

(1989) 04 OHC CK 0009

In the Orissa High Court

Case No : Original Jurisdiction Case No. 919 of 1980

Zenith Industrial Services and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-04-1989

Acts Referred:

Constitution of India, 1950 — Article 266

Contract Labour (Regulation and Abolition) Act, 1970 — Section 10, 10(1), 10(2), 3

Citation : (1989) 68 CLT 175 : (1990) 1 LLJ 38

Hon'ble Judges : V. Gopalaswamy, J; D.P. Mohapatra, J

Bench : Division Bench

Advocate : Jagannath Das, K.K. Jena and G. Das, for the Appellant; A.B. Misra, S.C. (Central) and Ashok Kumar Mohanty, for the Respondent

Final Decision : Allowed

Judgement

V. Gopalaswamy, J.—In this writ petition filed under Article 226 of the Constitution, petitioner No. 1 M/s. Zenith Industrial Services, a registered partnership firm and its partners petitioners Nos. 2 and 3 challenge the notification No. S. 16025/5 8/77-LW dated 15th December 1979 issued from the Ministry of Labour, New Delhi, Government of India u/s 10(1) of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as "the Act") prohibiting the employment of contract labour in the works for overburden, removal and drilling and blasting in limestone, dolomite and manganese mines in the country with effect from the date on which the period of six months from the date of publication of the said notification expires.

2. The facts giving rise to the present writ petition may be briefly stated as follows: One of the objects of the petitioner-registered firm is to carry on the business of "Contract" and in pursuance of the said object the petitioner-firm entered into a contract with the Orissa Cement Limited, a public limited company (opposite party No. 2) for doing the jobs of excavation and removal of surface soil, refuse, spoils, deadstone, ferruginous clay etc., in the limestone quarries of

opposite party No. 2 with effect from 1st February 1978. Opposite party No. 2 is a manufacturer of cement and its cement factory is at Rajgangpur. Limestone is one of the main raw materials required for the manufacture of cement. Opposite party No. 2 owns limestone quarries at village Lanjiberna situated at a distance of 13 KMs. from Rajgangpur in the district of Sundargarh. Before the actual mining operation of limestone is done, various preliminary operations have to be done such as excavation and removal of surface soil, refuse, spoils, deadstone, ferruginous clay and transporting the same to a place within a radius of two miles. It is for doing all these jobs such as excavation etc., petitioner No. 1 firm was engaged as a contractor by opposite party No. 2 under Contract No. RKN 200 dated 10th January 1978. The period of contract was from 1st January 1978 to 31st December 1980 and it may continue even thereafter subject to the satisfactory performance of the contract. For the performance of the contract, the petitioner No. 1 used to engage contract labour and 210 such workers were on its rolls though the average daily attendance was 150. The petitioner-firm claims that it has been complying with all the requirements of the Act relating to the welfare of the workers and the workers employed by him as contract labour were enjoying all the benefits available to regularly employed workmen. The Ministry of Labour, New Delhi, issued the notification dated 15th December 1979 Annexure-4 prohibiting" the employment of contract labour in the works of overburden, removal and drilling and blasting in the limestone mines of the entire country. In pursuance of that notification, Annexure-5 dated 11th March 1980 was issued by the Regional Labour Commissioner (Central), Bhubaneswar, opposite party No. 3, advising the opposite party No. 2 not to employ contract labour through contractors in the prohibited categories of work mentioned in the notification Annexure-4 and as a consequence of Annexure-5, opposite party No. 2, by his letter dated 19th May 1980 (Annexure-6) issued notice to the petitioner No. 1 terminating the contract earlier entered into with it on 10th January 1978 with effect from 18th June 1980. Being aggrieved by the said notification of the Ministry of Labour (Annexure-4) which has ultimately resulted in the termination of his contract by opposite party No. 2, the petitioner-firm and its partners filed this writ petition against opposite party No. 1 the Union of India, the Orissa Cement Limited opposite party No. 2 and the Regional Labour Commissioner (Central), Bhubaneswar, opposite party No. 3, praying for quashing the above referred Annexures 4, 5 and 6.

3. The petitioners plead in their writ petition that the jobs given to them under the contract are excavation and removal of surface soil, refuse spoils, deadstone and ferruginous clay and such jobs are not perennial in nature and the petitioners, therefore, cannot give employment regularly to all the workmen throughout the year. According to the petitioners at any given period the number of labourers required by the firm would depend upon several factors, such as, the area and the land which is sought to be exploited for mining operation and on the quantity of refuse spoils, deadstones, etc., extracted therefrom and to be loaded in the wagons etc. and therefore, the strength of the labour force

employed by the firm is bound to vary from time to time. The petitioners state that during the period of contract, from time to time, opposite party No. 2 would be selecting a piece of land in the mining area and the petitioners are entrusted with the removal of surface soil, deadstones etc. from that area and this job is done by the petitioners by engaging labourers and whenever no mining face is required by the opposite party No. 2 for raising minerals there is no work to be done for the petitioners. It is urged by the petitioners that in view of the above circumstances the contract work entrusted to them is of an intermittent or casual nature and there is no scope for the engagement of labourers permanently in that type of work. Petitioners allege that the Central Government has not applied its mind to the facts prevailing in the petitioners' establishment and has also not considered the conditions of work and the benefits provided to the workers at Lanjiberna by the petitioners' establishment. Hence the petitioners contend that as the impugned notification (Annexure-4) was issued by the Central Government without duly complying with the provisions of Section 10 (1) and (2) of the Act, the same is liable to be quashed.

