

(2016) 07 OHC CK 0020

In the Orissa High Court

Case No : Writ Petition (Civil) No. 10063 of 2015

The Management of M/s Paradeep Phosphates Ltd.

APPELLANT

Vs

Govt. of India

RESPONDENT

Date of Decision : 20-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226

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

Citation : (2017) 1 CLR 679 : (2016) 2 ILRCuttack 479 : (2017) LabLR 555 : (2017) LIC 1797

Hon'ble Judges : Vineet Saran, CJ. and Dr. B.R. Sarangi, J.

Bench : Division Bench

Advocate : M/s. Narendra Kishore Mishra, Senior Advocate, N.K. Mishra, A.K. Ray, A. Mishra, P. Dash and S. Pradhan, Advocates, for the Petitioners; Mr. Aurovinda Mohanty, C.G.C. Ms. Savitri Ratho, Addl. Govt. Advocate M/s S.K. Mishra and S.S. Sahoo, Advocates, for t

Final Decision : Allowed

Judgement

Vineet Saran, C.J.—The only question involved in this writ petition is with regard to abolition of contract labour in fifteen specified areas of functioning by the petitioner company, Paradeep Phosphates Limited (PPL).

2. This case has a chequered history. Very briefly, the facts are that the petitioner company was established in the year 1981 as a joint venture company of Government of India and Government of Nauru. In 1990, the company came to be fully owned by the Government of India. Thereafter in the year 2002, the Government of India dis-invested 74% of shares and consequently the company was privatized.

3. The question of abolition of contract labour started in the year 1997, when on 29.07.1997, a report regarding the same was submitted by the State Advisory Contract Labour Board (for short "State Board") recommending prohibition of contract labour in sixteen specified areas of functioning by the petitioner

establishment. By notification dated 28.04.2000, the State Government abolished contract labour in one of the sixteen areas, i.e., DAP plant of the petitioner company, and did not exercise its power of abolishing contract labour in the remaining specified fifteen areas.

The abolition of contract labour in DAP plant was challenged by the petitioner company, and the act of the State-opposite parties in not abolishing the contract labour in other fifteen specified areas was challenged by the Mazdoor Union, before this Court by filing separate writ petitions. The writ petition of the petitioner company for quashing the notification dated 28.04.2000, was dismissed, which order was affirmed by the Supreme Court. The matter regarding not notifying abolition of contract labour in fifteen specified areas was remanded to the State Government by the common judgment dated 24.06.2003 of the High Court passed in OJC No. 2751 of 2000 and 7382 of 2001. Subsequently, another notification dated 05.11.2004 was issued by the State Government refusing to abolish contract labour system in the fifteen left out areas of the petitioner company. Challenging the same, the Mazdoor Union filed W.P.(C) No. 13791 of 2005, and a Division Bench of this Court, while allowing the writ petition, by order dated 05.07.2012, quashed the said notification dated 05.11.2004, and remanded the matter back to the State Government to take a fresh decision as per the observations made in the said order, by ignoring the report submitted by the extra-legal committee constituted by the State Government, and by giving due weightage to the recommendation made by the State Board. The said order was challenged by the petitioner company in S.L.P. (C) No. 31360 of 2012, which was finally dismissed by the Apex Court on 15.07.2014.

Thereafter, on 20.04.2015, another notification (Annexure-10) has been issued by the State Government providing for abolition/prohibition of contract labour in the jobs/processes in the fifteen specified areas of the petitioner company which, though recommended by the State Board, had not been notified earlier. Challenging the said notification, this writ petition has been filed.

4. We have heard Sri Narendra Kishore Mishra, learned Sr. Counsel along with Sri Nitish Kumar Mishra, learned counsel appearing for the petitioner company, as well as Ms. Savitri Ratho, learned Addl. Govt. Advocate appearing for the State opposite parties and Sri Sanjay Kumar Mishra, learned counsel appearing for opposite party no.5-Paradeep Phosphates Mazdoor Union, and perused the records. Pleadings between the parties having been exchanged, with the consent of learned counsel for the parties, this writ petition is being disposed of finally at the stage of admission.

5. For proper appraisal of the issues involved in this case, we would like to extract the impugned notification/order as well as relevant Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (for short "Act 1970").

