Vegoils Private Limited

Vs

The Workmen

Civil Appeal No. 620 of 1971

(C.A. Vaidialingam, P. Jagmohan Reddy JJ)

10.09.1971

JUDGMENT

VAIDIALINGAM, J. -

1. This appeal, by special leave, is directed against the award (Part I), dated November 20, 1970, of the Industrial Tribunal, Maharashtra, Bombay in Reference (I.T. No. 110 of 1967).

2. The reference was made by notification, dated April 17, 1967 and three questions were referred for adjudication. We are not concerned in these proceedings with the subject-matter of dispute relating to demand Nos. 2 and 3. Part I of the award, against which this appeal is preferred, related to demand No. 1, which was as follows :

> "Demand No. : Abolition of contract system. - The Company shall abolish the contract system in whatever form and in any department of the company existing at present and the workmen employed by the contractors shall be treated as the Company's regular employees and all the benefits of service conditions and wages available to the company's employees, will be extended to them."

3. It will be seen that the above demand consisted really of two part : (a) that the contract system should be abolished, and (b) that the workmen employed by the contractor should be treated as the appellant's regular employees with all the benefits of service conditions that are available to the regular employees of the Company.

4. The original parties to the reference were the Swastik Oil Mills Ltd., Wadala, Bombay and the workmen employed therein as represented by the Dyes and Chemical Workers Union. Prior to its incorporation in 1968, the appellant Company was carrying on business of manufacturing edible oils, soaps and its by-products such as glycerine and deoiled cake meal in the name of Karamchand Premchand Private Limited. In or about March, 1970 the latter firm was taken over by the appellant Company. The said business was originally carried on by Swastik Oil Mills Limited, which be the orders of the High courts of Bombay and Gujarat was amalgamated with Karamchand Premchand Private Limited on April 18, 1967. Since the taking over of the said Karamchand Premchand Private Limited, by the Vegoils Private Limited, namely, the appellant, the latter has been carrying on the said business.

5. In connection with its business, the appellant employs about 700 permanent workmen at its factory in Wadala, Bombay. According to the appellant, it has been employing for more than 30 years a contractor for loading, unloading, weighing and stacking materials and bags and feeding the

hoppers. It may be mentioned at this stage that the workmen had raised a dispute under demand No. 1 regarding the abolition of the contract system of employing labour in the two departments of the appellant, namely, (i) in the canteen section, and (ii) in the seeds godown and the solvent extraction plants section. But before the Industrial Tribunal the Union did not press their demand for abolition of contract labour in respect of the canteen section. As a consequence the Industrial Tribunal in the award has rejected the claim of the Union for abolition of the contract system in the canteen section. Therefore, we will make no further reference to the stand taken by the parties regarding this section, in our judgment.

6. We will now refer to the stand taken by the appellant and the Union regarding the abolition of contract labour in respect of seeds godown and the solvent extraction plants. The stand taken by the Union in its statement of claim, dated May 30, 1967, was briefly as follows.

7. The Company had work in this section which was of a regular and continuous nature. The work in that section was not intermittent or accidental type. The work required to be performed is of loading and unloading seed bags and also to feed the hoppers for the requirements of solvent extraction plants. The product left after the process of solvent extracts also is to be filled in gunny bags. All these items of work are of a permanent nature and was being regularly carried out by the contractor's workmen by employing on an average more than 200 workmen. The work being of a continuous nature is being carried out throughout the year. Further, this type of work is an essential part of the solvent extraction unit. As the jobs were essentially connected with the day today work of the Company, and as they were continuous, the employment of a contractor for getting these types of work done, is nothing but an unfair labour practice adopted by the appellant. The employment of contract labour has been disapproved by the various Committees and Commissions. This Court has also discussed and laid down principles regarding the employment of contract labour. The labourers working under a contractor were at his mercy and were not getting the benefits which the permanent employees of the appellant Company are normally entitled to. To avoid giving the benefit to such workmen, the Company has adopted the device of having the work done by contract labour. The demand for abolition of contract labour is fair and reasonable and as such the demand has to be acceded to.

8. In the written statement, dated July 22, 1967, which was originally filed by the Swastik Oil Mills Limited, the Company took up the following contentions.

9. Wherever the work was of a perennial nature, the Company has been having that work done only by its permanent employees. But where certain items of work were of intermittent and sporadic nature and irregular in its working, to ensure efficiency, economy and proper working, the appellant had to engage contract labour. In respect of the weeds godown and solvent extraction plants, the appellant classified the type of work into four part : (i) unloading of seeds and cake bags from railway wagons and motor trucks and stacking the same in the godown for easy identification in separate lots, (ii) loading of deoiled cake mean bags into motor lorries and wagons whenever they had to be despatched from the factory, (iii) feeding of cake in the hoppers which in turn feed the solvent extraction plants through a system of long screw conveyors and other necessary equipment and (iv) filling, weighing and stacking of small bags.

