
(1991) 10 OHC CK 0025
In the Orissa High Court
Case No : O.J.C. No. 1846 of 1987

Tata Refractories Ltd. and Others

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 30-10-1991

Acts Referred:

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

Citation : (1992) 73 CLT 373 : (1992) 2 LLJ 810

Hon'ble Judges : G.B. Patnaik, J; D.M. Patnaik, J

Bench : Division Bench

Advocate : Govind Das, Sitakant Patnaik and S.K. Pandhi, for the Appellant;
Ashok Mohanty and Standing Counsel (Central), for the Respondent

Final Decision : Allowed

Judgement

G.B. Patnaik, J.—The notification of the Central Government dated February 4, 1987 issued in exercise of powers conferred by Sub-section (1) of Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as "the Act") prohibiting the engagement of contract labour in the fireclay mines of the country, is under challenge in this writ application. The main ground of attack is that the appropriate authority has not applied its mind to the relevant conditions stipulated under the Act before issuing the notification and accordingly, the impugned notification being a product of non-application of mind is illegal and invalid.

2. The petitioners assert that the Tata Refractories Limited is engaged in manufacture and production of fire-bricks and other refractory materials and the Talabasta Fireclay Mine situated near Banki is a captive mine of petitioner No. 1. The petitioners have engaged two contractors with the job of removal of overburden, raising and stacking of fire-clay and dewatering of the fireclay mine. According to the petitioners, though Section 10 of the Act empowers the appropriate Government in consultation with the Central Board or the State Board, as the case may be, to prohibit employment of contract labour in any

process, but before exercising the said power, the pre-conditions contained in Section 10 must be complied with. But the appropriate Government in the present case before issuing notification under Annexure-1 did not take the relevant factors into consideration and without any application of mind, issued the notification in question. In course of hearing of the writ application, Mr. Das appearing for the petitioners, apart from reiterating the stand taken in the writ application, has also urged that there was no report of the Central Board and there had been no consultation and further no opportunity of hearing has been given to the petitioner before the notification in question.

3. The Union Government has tiled a counter affidavit and the stand of the Union in the counter affidavit is that in view of the object of the Act and power having been conferred u/s 10, the Union Government was wholly justified in issuing the notification keeping the socio-economic condition in view. It was also alleged that the working condition of the contract labour in the fireclay mines was found to be not satisfactory for which the Central Government reconstituted the Central Advisory Contract Labour Board which in its turn constituted a Committee to go into the question of working of contract labour system in mica, magnesium, gypsum, magnesite and fireclay mines. The said Committee discussed the matter and incorporated its recommendations which were ultimately accepted by the Central Advisory Board and thereupon in consultation with the Board, the Central Government issued the notification.

4 In view of the rival stands of the parties, the short question that arises for our consideration is whether the exercise of power by the Central Government u/s 10 of the Act and issuance of the notification under Annexure-1 can be said to be invalid and inoperative as there has been no compliance with the provisions contained in Section 10 of the Act. To appreciate the contention better, it is appropriate to extract the provisions of Section 10 of the Act hereunder:

"10. Prohibition of employment of contract labour.

(1) Notwithstanding anything contained in this Act, 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 so, 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.

Explanation-If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final."

Mr.Das appearing for the petitioners contends that there has been no consultation with the Central Board as provided in Section 10(1) and there has been no application of mind by the Central Government to the four clauses of Sub-section (2) of Section 10 and, therefore, the impugned notification is vitiated. He also urges that since the question whether the operation is of a perennial nature or not is required to be decided by the Central Government and the decision of the Central Government is final, the process involves an adjudication and, therefore, it was obligatory on the part of the Central Government to give an opportunity of hearing to the petitioners and that not admittedly having been done, the notification is invalid. Mr. Mohanty, the learned Standing Counsel, appearing for the Central Government, on the other hand, contends that the procedure provided u/s 10 has been duly followed before issuing the notification under Annexure-1 and no opportunity of hearing is necessary before issuing the notification. We shall now examine the rival submissions made at the Bar.

5. Before examining the rival submissions made at the Bar, it would be appropriate to notice that the Act has been enacted to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances as enumerated in the different provisions of the Act. The Statement of Objects and Reasons of the Act which was noticed by their Lordships of the Supreme Court in the case of *Catering Cleaners of Southern Railway Vs. Union of India (UOI)* and *Another*, is as follows: (pp 350-351):

"The system of employment of contract labour lends itself to various abuses. The question of its abolition has been under the consideration of Government for a long time. In the second Five Year Plan, the Planning Commission made certain recommendations, namely, undertaking of studies to ascertain the extent of the problem of contract labour, progressive abolition of system and improvement of service conditions of contract labour where the abolition was not possible. The matter was discussed at various meetings of Tripartite Committees at which the State Governments were also represented and general consensus of opinion was that the system should be abolished wherever possible or practicable and that in cases where this system could not be abolished altogether, the working conditions of contract labour should be regulated so as to ensure payment of wages and provision of essential amenities. The proposed bill aims at abolition of contract labour in respect of such categories as may be notified by appropriate

Government in the light of certain criteria that have been laid down, and at regulating the service conditions of contract labour where abolition is not possible. The Bill provides for the setting up of Advisory Boards of a tripartite character, representing various interests, to advise Central and State Governments in administering the legislation and registration of establishments and contractors. Under the Scheme of the Bill, the provision and maintenance of certain basic welfare amenities for contract labour, like drinking water and first-aid facilities, and in certain cases rest-rooms and canteens, have been made obligatory. Provisions have also been made to guard against details in the matter of wagepayment."