The notification dated 20.04.2015 issued by the Govt. of Odisha in Labour & ESI

Department reads thus:

"Government of Odisha

Labour & E.S.I. Department

Notification

Bhubaneswar dated 20th April, 2015

No. LL-II-CHL-2/13 3464/LESI, in exercise of the powers conferred by sub-section (1) of Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (37 of 1970), the State Government after consultation with the State Advisory Contract Labour Board having regard the conditions of work and benefits provided for and other relevant factors in relation to the contract labour in the establishment mentioned in column (2) of the Schedule below, do hereby prohibit the employment of contract labour in the jobs and processes specified against such establishment in column (3) thereof.

Schedule

Sl.No.

Name of the Establishment

Name of the Jobs/Processes

(1)

(2)

(3)

1.

M/s. Paradeep Phosphate Limited, Paradeep

1. Bagging, stitching, counting and dispatch of packets by the rake including loading of fertilizer packets, platform tally work and staking in the bagging plant.

2. Opening and closing of valves in Off-site Plant.

3. Cleaning, House keeping, Draining in inside the Sulphuric Acid Plant(SAP)

4. Cleaning in Phosphoric Acid Plant (PAP)

5. Maintenance in Sewerage Treatment Plant (STP)

6. Railway Track Maintenance work

7. Di-Ammonia Phosphates (DAP) Spillage and material feeding works.

8. Port operation Reclaiming and stacking work

9. Sulphuric Acid Plant (SAP), Di-Ammonia Phosphates (DAP), Spillage Shifting works.
10. Sweeping and Cleaning inside the factory premises.
11. Drain Cleaning work.
12. Mechanical Maintenance work.
13. Instrument maintenance including repair of broken/damaged tools.
14. Water Treatment Plant (WTP) Painting, Air conditioner work, Plumbing works and mechanical work.
15. Fire and Safety Services.

By order of the Governor

Sd/-

Principal Secretary to Government"

Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 is quoted 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 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."

6. Mr. Narendra Kishore Mishra, learned Senior Counsel, appearing for the petitioner company, has submitted that the impugned notification dated 20.04.2015 is liable to be quashed for the following reasons:-

- (1). Impugned notification is devoid of reasons;
- (2). Petitioner was not afforded opportunity before issuance of notification;
- (3). There was no consultation with the State Board prior to issuance of the notification;
- (4). Directives issued by the Division Bench of this Court vide its order dated 05.07.2012 in W.P.(C) No. 13791 of 2005 have not been followed; and
- (5). Provisions of Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 have not been followed.

7. Ms. Savitri Ratho, learned Addl. Govt. Advocate appearing for the State opposite parties, as well as Sri S.K. Mishra, learned counsel appearing for the Mazdoor Union-opposite party no. 5, have, however, submitted that while issuing the impugned notification, no reasons were required to be given, as the same would be contained in the records of the State Government. As regards opportunity of hearing to be provided to the petitioner, it is submitted that law does not require so. It is, however, submitted that notice was issued to the petitioner by the Labour Department on 31.10.2012, to which a reply was given by the petitioner on 20.12.2012 and, as such, there was sufficient compliance of the principles of natural justice. As regards non-consultation of the State Board prior to issuance of the impugned notification, it is submitted that there was no necessity for fresh consultation with the State Board, as the report of the State Board dated 29.07.1999 was already on record. Their further submission is that the directives of the High Court vide order dated 05.07.2012 as well as the provisions of Section 10 of the Act, 1970 have been complied with and, as such, according to the learned counsel for the opposite parties, this writ petition deserves to be dismissed.

8. Sub-section (1) of Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 begins with a non obstante clause -" notwithstanding anything contained in this Act". Such clause beginning with "notwithstanding anything contained in this Act" is appended to a Section in the beginning, with a view to give the enacting part of the Section, in case of conflict, an overriding effect over the provision of the Act. The interpretation of non obstante clause has been considered by the apex Court in *Orient Paper and Industries Ltd. v. State of Orissa*, AIR 1991 SC 672 and *Narcotics Control Bureau v. Kishan Lal*, AIR 1991 SC 558.

In *Iridium India Telecom Ltd. v. Motorola Inc*, (2005) 2 SCC 145, the apex Court held that the expression non obstante clause is equivalent to saying that in spite of the provision or Act mentioned in the said clause, the enactment following it will have its full operation or that the provisions embraced in the non obstante

clause will not be an impediment for the operation of the enactment.

In *Satyanarayan Sharma v. State of Rajasthan*, AIR 2001 SC 2856, the apex Court held that "notwithstanding anything contained in this Act" may be construed to take away the effect of any provision of the Act in which the Section occurs but it cannot take away the effect of any other law.