10. The full particulars regarding the type of work involved in the above four items were given. All these items of work were of an intermittent and irregular nature. The loading and unloading in wagons and trucks was not a regular affair but dependent on the availability of railway wagons and trucks. The feeding of cakes into hoppers and filling up deoiled cakes were also if an irregular and

intermittent nature. In view of these circumstances, it was not possible to employ permanent workmen to carry out the said items of work. Further, legislation regarding the regulation and abolition of contract labour was being contemplated by the Central Government and the State of Maharashtra. Various charts relating to the approximate number of workmen employed, their hours of work as well as the days on which they were employed for these items of work by the contractor were also given. In view of the peculiar type of these items of work, the demand of the Union for abolition of contract labour was not justified.

11. The Industrial Tribunal considered the demand undo two head : (i) the abolition of contract labour, and (ii) treating the workmen employed by the contractor as regular employees of the Company and giving them all the benefits of service conditions which the permanent employees were entitled to.

12. So far as the second part of the above demand in concerned, the Industrial Tribunal rejected the Union's claim. According to the Industrial Tribunal the Union has not placed any material nor made out any case justifying this part of the claim. In this connection the Industrial Tribunal relied upon the evidence of the contractor Shri Giri, as well as the documents filed by him, and has come to the conclusion that the persons working under the contractor were not his permanent employees and that, on the other hand, they were free to go and work on any day under any body else. In view of this circumstance, the Industrial Tribunal held that there was no relationship of permanent employees between the contractor and the labour force engaged by him for the daily work which he had to get done under the contract. Hence this part of the claim to threat the contractor's workmen as regular employees of the Company was rejected.

13. Regarding the first part of the demand, namely, abolition of contract labour, the appellant adduced volume of evidence, oral as well as documentary. The documentary evidence consisted of various charts prepared not only by the appellant but also by the contractor, Shri Giri, giving particulars about the number of workmen employed, the hours of work done by them, as well as the days on which there was no work at all to be done. Some of the officers of the appellant Company as well as the contractor gave evidence regarding the manner in which the work was done in the seeds godown and the solvent extraction plants. In particular, the appellant led evidence to show that the work of loading and unloading in wagons and lorries was not of a continuous nature. The arrival of wagons on any particular day was uncertain. Nevertheless, the contractor has to be ready to clear the wagon as and when it arrives within the time allowed by the railway authorities, otherwise heavy demurrage had to be paid. While on certain days on wagon at all will arrive, on certain other days suddenly a large number of wagons will arrive necessitating the clearance of he goods promptly and immediately for which purpose the contractor was always having workmen ready of meet the situation. This type of work, according to the appellant company, could be done efficiently and promptly only by a contractor.

14. The Union, on a the other hand, placed reliance upon the charts furnished by the appellant and the contractor and pleaded that the work was of a continuous and perennial nature, which could be very efficiently discharged by the permanent employees of the appellant Company. The Union also referred to the practice obtaining in certain other companies doing similar business in the area and pointed out that the type of work that was being done by the appellant through a contractor was being done in those concerns by their permanent workmen.

15. The Industrial Tribunal considered the affidavit filed by Vallabhdas A. Parikh, who was at the material time the Production Director of the Swastik Oil Mills. But he was not available for giving

evidence, hence the Company relied on the affidavits filed by Anirudhha R. Shah, the Head Time-keeper and Ramanlal M. Desai, who was in-charge as the Head of the Department of the solvent section, crushing section refinery and refined filling sections of the appellant. Further the business Manager of the appellant Sri Rajnikant C. Nanavati had also filed an affidavit. The contractor Giri also gave evidence on behalf of the appellant. Such of those witnesses who had given affidavits supporting the claim of the appellant were cross-examined by the Union. The Industrial Tribunal placed reliance on the evidence of Ramanlal M. Desai, who was the Head of the Department of the Solvent section. This witness gave particulars regarding the approximate number of days that the solvent extraction plant worked in the years 1967, 1968 and 1969. From his evidence it was clear that out of 365 days in 1967, the plant did not work for 65 years because of non-availability of raw materials and it had to be closed for general cleaning and repairs for about 23 days. Similarly it remained close for 6 days due to holidays and for 8 days due to power failure. During all the other days the plant was working. The position in 1968 and 1969 was more or less substantially similar. Even in cross examination Ramanlal M. Desai admitted that the solvent extraction plant was working for about 300 days out of 365 days in the year and that the solvent extraction plant. The Industrial Tribunal is of the view that the work of filling the hoppers, in vie of the evidence referred to above, cannot be said to be intermittent or sporadic. On the other hand, feeding of hoppers in the solvent extraction plant in intimately and closely connected with the principal activity of the appellant, namely, that the crushing oil cakes and oil seeds for extraction of oil and other chemical productions. In this view the Industrial Tribunal held that the work of feeding the hoppers and other allied process connected with the filing of bags with deoiled cakes must be considered to be a necessary and integral part of the industry carried on by the appellant. The Industrial Tribunal is also of the view that the work of feeding the hoppers and other activities connected with the same are of a permanent nature. In consequence, the Industrial Tribunal held that there was no justification for the appellant to employ contract labour for this purpose.