4. Opposite party No. 2 Orissa Cement Limited filed its counter stating that as the jobs entrusted to the petitioners under the contract were not of perennial nature, it became necessary for opposite party No. 2 to enter into a contract with the petitioner No. 1 for the performance of those jobs. It was further stated by opposite party No. 2 that it contemplated the renewal of the contract with the petitioners for a period of three years more had it not been terminated in pursuance of the notification (Annexure-4). The tenor of the counter of opposite party No. 2 reveals that it also supports the contention of the petitioners that the works entrusted to them under the contract are not of perennial nature.

5. A counter was jointly filed by opposite parties Nos. 1 and 3 wherein it was stated that the Central Government, being fully satisfied with the recommendations made by the Central Board, issued the general notification Annexure-4 prohibiting the employment of contract labour in the works specified in the schedule thereto in the limestone, dolomite and manganese mines in the country. It was pleaded on behalf of the opposite parties Nos. 1 and 3 that the general notification issued by the Central Government (Annexure-4) was in accordance with the provisions of the Act and therefore, the same is valid and binding on the petitioners and opposite party No. 2.

6. At the outset Shri Jagannath Das, the learned counsel for the petitioners, contended that an omnibus notification of the type of Annexure-4 covering all the limestone, dolomite and manganese mines in the country is not contemplated under the Act and on that score also the notification is vitiated. He contends that prohibition of employment of contract labour can only be establishmentwise and the notification issued u/s 10(1) of the Act can be in respect of an individual establishment only and that a notification covering more | than one establishment, and much less all the establishments pertaining to an industry in the entire country, is not contemplated u/s 10 of the Act. In the present case,

according to the definition, "establishment" means any place where any industry, trade, business, manufacture or occupation is carried on. We are presently concerned with the limestone quarries owned by opposite party No. 2. If the above arguments of Shri Das are accepted it means there should be as many notifications u/s 10(1) of the Act as there are limestone quarries in the country. He could not cite any decision in support of his contention that for every individual establishment there should be a separate notification. In this context Shri Das cited the decision *National Organic Chemical Industries Ltd. v. State of Maharashtra and Ors.* 1988(11) C L.R. 612. There is nothing in the said decision to suggest that a general notification of the type of Annexure-4 u/s 10(1) cannot be issued covering all similar establishments wherein similar circumstances exist justifying prohibition of employment of contract labour. In that decision the notification issued u/s 10(1) abolishing the contract labour system in the petitioner-Company qua the jobs specified in that notification was challenged on the basis that it was violative of Article 14 of the Constitution. While holding that the challenge based on Article 14 is without any substance, their Lordships of the Bombay High Court observed thus:--

"... In the present case a complaint was made by the Union of the employees in the petitioner's establishment. If no complaint is made qua other establishments, then it cannot be said that all of them stand on the same footing. It is the scrutiny of individual establishment which is contemplated by Section 10. Therefore only because a notification is not issued qua other establishments, it cannot be said that there is a hostile discrimination....."

So the above observations cannot be stripped out of their context and should never be understood to mean that in no event, whatever be the circumstances, a general notification of the nature of Annexure-4 cannot be issued u/s 10(1) of the Act.

On the other hand one of the factors to be taken into consideration before issuing a notification regarding an establishment u/s 10(1) is whether the work is done ordinarily through regular workmen in an establishment similar thereto. On a consideration of the provisions of Section 10 of the Act, it is clear that if the Central Government, after consultation with the Central Board, is satisfied that the works specified in the schedule annexed to the notification Annexure-4, that is the over-burden removal and drilling and blasting in the lime-stone, dolomite and manganese mines in the country are of perennial nature and are done ordinarily through regular workmen and demand the employment of considerable number of wholtime workmen, it can issue a general notification like Annexure-4 abolishing contract labour in such works, having regard to the service conditions of such contract labour in general. So the contention of the petitioners that under the general notification Annexure-4 the employment of contract labour is prohibited in the works specified in the notification in all the limestone, dolomite and manganese mines in the country, even on that score the said notification should be held to be invalid, is neither valid nor tenable.