9. Regulation or Abolition of Contract labour is governed by the Contract Labour (Regulation and Abolition) Act, 1970, which is a complete code in itself. The question as to whether the contract labour should be abolished or not, is within the exclusive domain of the appropriate Government as provided under Section 10 of the Act. Therefore, 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.

In *Andhra Bank v. Andhra Bank Officers*, (2008) 7 SCC 203, the apex Court held that "consultation" has to be meaningful. It must be conscious and effective consultation.

In *High Court of Judicature for Rajasthan v. P.P. Singh*, (2003) 4 SCC 239, the apex Court considered the meaning of Consultation as follows:

"The Terminology "consultation" used in Rule 15 having regard to the purport and object thereof must be given its ordinary meaning. In Words and Phrases (Permanent Edition, 1960, Vol.9 p.3) to "consult" is defined as "to discuss something together, to deliberate". Corpus Juris Secundum (Vol. 16-A, 1956 Edn., p. 1242) also says that the word "consult" is frequently defined as meaning "to discuss something together, or to deliberate". By giving an opportunity to consultation or deliberation the purpose thereof is to enable the Judges to make their respective points of view known to the others and discuss and examine the relative merits of their view. It is neither in doubt nor in dispute that the Judges present in the meeting of the Full Court were supplied with all the requisite documents and had full opportunity to deliberate upon the agenda in question."

While interpreting the provisions contained under Section 3(1)(a) of the Orissa Lokpal and Lokayuktas Act, 1995 in *Justice K.P. Mohapatra v. Sri Ram Chandra Nayak*, (2002) 8 SCC 1, the apex Court held as follows:

"(1) Consultation is a process which requires meeting of minds between the parties involved in the process of consultation on the material facts and points involved to evolve a correct or at least satisfactory solution. There should be meeting of minds between the proposer and the persons to be consulted on the subject of consultation. There must be definite facts which constitute the foundation and source for final decision. The object of the consultation is to render consultation meaningful to serve the in the Contract Labour (Regulation and Abolition) Act, 1970 ended purpose. Prior consultation in that behalf is mandatory."

In *L & T McNeil Ltd. v. Govt. of T.N.*, (2001) 3 SCC 170, the word "consultation", used under Section 10(1) of the Contract Labour (Regulation and Abolition) Act, 1970, came up for consideration by the apex Court and it was held as follows:

"Consultation" does not mean concurrence. Where on the question of prohibition of employment of contract Labour the State Board recorded diverse views of the representatives of various interests but without reaching any decision recommended that the Government should take a decision in the matter, held, the requirement of consultation stood satisfied.

Consultation does not mean concurrence and the views of the Board are ascertained for the purpose of assisting the Government in reaching its conclusion on the matter one way or the other. In the present case, although no definite view was expressed by the Board, the fact that the Board had been consulted in the matter is indisputable."

10. In view of the meaning attached to "consultation" used under Section 10(1) of the Act of 1970, it does not need to be read as "concurrence". Therefore, in the context of the present case, where the question of prohibition of employment of contract labour is under consideration, the appropriate Government has to make consultation with the State Board and then a decision has to be taken, then only the requirement of consultation would stand satisfied. However, to make the consultation purposeful and relevant, the same should be just before the decision is taken by the State Government.

11. Further as per sub-section (2) of Section 10 of the Act, the appropriate Government has to take into consideration the relevant factors as enumerated in clause (a) to clause (d) of the said sub-section. Notification is to be issued only when the conditions required under Section 10(1) and 10(2) of the Act, 1970 are satisfied. However, any notification issued contrary to the same, cannot be sustained in the eye of law.

12. As we have already indicated, the earlier recommendation made by the State Board on 29.07.1999 was duly considered by the State Government immediately thereafter on 28.04.2000, and instead of sixteen specified areas, for which recommendation was made by the State Board for abolition of contract labour, the State Government, vide notification dated 28.04.2000, accepted the recommendation for only one area, i.e., DAP plant of the petitioner, and impliedly rejected the recommendation of the State Board for the remaining areas.

13. Then, vide order dated 05.11.2004, the recommendation for abolition of contract labour with regard to fifteen specified areas was rejected by the State Government by giving reasons for the same. What we notice is that by the impugned notification dated 20.04.2015, no reason whatsoever has been given, and all that is mentioned is that the order has been issued after the consultation with the State Board, without there being any fresh consultation with the State Board after 29.07.1999.