16. Mr. G. B. Pai, learned counsel, for the appellant, no doubt, attacked this finding of the Industrial Tribunal. According to the learned counsel the evidence in this regard has not been properly appreciated and the Industrial Tribunal committed an error in holding that the work connection with feeding of the hoppers and other activities connected with the same are of a permanent and perennial nature.

17. The Union, though served, has not chosen to appear in this appeal. But Mr. Pai has drawn our attention to all the relevant materials on record.

18. We are not inclined to accept the contention of Mr. Pai that the direction given by the Industrial Tribunal abolishing the contract labour regarding the work of feeding the hoppers and other allied activities incidental and connected therewith is in any manner erroneous. The direction given in this regard, in our opinion, is fully justified. Even according to the evidence of the appellant's witnesses, referred to above, it is clear that the feeding of hoppers in the solvent extraction plant is an activity closely and intimately connected with the main activity of the appellant, namely, crushing oil cakes and oil seeds for extraction of oil and other chemical production. Excepting a few days, as already referred to above, this work has to go on continuously almost throughout the year. From this it follows that this item of work in incidental to the nature of the industry carried on by the appellant, which must be done almost every day and there should be no difficulty in having regular workmen in the employment of the appellant to do this type of work. It is not as if that the work is of an intermittent or temporary nature or so little that it would not be possible for the appellant to employ full time workmen for this purpose. Further, it cannot also be said that by employing contract labour for this purpose, the appellant could be enabled to keep down the costs on the ground that there

would not be sufficient work for all the workmen if permanent labour was employed.

19. There is also on record the statement Ex. C, filed on behalf of the appellant. That statement gives the items of work got done by contract labour by three other concerns, namely, M/s. Godrej Soap Works, M/s. Tata Oil Mills and M/s. Hindustan Lever. From the said statement it is seen that feeding of cakes in the hoppers is done by contract labour in the appellant company and M/s. Godrej Soap works. That work is done by the departmental workmen in M/s. Tata Oil Mills. M/s. Hindustan Lever does not have any solvent extraction plant, but the work of feeding the seeds in the hoppers, filling of cakes in the bags and stitching cake bags and stacking those bags are done by departmental workmen. Therefore, from this it follows that the feeding of hoppers is an essential part of the industry carried on by the appellant and that it could very well be done by the departmental workmen as is being done by M/s. Tata Oil Mills and M/s. Hindustan Lever. In view of all these circumstances pointed out above, the direction of the Industrial Tribunal regarding this aspect is not erroneous. In fact Mr. Pai himself felt considerable difficulty in satisfying us that there has been any wrong approach made by the Industrial Tribunal in this regard. Further, the direction given by the Industrial tribunal abolishing the contract labour in respect of feeding the hoppers is quite in accordance with the principles laid down by this Court in various decisions. Those principles will be referred to by us when considering the direction given by the Industrial Tribunal abolishing the contract labour regarding loading and unloading of seeds bags in wagons and trucks.

20. The Industrial Tribunal considered the evidence of the appellant's witnesses regarding loading and unloading of seeds and cake bags from railway wagons and motor trucks and stacking the same in the godowns as well as the loading of deoiled cake meal bags in the motor lorries and wagons whenever required to be dispatched from the factory. Here again the Industrial Tribunal is of the view that these activities are also closely connected with the main industry carried only the appellant and that the said work is also of a permanent character. This item of work forms an integral part of the process of the industry itself. On this reasoning, the Industrial Tribunal held that those activities also could be carried on by the appellant by its permanent workmen. The Industrial Tribunal no doubt noted that from Ex. C it is clear that the work of loading and unloading of seed bags, cake bags from wagons and lorries is being done in all the firms, namely, M/s. Godrej Soap Works, M/s. Tata Oil Mills and M/s. Hindustan Lever, situated in the same area including the appellant, were got done by the contract labour. But nevertheless, the Industrial Tribunal is of the view that the contract labour will have to be discouraged. The Industrial Tribunal also referred to a statement filed by the appellant Ex. C-9. the said exhibit is as follows :

> #"EMPLOYMENT POSITION - LOADING AND UNLOADING CONTRACTOR--
> ----------No. of Total Average
> Total Maximum Minimum Totalemployees Mandays attendance working employed
> employed amountMonth on roll per days days per day per paid today contractor-------
> ----------March, 1967 67 1176 47
> 25 51 41 11,183.05April, 1967 64 1188 47 25 56 43 11,300.02May, 1967 63 1245 48
> 26 55 43 12,510.04June, 1967 82 1669 64 26 76 46 11,358.00----------
> ----------for The Swastik Oil Mills Ltd.(Sd.) V. A.
> Parikh,Production Director."##

21. From the above figures furnished by the appellant, the Industrial Tribunal is of the view that the average number of employees of the roll were between 63 and 82 per month and that the total mandays ranged between 1188 to 1669 per month. The average attendance per day again ranged between 46 to 47 per day. From this statement the Industrial Tribunal drew an inference that the

total number of working days in every months was between 25 or 26, while the minimum and maximum persons employed per day fluctuated between 41 and 46 at the minimum and between 51 to 76 at the maximum. The Union also placed very strong reliance on this document. Ex. C-9 in support of its contention that the work of loading is of a permanent nature and that it could be done by the permanent employees of the Company. The Industrial Tribunal accepted thus contention of the Union and ultimately held that even in respect of this item of work, the contract labour should be abolished.

