

(1994) 08 BOM CK 0089

In the Bombay High Court

Case No : Writ Petition No. 3513 of 1991

Transport and Dock Workers Union

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 25-08-1994

Acts Referred:

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

Citation : (1995) 70 FLR 193

Hon'ble Judges : S.M. Jhunjhunwala, J;M.L. Pendse, J

Bench : Division Bench

Judgement

1. The petitioner which is a trade union have filed this petition under Article 226 of the Constitution for a declaration that the canteen workers employed through respondent Nos. 4 to 15 be treated as regular employees of Bombay Port Trust. The petitioners also claimed that the canteen workers employed by respondent Nos. 4 to 15 be treated as workmen of Bombay Port Trust with effect from the date upon which they have entered into the service. The petitioners also claimed that the wages of the canteen workers employed by respondent Nos. 4 to 15 should be fixed and paid on par with those canteen workers employed by the Bombay Port Trust in the departmental canteens. Only few facts are required to be set out to appreciate the grievance of the petitioners.

The Bombay Port Trust is a statutory body formed under the provision of the Major Port Trust Act 1973. Sections 42 of the Act demands that the port trust authorities shall provide certain essential services to the port workers. The port trust has to work-shop at Mazagaon which is registered as a factory under the Factories Act. In accordance with the provisions of the Factories Act, it is a statutory obligation of the Port Trust authorities to provide canteen facility to the factory workers and accordingly, the authorities are running a canteen departmentally for last over several years. Apart of from the statutory obligations under the Factories Act, the Port Trust Authorities provide two mobile canteens and also canteen facility for tea and light refreshment in accordance with the

award declared by Central Government Industrial Tribunal in Reference No. 4 of 1954. The Port Trust Authorities also permitted respondent Nos. 4 to 15 to run some additional canteens. Respondent Nos. 4 to 15 are Co-operative Societies formed by workmen and these Societies were permitted by the Port Trust Authorities to run the canteens. The Port Trust Authorities not only recognised canteens run by the Co-operative Societies but also providing several other facilities in the Port Trust premises. The bye-laws of the Co-operative Societies clearly indicate that the Chief Labour Officer, Bombay Port Trust shall be the ex-officio Chairman of the Co-operative Society and shall preside over as Chairman at every general body meeting of the Society. The bye-law further provide that in all policy matters concerning the canteen, including pricing, the number of staff, wages of the staff etc., the managing committee shall have full authority to carry on the business on the business subject to the directions that might be issued by the Chairman of the Bombay Port Trust. It is not in dispute that the Port Trust authorities have provided accommodation for running of these canteens and are also reimbursing to the extent of 70 % of the expenditure incurred by the societies towards contribution of the provident fund, ex-gratia, payment and terminal gratuity payment and terminal gratuity required to be paid to the employees. The Port Trust Authorities are also granting advance amount of the arrears bills to each canteen and recovering the amount in easy installments. The management of the Bombay Port Trust is also providing financial assistance, fuel, water, gas, electricity charges etc. for running of these canteens. It is not in dispute that the total number of employees engaged by these co-operative canteens is only 400.

2. The petitioner union was demanding that the canteen workers employed through these co-operative societies should be treated as regular employees of the Bombay Port Trust. The petitioners claimed that the contract labour employed by the Port Trust authorities should be abolished in accordance with the provisions of the Contract Labour (Regulation and Abolition) Act 1971. The petitioners approached the Central Government time and again but failed to receive any response and that give to the filing of the petition.

In answer to the petition, the Central Government has filed affidavit sworn by H. J. Parmar, Assistant Labour Commissioner (Central), Bombay on August 18, 1994. In paragraph 7 of the affidavit, it is stated that the matter regarding the abolition of contract labour system in major ports was discussed in the 18th meeting of the Central Advisory Contract Labour Board held on June 22, 1987. The discussions were then held with the Ministry of Surface Transport and notification was issued on May 9, 1991 prohibiting the employment of contract labour in certain categories. The affidavit claims that in the case of canteens and guest houses, the Government did not consider abolition of contract labour system. On behalf of the Port Trust Authorities, Prashant Popatlal Shah has filed returns sworn on January 6, 1992. The Port Trust authorities claimed that their departmental as well as co-operative canteens which are run under the control of Port Trust authorities, are covered as per the Government's policy of

encouraging co-operative movement in the area of consumer service. The authorities claimed that there is no obligation to run departmental canteens other than those required by the statutory provisions and the awards of the Tribunal. The authorities further claimed that it is only because the workmen can forward the proposals to run canteens by formation of co-operative societies. The authorities then claimed that though the Central Advisory Contract Labour Board had opined that the services of the canteens and guest houses should be taken up by the Port Trust management, effect cannot be given to it as the Government of India had issued notification directing abolition of contract labour in certain categories but did not provide for contract labour employed in the canteens.