7. The learned counsel for the petitioners impugned the notification issued by the Ministry of labour, Government of India, u/s 10(1) of the Act (Annexure-4) prohibiting employment of contract labour in the works of overburden removal and drilling and blasting in the limestone mines of the country, mainly on the ground that as the requirements laid down under Sections 10(1) and 10(2), Sub-clauses (a) to (d) were not fulfilled before the issuing of notification u/s 10(1), on that score alone, the notification is vitiated and liable to be quashed.

8. For convenience of reference, the provisions of Section 10 of the Act.

"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, the 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 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 wholetime 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".

9. The Contract Labour (Regulation and Abolition) Act, 1970 was enacted with a view, to abolishing wherever possible or practicable the employment of contract labour. Under the Act no invidious distinction can be made against contract labour. So the Act 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 question whether the employment of contract labour in any process, operation, or other work in any establishment would be abolished or not is a matter for the decision of the Government after considering the matters required to be considered u/s 10 of the Act--See B.H.E.L. Worker's Association v. Union of India and Ors. (1985 LLJ

428) and *The Workmen of the Food Corporation of India v. Food Corporation of India* (1985 LLJ 4). As held by the Supreme Court in *Catering Cleaners of Southern Railway v. Union of India and Anr.* (1987 LLJ 345), the appropriate Government is required to consult the Central Board or the State Board, as the case may be, before arriving at its decision and the decision, of course; is subject to judicial review.

10. Section 10 of the Act dealing with the prohibition of employment of contract labour empowers the appropriate Government, in the instant case, the Central Government, to prohibit employment of contract labour in any process, operation or other work in the limestone, dolomite and manganese mines in the country. But before the issuing of such notification prohibiting the employment of contract labour in the overburden removal and drilling and blasting work in the limestone, dolomite and manganese mines in the country, the Central Government is bound to consult the Central Advisory Board constituted u/s 3 of the Act. The Central Board is of a tripartite character, representing various interests and so the consultation with such a Board will enable the Central Government to know the views of the contractors, the workmen and of the industry in the matter of the proposed abolition of contract labour for doing the works in question in the concerned establishments. So such consultation is mandatory and it is a condition precedent before the issuance of a notification u/s 10(1) of the Act. Further, before issuing any notification u/s 10(1) in relation to an establishment the appropriate Government shall have regard to the conditions of work and benefits provided for contract labour in that establishment and other relevant factors given in detail in Clauses (a) to (d) of Sub-section (2). Explanation under Sub-section (2) provides that 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.

11. In *Vegoils Private Ltd v. The Workmen* (1971 LLJ 567), the Supreme Court observed that the appropriate Government when taking action u/s 10 will have an overall picture of the industries carrying on similar activities and decide whether contract labour is to be abolished in respect of any of the activities of that industry. In *Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others*, , the Supreme Court held that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and other methods of performance are necessarily forbidden. In the case of *Vegoils Private Ltd.*'s case (supra) also while dealing with the provisions of Section 10, the Supreme Court observed thus (P. 579):

"We are emphasising the provisions of Section 10 to highlight the point that a particular authority acting in a particular manner has been given the power and jurisdiction to decide whether contract labour has to be prohibited in any establishment. Before such a decision is taken, the representatives of the workmen, contractor and the industry have an opportunity to express their opinion."

12. Under the scheme of the Act u/s 10 the Parliament has vested in the appropriate Government the power to prohibit the employment of contract labour in any process, operation or other work in any establishment but then such power has to be exercised in the manner indicated in the provisions of Sub-sections (1) and (2) of Section 10. The prior consultation with the Advisory Board under Sub-section (1), and the relevant factors that should be taken into consideration under Sub-section (2), before issuing the notification are the in-built safeguards provided in that section itself to prevent the appropriate Government, from misusing or abusing its power, or exercising its power arbitrarily. In the present case no material was placed before the Court to indicate the nature of the consultation the Central Government had with the Central Board before issuing the notification Annexure-4. Likewise there is nothing on record to show as to what are the relevant factors that weighed with the Central Government in issuing the general notification abolishing the contract labour in the overburden removal and drilling and blasting works in the limestone, dolomite and manganese mines in the country, No doubt the decision regarding the prohibition of employment of contract labour is always with the appropriate Government but then such a decision is subject to judicial review as held by the Supreme Court in *Catering Cleaners of Southern Railway v. Union of India and Anr.* (supra). In the present case we find that there is no material to support that the Central Government issued the general notification Annexure-4 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 requirements of Section 10(1) and Clauses (a) to (d) of Section 10(2) of the Act and, therefore, the notification is liable to be quashed on that score.

13. In the result, the aforesaid notification Annexure-4 issued by the Central Government prohibiting the employment of contract labour in the works specified therein in the limestone, dolomite and manganese mines in the country is hereby quashed and accordingly the writ petition is allowed, but in the circumstances of the case, without costs.

D.P. Mohapatra, J.

14. I agree.