22. It must also be pointed out that the Industrial Tribunal has referred to two enactment : (1) passed by the Parliament and (2) by the Maharashtra State Legislature, to which we will refer later. It is the view of the Industrial Tribunal that these two enactments also support its view that the contract labour should be abolished as far as possible. Ultimately, the Industrial Tribunal directed the appellant not to engage any labourer through a contractor for the work of loading and unloading also with effect from the date after the termination of the present contract between the employer and the contractor, that is, after May 1, 1971.

23. Mr. G. B. Pai, has very strenuously attacked this finding of the Industrial Tribunal Learned counsel raised three contention : (1) The Tribunal has no jurisdiction to consider the question of abolition of contract labour in view of the Contract Labour (Regulation and Abolition) Act, 1970, (Act 37 of 1970) (hereinafter to be referred as the Central Act) and the Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969 (Act 30 of 1969) (hereinafter to be referred as the State Act); (2) even on the basis of the principles laid down by this Court, the direction to abolish contract labour in respect of loading and unloading is erroneous in law; and (3) the finding that contract labour should be abolished in this regard is opposed to the evidence and the practice obtaining in other industries in the same area.

24. Before we deal with the contention regarding Maharashtra Act, we will refer to the principles laid down by this Court in considering the question of abolition of contract labour which is the subject of the second contention of Mr. Pai. According to the learned counsel, the principles laid down by this Court have been ignored when the Industrial Tribunal directed abolition of contract labour regarding loading and unloading. There has been a consistent demand by the labour for abolishing the system of contract labour and that has given rise to certain industrial adjudications, the correctness of which has come up for consideration before this Court. In The Standard Vacuum Refining Co. of India Ltd. v. Its Workmen and Others, ((1960) 3 SCR 466 : AIR 1960 SC 948 : (1961) 1 SCJ 84) two questions arose, namely, (1) whether a dispute raised by the permanent workmen regarding abolition of contract labour in an industrial dispute under Section 2(k) of the Industrial Disputes Act, and (2) whether the directions given by the Industrial Tribunal abolishing the contract system was justified.

25. We are not concerned with the first aspect, referred to above, in the case before us. Regarding the second aspect, the Industrial Tribunal had in that case abolished the contract system obtaining in the particular establishment. This Court after refering to the recommendations of the Royal Commission Labour, as well as the opinion expressed by several Labour Inquiry Committees appointed in different States, has expressed the opinion that in a given case the Industrial Tribunal should rest its decision not merely on theoretical or abstract objections to contract labour but also on the terms and conditions on which contract labour is employed and the grievance made by the employees in respect thereof. In that case this Court further held that the contract labour was doing an item of work which was incidental to the manufacturing process, which was carried on by the company and that type of work was necessary and also of a perennial nature which had to be done

every day. It was also noted that such type of work was generally done by the workmen in the other industries in the area by the regular employees of the employer. In view of all these circumstances it was held by this Court that there should be no difficulty in having the said type of work getting done by regular workmen of the employer. It was also emphasised that the matter would be different it the work was of an intermittent or temporary nature or was so little that it would not be possible to employ full workmen for the purpose. This Court approved the decision of the Industrial Tribunal abolishing contract labour in the above circumstances. The said principles laid down in the above decision have been referred to with approval and adopted in Shibu Metal Works. v. Their Workmen. (1966-1 LLJ 717 : 1966 (12) FLR 226) The abolition of contract labour by the Industrial Tribunal was also approved in this case. In National Iron and Steel Co. Ltd. and Others v. The State of West Bengal and Another, ((1967) 2 SCR 391 : AIR 1967 SC 1206 : (1967) 2 SCA 407) after quoting with approval the principles laid down by this court in The Standard Vacuum refining Co. of India Ltd. v. Its Workmen and Others (supra) this Court affirmed the decision of the Industrial Tribunal abolishing contract labour on the ground that the employment of contract labour would not have served to keep down the costs of the employer on the ground that there would not be sufficient work for all the workmen if permanent labour was employed.

26. From the principles laid down by this Court and referred to above, it is clear that if the work for which contract labour is employed is incidental to and closely connected with the main activity of the industry and is of a perennial and permanent nature, the abolition of contract labour would be justified. It is also open to the Industrial Tribunal to have regard to the practice obtaining in other industries in or about the same area. It may be pointed out that most of the principles laid down by this Court have been given due regard in the Central Act, to which we will refer immediately. In our opinion, Mr. Pai is justified in his contention that the principles laid down by this Court, though adverted to by the Tribunal, have not been given due regard, when it gave a direction regarding abolition of contract labour regarding loading and unloading. We will be discussing this aspect a little elaborately when we deal with the third contention of Mr. Pai on merits.