In view of the objects, as aforesaid, there is little doubt that the legislation is a beneficial one and power has been conferred u/s 10 upon the Central Government to issue appropriate notification prohibiting contract labour and the relevant factors to be considered before issuing such notification are mentioned in Section 10(2) of the Act. Undoubtedly, the appropriate Government is required to consult the Central Board or the State Board, as the case may be, before arriving at such decision and the said decision is subject to judicial review to the extent as to whether the appropriate Government has formed its opinion after taking into account the relevant considerations or not. In a recent case of Sankar Mukherjee and Others Vs. Union of India (UOI) and Others, their Lordships of the Supreme Court no doubt deprecated the practice of engaging contract labour and held (p 445):

"It is surprising that more than forty years after the independence, the practice of employing labour through the contractors by big companies including public sector companies is still being accepted as a normal feature of labour-employment. There is no security of service to the workmen and their wages are far below than that of the regular workmen of the company....."

It has also been held in the said case that the Contract Labour (Regulation & Abolition) Act is an important piece of social legislation for the welfare of labourers and has to be liberally construed. The system of engaging contract labour has been held to be "archaic", "primitive" and of "baneful nature" in the *Catering Cleaners*" case (supra) as well as in the case of *Standard Vacuum Refining Co. of India Ltd. v. Its Workmen* 1960 II LLJ 233. But howsoever laudable the object of the legislation may be and howsoever primitive the practice of engaging the contract labour may be, when a notification issued by the Central Government abolishing contract labour is challenged, it must be shown by the appropriate Government that there has been due compliance with the provisions of the Act and the formation of the opinion of the Central Government is bona fide after considering the germane materials as enumerated in the Act itself. Otherwise, the exercise of power conferred on the Central Government will be vitiated. It is, therefore, necessary to examine whether the Central Government in the present case before issuing the notification (Annexure-1) did consult the Central Advisory Board as required u/s 10(1) and in

finalising the process of issuing the notification whether the pre- conditions contained in Section 10(2) of the Act were duly taken into account or not. It is not disputed by the Union Government that before issuing the notification u/s 10(1) consultation with the Central Advisory Board is mandatory and before issuing any notification, the appropriate Government must have regard to the conditions of work and benefits provided for the contract labour in that establishment as well as the factors enumerated in Clauses (a) to (d) of Section 10(2). The stand of the opposite party is that the Central Advisory Board in its turn had constituted a Committee and that Committee had taken into account the relevant factors as contained in Sub-section (2) of Section 10 and had submitted a report on the basis of which ultimately the Central Government exercised its power u/s 10(1) and issued the notification. But neither in the report of the Advisory Board nor of the Committee constituted by the said Board was produced before the Court to satisfy as to whether the factors mentioned in Clauses (a) to (d) of Section 10(2) were at all taken into account by the said Committee or not. A bare assertion in the counter affidavit without any material in support of the same cannot be said to be sufficient to establish that the relevant factors contained in Clauses (a) to (d) of Sub-section (2) of Section 10 had been considered by the constituted Committee before submitting its report. Though time had been given to the learned Standing Counsel for the Central Government to produce the report in question for our inspection, yet the said report has not been produced. Recently, a Bench of this Court in the case of Zenith Industrial Services and Others Vs. Union of India (UOI) and Others, has come to the conclusion that there is no material to support that the Central Government issued the general notification prohibiting the employment of contract labour in the works specified therein in the limestone, dolomite and manganese mines in the country after satisfying the mandatory requirement of Section 10(1) and Clause (a) to (d) of Section 10(2) of the Act and, therefore, the notification is liable to be quashed. In coming to the aforesaid conclusion, the Bench of this Court has relied upon the enunciation of law made by their Lordships of the Supreme Court in Catering Cleaner's case (supra). The aforesaid Bench decision which was in respect of a notification abolishing contract labour in the works specified therein in the limestone, dolomite and manganese mines would apply to the present notification where there has been prohibition of contract labour in respect of fireclay mines. On the materials on record, namely on the basis of the counter affidavit filed by the Union Government without any supporting materials, it is difficult for us to accept the contention of Mr. Mohanty, the learned Standing Counsel for the Central Government that the provisions contained in Section 10(1) as well as in Section 10(2) of the Act were duly complied with and all the relevant factors had been taken into account. In the premises, as aforesaid, we are of the considered opinion that the Central Government had not complied with the mandatory requirements of Sub-section (2) of Section 10 of the Act and, therefore, the exercise of power u/s 10(1) and issuance of notification under Annexure-1 are vitiated.

6. In view of the above conclusion of ours on the first contention of Mr. Das, we do not think it necessary to examine the second contention. In the premises, as aforesaid, we quash the notification contained in Annexure-1 so far as it relates to the fireclay mine of the petitioners.

The writ application is allowed. There will, however, be no order as to costs.

D.M. Patnaik, J.

7. I agree.