-storeyed building where such cleaning or maintenance operations cannot be carried out except with specialised experience.

3. The brief facts, which are necessary to resolve the dispute in the present writ petition are as follows: The petitioner union claims that twenty workmen whose names are given in the annexure to the writ petition are their members and are employed as contract workmen in the second respondent a Government of India undertaking having its centre at Guindy Industrial Estate, that the said employees are doing the work of watch and ward, that the work of security and watch and ward has been entrusted by the second respondent to the private contractor namely, Thai Security which is not registered under the provisions of Contract Labour (Regulation and Abolition) Act, 1970, that the said workmen who are doing security and watch and ward work are members of the petitioner-union and as such the petitioners are espousing their cause, that though the contractor is charging very huge amount from the second respondent the workmen are paid only a meagre amount besides being denied weekly leave or payment in lieu of weekly off, leave on National and Festival Holidays, that as early as 1976, the Government of India issued a notification, dated December 9, 1976, u/s 10 of the Contract Labour (Regulation and Abolition) Act, 1970, prohibiting employment of contract labour for security and watch and ward service, that in spite of the said notification the second respondent continues to employ contract workmen to do security and watch and ward work and that the same is done to exploit cheap labour which is nothing but unfair trade labour practice. Hence the writ petition is filed with a prayer as stated above.

4. The second respondent filed a counter affidavit. In the counter-affidavit the second respondent while denying the various averments contained in the affidavit filed in support of the above writ petition has contended inter alia that the petitioner-union has filed the present writ petition claiming that the contract workmen, are the members of their union, that however, the petitioner-union does not represent the workmen of the second respondent. As such the writ petition filed by the union is not maintainable. It is further averred that irrespective of whatever claim the workmen may have in law against the respondent are total strangers to the second respondent and as such the petitioner-union cannot maintain the writ petition claiming to represent the contract workmen employed in the second respondent.

5. Further it is averred in the counter that the right available to the trade union to raise an industrial dispute on behalf of the workmen under the provisions of the Industrial Disputes Act, cannot be made applicable, to invoke the jurisdiction of this Court, under Article 226 of the Constitution of India. The further averment of the second respondent is that the second respondent is a company registered under the Companies Act and it is not an industry carried on by or under the authority of the Central Government. u/s 2(a) of the Industrial Disputes Act, the appropriate Government for the second respondent is the State Government.

Therefore the notification, dated December 9, 1976, which forms the basis for the claim of the petitioner does not apply to the second respondent. Further the engagement of the workers through the contract of the second respondent is in the category of security guards, security supervisor and security officer. They are engaged to monitor the entry and exit of men and material and vehicles and provide security to the personnel and properties. They are not engaged for watching the building. Therefore, the engagement of contract labour for security purpose would not fall within the scope of notification, dated December 9, 1976. In any event, the petitioner cannot maintain the writ petition, if at all a dispute under Industrial Disputes Act, can only be raised. As there is dispute about the nature of engagement of the persons mentioned in the annexure and the nature of the job for which engagement of contract labour is prohibited, it will have to be decided only on the basis of evidence. Such disputed question of fact cannot be decided in the writ petition. With the abovesaid averment, the second respondent prays for the dismissal of the writ petition.

6. Sri K.M. Ramesh, the learned counsel appearing for the petitioner, has contended that though the petitioner-union is not having any workers as members who are employed in the second respondent, the contract workmen are their members and the second respondent is a statutory Corporation controlled by the Central Government and as such the notification issued is binding on the second respondent and the second respondent has to implement the notification in its letter and spirit. The learned counsel for the petitioner also relied on the decision of the Supreme Court reported in *Air India Statutory Corporation, etc. Vs. United Labour Union and others* [overruled], : and contended that on identical set of facts, the workmen doing sweeping and cleaning work, had filed a writ petition in the High Court of Bombay claiming the benefits under the present notification and not only the writ petition was allowed by the High Court of Bombay but on appeal, the Supreme Court also in the case referred above upheld the judgment of the Division Bench of the High Court. The said judgment squarely applies to the facts of the present case.