3. During the pendency of this petition, on March 10, 1992, a Division Bench directed Regional Labour Commissioner (Central), Bombay to prepare the report as regards the parity of wages in respect of workers working in canteens run by Bombay Port Trust. In pursuance of the direction, the Regional Labour Commissioner prepared the report and tendered it alongwith affidavit sworn on September 18, 1992. The report sets out that there are six canteens managed by Port Trust departmentally and 17 co-operative societies' canteen formed by employees. The recruitment of employees in the canteens run by co-operative societies is being are not free to make recruitment on their own. The report further recites that the management is providing financial assistance, accommodation, fuel, water, gas, electricity charges, furniture etc. 70% of the wages are reimbursed by the management and the management is also fixing the wage scales for the canteen employees engaged by co-operative societies. The Labour Commissioner noticed that the work performed by the canteen employees in the canteens run by the co-operative societies societies and the canteens run by the departments is identical while the wages paid to the workers in departmental canteens are far more than the wages earned by the workers in the co-operative canteens. In pursuance of the report, the Division Bench directed Port Trust authorities to pay 50% of the difference of wages to the employees working in the canteens run by co-operative societies. The Port Trust authorities approached the Supreme Court to challenge the validity to the order but SLP was dismissed.

4. Shri Singhvi, learned counsel appearing on behalf of the petitioners, submitted that relief sought in the petition is required to be granted in view of the decision of the Supreme Court reported in 1990 2 C. L. R. 261. M. M. R. Khan and others v. Union of India and others. The learned counsel urged the Government of India has acted upon the ratio laid down by the Supreme Court and issued direction that the employees of the non-statutory departmental canteens/co-operative canteens located in the Central Government Offices should be treated as Government servants with effect from October 1, 1991. The Circular further provides that the employees of canteens may be extended all benefits as are available to other Government employees of comparable status. There is considerable merit in the submission urged by the learned counsel. The Supreme

Court held that there is hardly any difference between statutory recognised canteens and non-statutory recognised canteens. The only material difference between the statutory canteens and non-statutory recognised canteens is that while the first is obligatory under the Act the other is not. There is no difference in the management of the two types of canteens and no distinction can be made between the employees of the two types as far as service conditions are concerned. The Supreme Court noticed that there are certain non-statutory non-recognised canteens and the workers of such non-statutory non-recognised canteens are not entitled to the claim of status of Government servant.

Shri Singhvi is right in claiming that the decision of the Supreme Court squarely applies to the facts of the present case. Shri Ramaswamy, learned counsel for the Port Trust, did not dispute that the employees working in the canteens run by co-operative societies are working in non-statutory recognised canteens. Once it is accepted that the canteens run by co-operative societies are recognised canteens, then it is obvious that the workers in such canteens are entitled to the wages on par with the employees in the statutory canteens and will have to be treated for all purposes as the employees of Port Trust authorities. The fact that the canteens run by the co-operative societies are recognised is evident from the fact that only the Port Trust makes the premises available but also bears all the charges for consumption of electricity, gas etc. In addition the Port Trust reimburses the salaries of the canteen workers and controls the management in several areas. In view of the decision of the Supreme Court, it is obvious that the petitioners are entitled to the relief sought.

Shri Ramaswamy urged that Section 10(2) of the Contract Labour (Regulation and Abolition) Act 1971 sets out that even the appropriate Government can direct prohibition of employment of contract labour by taking into consideration relevant factors set out in the sub-section. The learned counsel urged that the first factor which is relevant is whether the process, operation or other work is incidental to or necessary for the industry, trade or business that is carried on in the establishment. We are unable to appreciate how it can be suggested that the canteen work is not necessary for carrying out the industry that is being run by the Port Trust authorities.

5. Shri Ramaswamy and the counsel for the Union of India then submitted that the Central Advisory Contract Labour Board set up by the Ministry of Surface Transport has not recommended abolition of contract labour system in the canteens and guest houses of Bombay Port Trust and in support of the submission, reliance was placed on notification issued on May 9, 1991. In our judgment, the submission that the determination of this petition depends upon the decision of Central Advisory Contract Labour Board is without any merit. Shri Singhvi invited our attention to circular dated January 29, 1992 issued by the Government of India, Department of Personnel and Training which clearly sets out that the consequence upon the judgment of the Supreme Court, it has been decided that the employees of the non-statutory departmental canteens/co-

operative canteens in the Central Government offices should be treated as Government servants with effect from October 1, 1991. In case, such direction is issued to all the canteens run in the Government establishments, we are unable to appreciate why the same rule should not be made applicable to the workers in the canteens run in the Port Trust premises. In our judgment, the petitioners are entitled to the relief.

6. Accordingly, petition succeeds and it is declared that canteen workers employed through respondent Nos. 4 to 15 are regular employees of Bombay Port Trust authorities. The employees working in these canteens should be treated as employees of Bombay Port Trust authorities with effect from October 1, 1991. Shri Ramaswamy stated that the employees working in canteens run by the co-operative societies are provided with provident fund, gratuity and other benefits but not of the same scale as those available to the employees of canteens run by the departments. The Port Trust authorities are directed to give the identical benefits to the employees working in canteens run by respondent Nos. 4 to 15 with effect from October 1, 1991. While giving them benefits, the amount paid in pursuance of the interim order will be taken into account. The respondent Nos. 1 and 2 shall pay the costs of the petition.