27. Now coming to the first contention, it is necessary to refer to the material provisions of the two enactments. The Central Act received the assent of the President on September 5, 1970 and came into force on February 10, 1970. Therefore, at the time when the award was passed, the Act had received the assent of the President, though it had not come into force, but the State Act had been passed on June 13, 1969 and we are informed that it had come into force even before the date of the award.

28. The Central Act, as its preamble shows was to regulate the employment of contract labour in certain establishments and to provide for the abolition in certain circumstances and formatters connected therewith. Under sub-section (4) of Section 1, the Act applies to the establishments mentioned therein as well as to every contractor who employs the number of workers referred to in clause (b). There is no controversy that the Act applies to the appellant establishment.

29. Section 2 defines the various expression. Expressions "appropriate Government" "contract labour" "contractor" "establishment" and "principal employer" are all defined in clauses (a), (b), (c), (e) and (g) respectively of sub-section (1) of Section 2. Chapter II deals with the Advisory Board. Section 3(1) provides for the Central Government constitution the Central Advisory Contract Labour Board, to advise the Central Government with regard to matters arising out of the Administration of the Act. Sub-section (2) provides for the composition of the said Board, and from clause (c) it is seen that among other persons, the said Board is to consist of the representatives of the contractor, workmen and the industries concerned. Under the proviso to sub-section (3) the

number of members nominated to represent the workmen shall not be less than the number of members nominated to represent the principal employers and the contractors. Section 4 deals with the constitution of a similar Advisory Board by the Start Government. The said Advisory Board is also to consist among other persons, the representatives of the industry, the contractor and the workmen. A proviso to sub-section (3) of Section 4, similar to the proviso to sub-section (3) of Section 3 has also been enacted.

30. Chapter III deals with the registration of establishments employing contract labour. Sections 6 to 15 are in this Chapter. Section 6 deals with the appointment of registering officers by the appropriate Government by notification in the Official Gazette. Section 7 makes it compulsory on the part of every principal employer of an establishment to which the Act applies to make an application to the registering officer within the time prescribed for registration of the establishment. Section 8 deals with revocation of registration in the circumstances mentioned therein. Section 9 dealing with the effect of non-registration prohibits the principal employer of an establishment to which the Act applies from employing contract labour if the establishment has not been registered under Section 7 within the time prescribed or in the case of an establishment in respect of which registration has been revoked under Section 8. Section 10, which prohibits the employment of contract labour and which, in our opinion is an important provision is as follows :

> "Section 10 - Prohibition of employment of contact labour. - (1) Notwithstanding any thing 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 an 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;
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> (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;
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> (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."

31. The following points emerge from Section 10. (1) The appropriate Government has power to prohibit the employment of contract labour in any process, operation or other work in any establishment; (2) Before issuing a notification prohibiting contract labour, the appropriate

government has to consult the Central or State Board, as the case may be, which we have already pointed out, comprises of the representatives of the workmen, contractor and the industry; (3) before issuing any notification under sub-section (1), prohibiting the employment of contract labour, the appropriate Government is bound to have regard not only to the conditions of work and benefits provided for the contract labour in particular establishment, but also other relevant factors enumerated in clauses (a) to (d) of sub-section (2); and (4) under the explanation which really relates to clause (b), the decision of the appropriate Government, on the question whether any process, operation or other work is of perennial nature, shall be final.

32. Chapter IV deals with licensing of contractors. Two section in this Chapter have to be noted, namely, Sections 11 and 12. Section 11 deals with the appointment of licensing officers by the appropriate Government for the purpose of Chapter IV. Sub-section (1) of Section 12 prohibits a contractor to whom the Act applies from undertaking or executing any work through contract labour except under and in accordance with the licence issued in that behalf by the licensing officers. Sub-section (2) of Section 12 provides for a licence issued to a contractor containing conditions relating to hours of work, fixation of wages and other essential amenities in respect of contract labour, which the appropriate Government may deem fit to impose by the rules made under Section 35. Sections 13, 14 and 15 relate to the procedure for the grant of licence, revocation, suspension and amendment of licences and appeals by persons aggrieved by the orders made under Sections 7, 8, 12 and 14.

33. Chapter V deals with the welfare and health of contract labour. There are provisions made for the establishment of Canteens and Rest Houses and to provide other facilities to the contract labour by the contractor.

34. Section 20 casts a liability on the principal employer to provide the amenities referred to under Sections 16, 17, 18 and 19 for the benefit of contract labour employed in his establishment, if the contractor fails to provide those amenities. That section also enables the principal employer, if it provides those amenities, to recover from the contractor expenses so incurred by him. Section 21 makes the contractor responsible for payment of wages to the contract labour. Sub-section (2) of Section 21 makes it obligatory on every principal employer to nominate a representative duly authorised by him to be present at the time of disbursement of wages by the contractor. The said sub-section also casts a duty on such representative to certify the amounts paid as wages as prescribed by the rules. Sub-section (4) makes the principal employer liable to pay wages in full or the unpaid balance due, as the case may be, in case the contractor fails to make the payment within the period prescribed. It also enables the principal employer to recover from the contractor the amount so paid to the labour.