14. In our view, when once the State Government had already rejected the recommendation dated 29.07.1999 made by the State Board by giving specific reasons vide order dated 05.11.2004, then if the said recommendation of the State Board was to be reconsidered and accepted, then the least that was required is that adequate reasons should have been given to counter the reasons given in the order dated 05.11.2004 whereby recommendation of the State Board had been rejected. The same are patently lacking in the present case. The submission of the opposite parties that the reasons would be in the records of the Government, is not worthy of acceptance, as the opposite parties had sufficient opportunity to place the same, either by way of annexing the relevant documents along with the counter affidavit, or by producing the records, which both have not been done.

15. The next issue relates to providing of opportunity to the petitioner before passing of the impugned order/ notification. What we notice is that the communication dated 31.10.2012 issued by the State Government was merely a query which was made to the petitioner, to which a reply was given on 20.12.2012. However, it does not appear that any specific opportunity was given to the petitioner as to why the contract labour should be abolished in the fifteen specified areas of its establishment. While passing the order dated 05.07.2012, a Division Bench of this Court had specifically observed that the earlier notification was bad as the Mazdoor Union was not given opportunity prior to the issuance of that notification. If the Mazdoor Union was to be given opportunity before issuance of the notification, then, as a natural consequence, the employer also ought to be given adequate opportunity, which apparently has not been afforded in the present case.

16. Regarding the question of consultation with the State Board prior to passing of the impugned notification, though it has been argued that the earlier recommendation of the State Board dated 29.07.1999 was sufficient for the State Government to issue the notification, however, in the present context, where the notification was being issued sixteen years after the recommendation was made by the State Board, which had already been rejected by the State Government on 05.11.2004, then fresh consultation, even if it may not be mandated by law, ought to have been made with the State Board, as circumstances and facts would have changed during the period of sixteen years, which would necessarily be required to be considered by the State Government while taking a fresh decision in the matter before reviewing/reconsidering its earlier decision dated 05.11.2004.

17. With regard to the question as to whether, after the judgment of the Division Bench of this Court dated 05.07.2012 and before issuance of the notification dated 20.04.2015, any meeting of the State Board was held or not, a query was made by the petitioner from the office of the Labour Commissioner, who is the Chairman of the State Board, and in response to such query made under the Right to Information Act, a reply was given on 05.08.2015 to the effect "No

meeting of Contract Labour Advisory Board was held during the period from 5.7.2012 to 20.04.2015. As such, notes of the proceeding of the Contract Labour Advisory Board during the aforesaid period is not available in this office". As such, it is evident that there was no consultation with the State Board prior to passing of the impugned notification/order dated 20.04.2015.

18. The directives of the High Court in its judgment dated 05.07.2012, as well as the provisions of Section 10 of the Act, 1970 are now required to be considered. The High Court, by order dated 05.07.2012, had only directed for a fresh decision in accordance with law, ignoring the report of the extralegal committee, which had been considered while quashing the earlier order dated 05.11.2004, and the recommendation made by the State Board was also to be considered.

19. As we have already opined above, consultation with the State Board made in the year 1999 would not be sufficient in the context of the present case and the State Government ought to have consulted the State Board afresh, as more than a decade and half had passed since the last consultation was made. Section 10 of the Act, 1970 specifically provides for certain factors to be considered, four of which have been mentioned in sub-section (2) of the said Section extracted above. There is no indication in the impugned notification/order or in the counter affidavit of the State Government, that any of these factors was considered by the State Government before issuance of the said notification. The Division Bench of this Court, by order dated 05.07.2012, had also provided for certain directions to be complied with, as would be borne out from paragraphs 9 and 10 thereof, which also do not seem to have been complied.

20. In view of the reasons given herein above, we are of the view that the impugned notification dated 20.04.2015 has not been issued in accordance with law, which is liable to be quashed.

21. Ms. Savitri Ratho, learned Addl. Govt. Advocate appearing for the State-opposite parties has, at this stage, brought to our notice a judgment dated 26.08.2014 of the apex Court passed in Civil Appeals No. 8151 and 8152 of 2014. The said judgment relates to the notification dated 28.04.2000, whereby the abolition of contract labour was accepted in the area of DAP plant of the petitioner company. The same, being different on facts, would not be relevant for the purpose of deciding the issues involved in the present case.

22. In the above conspectus, the writ petition stands allowed by quashing the notification dated 20.04.2015 (Annexure-10) and remanding the matter to the State Government for passing fresh order in accordance with law, and in the light of observations made herein above, as expeditiously as possible, preferably within a period of six months hence. There would be no order as to cost.