7. The learned counsel for the petitioner further contended that the appropriate Government in respect of the second respondent is the Central Government. This aspect of the matter has also been considered in *Air India Statutory Corporation* case (supra) and as such the second respondent cannot contend that the appropriate Government is not the Central Government and that the notification issued by the Central Government is not applicable to the second respondent-company. He also relied on a letter, dated November 1, 2000 issued by the Labour Enforcement Officer (Central), Chennai, wherein the Labour Enforcement Officer has stated that the contract labour for sweeping, cleaning, dusting and watching were engaged in violation of notification, dated July 12, 1976, through a contractor namely, Thai Security Services (Private), Ltd., and requested the second respondent to rectify the irregularity and contended that the issuance of notice by the Labour Enforcement Officer would go to show that the appropriate Government is only the Central Government.

8. Per contra, the learned counsel appearing for the second respondent reiterated the contentions raised in the counter as to the maintainability and further contended that the petitioner-Union has raised a dispute before the State Government which would indicate that the petitioner Union itself has accepted that the appropriate Government for the petitioner is the State Government. Further he relied on the petitioner's charter of demands submitted to the Labour Officer, Chennai, dated January 6, 2001. He further contended that the second respondent is a company incorporated under the provisions of the Companies Act and it is a private company and as per the definition of Section 2(a) of the Industrial Disputes Act, the company is not carried on by the Central Government or carried on under the authority of the Central Government.

9. He also further contended that the issue involved in the present writ petition as to the appropriate Government has not been ultimately concluded by the Supreme Court as stated by the petitioner relying on the decision in *Air India Statutory Corporation v. United Labour Union and Ors.* (supra) and the matter is still under consideration before a Larger Bench. In support of his contention the learned counsel relied on the decision in *F.C.I., Bombay and Others Vs. Transport and Dock Workers Union and Others*, wherein the Apex Court has observed that though the cases, namely, *Hindustan Machine Tools v. Ramana Dayaram Shetty* 1998 (1) LLN 270 and *Food Corporation of India Workers' Union Vs. Food Corporation of India and Others*, : were decided by three-Judges Bench. The Hon'ble Judges, who constituted the three-Judges Bench in *Air India Statutory Corporation case* (vice supra), did not agree with the view already expressed earlier that the appropriate Government would be the State Government and thus there is an obvious conflict of opinion on this issue which needs to be resolved. The other question canvassed as to the question on automatic absorption of contract labour as a consequence of a notification issued u/s 10 of the Act is also an important question and having regard to the conflict of opinion the matter has already been referred to a Larger Bench.

10. He further contended that even the notification is not applicable because the persons engaged as contract workmen through Thai Security Services are all engaged for specialised work of security services and the said security services as stated earlier is providing security for the men and material and the equipment which security services cannot be done without special training.

11. Heard Sri K.M. Ramesh, learned counsel appearing for the petitioner. Sri N.R. Natarajan, Additional Central Government Standing Counsel for the first respondent and the learned counsel appearing for the second respondent.

12. The basis for the claim of absorption of the workmen on permanent basis is the notification dated December 9, 1976, issued by the Central Government which is as follows:

NOTIFICATION Supplement to the Contract Labour (Regulation and Abolition Act, 1970). Prohibition of certain employment (Central Notification No. S. O. 779 (F)

Dated December 9, 1976, New Delhi).

In exercise of the power conferred by Sub-section (1) of Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (87 of 1970), the Central Government after consultation with the Central Advisory Contract Labour Board, hereby prohibits employment of contract labour on and from March 1, 1977, 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.

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

"Published in the Gazette of India, Extra-ordinary No. 524, dated December 9, 1976."