35. Chapter VI provides for penalty for any person contravening any provision of the Act or the Rules.

36. Chapter VII deals with miscellaneous matters. Section 29 makes it obligatory on a principal employer and contractor to maintain the registers and records as provided therein. Section 30 provides that the Central Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any agreement or contract of service or in any standing orders applicable to the establishment whether made before or after the commencement of the Act. No doubt the said section also saves any agreement or contract or standing order whereunder the contract labour gets more benefits than those conferred on them under the Act.

37. Section 35 gives power to the appropriate Government to make rules for carrying out the purpose of the Act as and also in respect of various other matters mentioned in clauses (a) to (p) of sub-section (2).

38. The State Act, as we have already mentioned, was passed on June 13, 1969 and had already come into force when the award was passed. The State Act is an Act for regulating the employment of unprotected manual workers employed in certain employments in the State of Maharashtra, to make provision for their adequate supply and proper and full utilization in such employments, and formatters connected therewith. It purports to be an Act for regulating employment of unprotected manual workers and to make better provisions for their terms and conditions of their employment as also for their welfare, heath and safety measures. Sub-section (3) of Section 1 makes the Act applicable to the employments specified in the Schedule. Item No. 5 of the Schedule is as follows :

> "5. Employment in markets, and factories and other establishments, in connection with loading, unloading, stacking, carrying, weighing, measuring or such other work including work preparatory or incidental to such operations carried on by workers not covered by any other entries in this Schedule."

From the above it will be seen that employment in factories and other establishments in connection with loading, unloading, stacking etc., are within the ambit of the Act. Section 2 defines the various expressions. The expressions "contractor", "employer", "establishment", "principal employer", "Scheme", "unprotected worker" and "work" are defined in clauses (2), (3), (4), (7), (10), (11) and (12) respectively of Section 2. Section 3 provides for the State Government framing a scheme for registration of employers and unprotected workers and to provide for the terms and conditions of work of such unprotected workers as well as for their general welfare in the employment. The scheme so framed may provided also for the various matters mentioned in clauses (a) to (l) of sub-section (2). Section 4 empowers the State Government after consultation with the Advisory Committee to make one or more scheme for any scheduled employment or group of employments. Section 5 makes the decision of the State Government in respect of any question arising whether any scheme applies to any class of unprotected workers or employers, final. But the State Government should arrive at a decision after consulting the Advisory Committee constituted under Section 14. Section 6 deals with the establishment of a Board by the State Government for any scheduled employment in any area. Sub-section (3) dealing with the composition of the Board provides that representation be given to employers, unprotected workers and the State Government. Section 14 provides for the State Government constituting an Advisory Committee to advise upon such matters arising out of the administration of the Act or any Scheme made under the Act. Section 21 saves the rights and privileges of the unprotected workers employed in any scheduled employment of the rights any privileges that he was entitled to on the date of the Act coming into force any other law, contract, custom or usage. This right is saved notwithstanding anything contained in the Act. Section 25 makes void any contract or agreement whereby an unprotected worker relinquishes any right conferred by or accruing to him under the Act or the Scheme. The said provision applies both to the contract or the agreement made either before or after the commencement of the Act.

39. The question naturally arises what is the effect of the Central and the State Acts regarding the jurisdiction of the Industrial Tribunal to entertain and adjudicate upon a dispute regarding abolition of contract labour. The Central Act had received the assent of the Present on September 5, 1970, before the date of the award, though the said Act has come into force only with effect from February 10, 1971. The State Act was already in force at the time when the award was passed.

Though we are not inclined to accept the extreme contention of Mr. Pai that the Industrial Tribunal in view of these two enactments had no jurisdiction to adjudicate upon the dispute regarding abolition of contract labour, nevertheless, we are of the view that those two enactments, which are now in force, have to be taken into account in considering whether the award of the Industrial Tribunal regarding abolition of contract labour in respect of loading and unloading operations has to be sustained. The Industrial Tribunal acquires jurisdiction to entertain the dispute in view of the reference made by the State Government on April 17, 1967. Admittedly on that date none of these enactments have been passed. Even during the proceedings before the Industrial Tribunal, there is no indication, that the appellant raised an objection after the passing of the enactments, that the Tribunal has no further larger jurisdiction to adjudicate upon the dispute. Under those circumstances, the Tribunal had to adjudicate upon the point referred to it having due regard to the principles laid down by the Courts, particularly this Court governing the abolition of contract labour. It may be that in future if a reference is proposed to be made or actually made by the authorities concerned regarding abolition of contract labour for adjudication by the Industrial Tribunal, it may be open to the persons concerned to resist the reference on the ground that the jurisdiction to consider such matters and prohibit contract labour is now vested with the appropriate Government under the Central Act.