13. A mere perusal of the notification would show that it prohibits the employment of contract labour on and from the first of March 1977 for sweeping, cleaning, dusting and watching of buildings owned and occupied by establishments in respect of which the appropriate Government under the said Act is the Central Government and further provided that the notification shall not apply to the outside cleaning and other maintenance operations of multi-storeyed building where such cleaning or maintenance operations cannot be carried out except with specialised experience.

14. It is the specific case and contention of second respondent that the workmen are engaged through contractor in the category of security guard, sweeping supervisor and security officers. They are not engaged for watching the building but are engaged to provide security to men and materials and vehicles and monitor the entry and exit of men and materials. They cannot be equated with persons doing dusting, cleaning and watching the building. The document, dated August 10, 2000, which is a letter whereby the second respondent has extended the contract up to September 30, 2000. The said document is filed by the petitioner themselves. To understand the service for while such the contract labour are engaged by the second respondent, it is better to extract the letter which is as follows:

NSIC Technical Service Centre The National Small Industries Corporation Ltd.,

(A Government of India Enterprise) Sector B-24, Guindy Industrial Estate Ekkaduthangal, Chennai - 600 032.

Telephone: 2342335/6/8, 2318817 Fax No. 091-044-2344812 Grams: Prototype E-mail: nsictsc@mdl.vsnl.net.in

Date 10.08.2000 By hand delivery

The Managing Director Thai Security Services (Private), Ltd., "Agruchand Mansion" 153, Anna Salai, Chennai - 2.

Sir,

The existing contract for security services at our Centre has been extended upto September 30, 2000 on the existing terms and conditions.

Thanking you,

Yours faithfully, (Sd.) D. Mohan Raj Manager (P & A)

C.C. to: J.M. (A/cs), G.M.S. Cell Security Officer

From the above extracted letter it is clear that the letter is addressed to a security agency by the second respondent extending their services up to September 30, 2000 and it is evident from the letter that the persons are engaged for a specialised purpose which requires specialised training.

15. If so, the next question would be, whether these security personnel would be equated with the person watching the building? In other words, whether the words "watching the building" employed in the notification would rope in or comprehend within it, the Security Personnel. It is common ground and well settled that the meaning of the particular word would be gathered or understood with particular reference to the context with which and from the companion word with which it is used in the provision, in the case notification, dated December 9, 1976. As seen from the notification, which is extracted above, it prohibits employment of contract labour on and from March 1, 1977 for "sweeping, cleaning, dusting and watching the building". The word : "watching the building" has employed in the notification with conjunction (and) of the words sweeping, cleaning, dusting which work requires no specialised training. If so, the work of "watching the building" also require no specialised training. This aspect is made more clear by the proviso attached to the notification, which provides with no uncertain terms that the notification shall not apply to even to the outside cleaning and maintenance operation where such maintenance cannot be carried out except with specialised experience.

16. If the meaning of the word "watching of the building" is understood by applying the principles of ejusdem generis also it would go to prove it requires no specialised experience as that of doing the work of cleaning and dusting, which are the words, the word "watching of building" keeps company. So the security personnel employed as contract labour through the contractor Thai Security Services, in my opinion cannot be roped in with the words "watching of the building" employed in the notification because they required specialised experience in providing securities.

17. If the wordings employed in sweeping, cleaning, dusting and watching of the building is understood by applying the principles of ejusdem generis, the security personnel employed by the second respondent cannot be roped in which the word watching of building and as such the notification cannot be made applicable to the persons who are employed for the purposes and therefore the prayer sought for in the writ petition cannot be granted since the petitioner is non-

suited to the relief as sought for the reasons abovesaid.

18. In view of my finding as to the application of the notification to the persons engaged by the second respondent, the other contentions as to which is that the appropriate Government and as to the maintainability of the writ petition, and also as to the applicability of the principles involved in *Air India Statutory Corporation v. United Labour Union and Ors.* (supra), assumed no importance and as such they are not considered.

19. In view of the above discussions, the writ petition is dismissed. Consequently, the connected W.M.P. is also dismissed.