40. In fairness to the Industrial Tribunal it must be stated that it has referred to these two enactments. But the Industrial Tribunal has proceeded on the basis that the effect these two enactments is to abolish contract labour which is consistent with the recommendations made by the Royal Commission and the various Committees constituted by the States. No doubt, there is a reference by the Industrial Tribunal to Section 10 of the Central Act dealing with prohibition of employment of contract labour, but in our opinion, the Industrial Tribunal has misapplied those provisions when it directed abolition of contract labour regarding loading and unloading operations. We are of the opinion that we will be justified, when dealing with this appeal to give effect particularly to the provisions of the Central Act having due regard to the clearly expressed intention of the Legislature in the said act regarding the circumstances under which a contract labour can be abolished.

41. The main grievance of the Union was that the conditions of employment of the persons working under a contractor were entirely different from that of the workmen under the permanent employ of the appellant and in order to improve the conditions of service of contract labour, the latter must be treated as the appellant's regular employees with all benefits of service conditions, etc. We have referred to the various provisions of the Central Act and, in our opinion, it has elaborately regulated the employment of contract labour. It has also made provisions for improving the service conditions of contract labour. An establishment has been prohibited from employing contract labour unless it gets registered under Section 7. The said Act has also provided for licensing of contractors and casts an obligation on the contractors to provide amenities and proper wages to the contract labour. It has cast an obligation on the principal employer to provide the amenities to the contract labour, if the contractor fails to provide the same. Even in respect of payment of wages the principal employer has to nominate a representative to be present when the contractor disburses the wages to the contract labour. In fact, it makes it obligatory on the principal employer to pay the wages or any deficiency in wages in consequence of default committed by the contractor. Contravention of the provisions of the Act by any person including the principal employer has been made a penal offence.

42. The said Act specifically deals with the Central Government and the State Government constituting the Central Advisory Board and the State Advisory Board, respectively. Those Boards

consist of representatives of the workmen, industry and of the contractor. Section 10 dealing with prohibiting employment of contract labour gives power to the appropriate Government to prohibit employment of contract labour in any process, operation or other work in any establishment. But before issuing a notification prohibiting the employment contract labour, the appropriate Government is bound to consult the Central Board or the State Board, as the case may be. That means the representatives of the contractor, the workmen and of the industry will have a voice in expressing their vies when the Board concerned is being consulted with regard to a proposal to prohibit contract labour. Sub-section (2) lays down the various matters, which are considered to be relevant factors, to be taken into account by the appropriate Government before a notification prohibiting contract labour is issued. The appropriate Government is bound to have regard also to the conditions of work and benefits provided for the contract labour in the establishment. The Explanation which has to be read along with clause (b) of sub-section (2) makes final the decision of the appropriate Government regarding the question whether any process, or operation or other work is of a perennial nature.

43. We are emphasising 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 established. Before such a decision is taken, the representatives of the workmen, contractor and the industry has an opportunity to express their opinion.

44. The more important aspect to be noted is the provision in the Explanation which makes the decision of the appropriate Government final, on the question, whether any process or operation or work is of a perennial nature. We have already extracted the whole of Section 10 and one of the relevant factor is that contained in clause (b) of sub-section (2) in respect of which the Explanation makes the decision of the appropriate Government final. The appropriate Government when taking action under Section 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. Therefore, it is reasonable to conclude that the jurisdiction to decide about the abolition of contract labour, or to put it differently, to prohibit the employment of contract labour, is now to be done in accordance with Section 10. Therefore, it is proper that the question whether the contract labour regarding loading and unloading in the industry of the appellant is to be abolished or not, is left to be dealt with by the appropriate Government under the Act, if it becomes necessary. On this ground, we are of the opinion that the direction of the Industrial Tribunal in this regard will have to be set aside. The Maharashtra Act also, as we have pointed out, applies to employment in factories and other establishments in connection with loading and unloading, etc. But the said Act deals with different aspects and that Act also has the effect of improving the conditions of both the unprotected worker and the worker as defined in the Act. But the provisions, more directly in point, as pointed out above, are those contained in the Central Act.

45. The legality of the direction given by the Industrial Tribunal abolishing contract labour in respect of loading and unloading from May 1, 1971, can also be considered from another point of view. The Central Act, as mentioned earlier, had come into force on February 10, 1971. Under section 10 of the said Act the jurisdiction to decide matters connected with prohibition of contract labour is now vested in the appropriate Government. Therefore, with effect from February 10, 1971,it is only the appropriate Government that can prohibit contract labour by following the procedure and in accordance with the provisions of the Central Act. The Industrial Tribunal, in the circumstances, will have no jurisdiction, though its award is, dated November 20, 1970, to give a direction in that respect which becomes enforceable after the date of the coming into force of the Central Act. In any event, such a direction contained in the award cannot be enforced from a date

when abolition of contract labour can only be done by the appropriate Government in accordance with the provisions of the Central Act. In this view also it must be held that the direction of the Industrial Tribunal abolishing contract labour with effect from May 1, 1971, regarding loading and unloading cannot be sustained.

46. In the view that we have expressed above that the direction of the Industrial Tribunal will have to be set aside, it may not be really necessary to consider elaborately the third contention of Mr. Pai, which is really an attack against the decision of the Industrial Tribunal on merits. The learned counsel has taken us through the various items of evidence on record. The appellant has filed various charts relating to several periods showing the number of days in a month when the work of loading and unloading from wagons and trucks was done by the contractor as also the volume of work done together with particulars regarding days when there was absolutely no work. The contractor Giri has also given evidence in this behalf and has also filed statements giving particulars similar to the charts filed by the appellant. As a specimen we will only refer to the period commencing from March to June, 1967. A glance through the statement reveals that in March the work load ranges from 200 bags on 3rd to 14700 on the 30th. Similarly, in April, 228 bags were handled on 3rd and about 13,704 bags were dealt with on the 17th. Similarly in May, on the 9th, 10,405 bags were handled whereas on 29th only 400 bags were handled. In June, on 9th, 9,600 bags were dealt with and on 26th. 142 bags were handled. These figures show the sharp difference in the nature of work that has to be done. We can also state that for these four months on 29th a total of 3,200 bags were handled and on 17th about 35,714 bags were dealt with. These figures, which have been taken as illustrative clearly show the drastic variation in the nature of work that had to be done by the contractor regarding loading and unloading of wagons and trucks.

47. We have only given some illustrative figures and even during the intervening days there is a very wide discrepancy in the total number of bags dealt with. There is also evidence on record to show that on some days no wagons or trucks are available. That means there will be no work of loading and unloading on those days; whereas on certain other days a number of wagons and trucks suddenly arrive, which means that there must be workmen ready to clear the goods within a specified time. It is also seen from Ex. C-8 that the goods are allowed to be cleared from the railway wagons free of demurrage within five hours after the arrival of the wagons. After the expiry of five hours, demurrage is charged by the railway at 10 paise per hour per tonne on the carrying capacity of the wagon. The contractor Giri has stated that he has to keep in readiness the necessary workmen anticipating the arrival of wagons on any date or at any time of the day and if the goods are not cleared within five hours, heavy demurrage will have to be paid. Ex. C. to which we have already referred to shows that the work of loading and unloading of seed bags and cake bags from lorries and wagons are done by contract labour by the three other concerns in the area, namely M/s. Godrej Soap Works, M/s. Tata Oil Mills and M/s. Hindustan Lever. At this stage it may be mentioned that under clause (c) of Section 10(2) of the Central Act, one of the relevant factor to be taken into account is to consider when contract labour regarding any particular type of work is proposed to be abolished, whether that type of work is done ordinarily through regular workmen in that establishment or an establishment similar thereto. When it is shown that in similar establishments this type of work is not ordinarily done through regular workmen, but by contract labour, that is a circumstance which will operate in favour of the appellant.

48. The evidence on the side of the appellant is to the effect that the work of loading and unloading in trucks and wagons in not of a perennial and permanent nature so as to justify the appellant maintaining a permanent staff for that purpose. On the other hand, their evidence is that this type of work is of an intermittent and temporary nature an so little, that it would not be possible and

profitable to employ full time workmen for the purpose and that this type of work is being done in the other concerns in the area through contract labour. These facts have not been seriously disputed by the Union.

49. The Union has placed reliance on Ex. C-9, a statement furnished by the appellant. We have earlier given a full extract of Ex. C-9. The Union appears to have pressed into service that exhibit to show that the work of loading and unloading is of a continuous and perennial nature. No doubt, a perusal of Ex. C-9, without anything more, may give the impression that the work of loading and unloading is a continuous activity of a permanent nature. Unfortunately, the appellant does not appear to have impressed upon the Industrial Tribunal the fact that the particulars mentioned in Ex. C-9 deal with the entire work done by the contractor on the basis of the contract entered into by him. The current contract in favour of the contractor is dated May 28, 1970. The previous contracts have been more or less substantially on the same lines as the present contract. The contractor has undertaken to do twenty types of jobs referred to in the contract for which the rate of payment has also been specified. They include feeding the hoppers and doing other work incidental to and closely related to the work of feeding the hoppers. We have already held that the Industrial Tribunal was justified in abolishing contract labour in respect of the work relating to feeding the hoppers. Though the Central Act has come into force, we have confirmed that part of the award regarding feeding of hoppers because we are satisfied that the principles laid down by this Court and substantially incorporated in clauses (a) to (d) of Section 10(2) have been properly taken into account by the Industrial Tribunal.

50. Ex. C-9 is a chart relating to all the twenty items of jobs, which the contractor had to do under the contract. The Industrial Tribunal has proceeded on the basis that Ex. C-9 related only to the contract work of loading and unloading, which we have already shown is erroneous. Therefore, even on merits the direction of the Industrial Tribunal abolishing contract labour regarding loading and unloading cannot be sustained.

51. In the result, the award of the Industrial Tribunal directing the appellant not to engage any labour through a contractor for the work of loading and unloading is set aside and to the extent the appeal is allowed and the award of the Industrial Tribunal will stand modified. As the Union has not appeared before us to contest the appeal, there will be no order as to costs.

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