

Food Corporation of India Workers' Union

Vs

Food Corporation of India and Others

Writ Petition No. 13508 of 1983

(V. Khalid, D. A. Desai JJ)

01.03.1985

JUDGMENT

V. KHALID, J. -

1. This is a representative action brought on behalf of the contract laborers, working with the Food Corporation of India, the first respondent in the with petition, distressed by the unhelpful attitude of both the Central and the State Governments is not redressing their grievance for either departmentalising them or in the alternative extending to them the benefit of the Contract Labour (Regulation and Abolition) Act, 1970 (for short 'The Act'). The petitioner's complaint is that the Central and the State Governments play hide and seek, one pointing to the other as the appropriate Government under the provisions of the Act and thus denying to them what is their due.

2. The first respondent is the Food Corporation of India (here in after called 'The Corporation'); the second respondent : Union of India; the third respondent : Chief Labour Commissioner (Central) and respondents 4 to 22, various State Governments. The Corporation has been entrusted by the second respondent with the duty of procuring food grains and its movement and distribution throughout the country. The Corporation employs for the discharge of this work three types of labourers : (1) departmentalised labour who are its regular employees; (2) direct paid labour; and (3) contract labour who are employed by the Corporation through the intermediary of contractors. The petitioners have been trying to persuade the Corporation for progressive departmentalisation of its labour. They, however, did not succeed. Their grievance is that even that limited benefits available to them under the provisions of the Act have not been extended to them. By this writ petition they pray, for a writ of mandamus either to the Union Government or to the State Governments, to extend to them the benefits of the Act, for a direction to the Corporation to pay them the same wages as are paid to the departmentalised labour and for other reliefs.

3. In a detailed counter-affidavit, the Corporation has pleaded that the appropriate Government for the purpose of the claims of the petitioners is the State Government and not the Central Government, and that it is not practicable for the Corporation to employ the labour whom the petitioner represents as departmental labour since the nature of the operations are seasonal, sporadic and varied from region to region, that the work of the Corporation fluctuates in volume at different places and at different points depending upon the procurement, movement and off take of food grains. It is further stated that it is not easy for abolition of contract labour employed by the Corporation since other like organisations connected with the Government of India also employ contract labourers and hence abolition of contract labour cannot be considered in isolation for the Corporation alone. Among the State Governments, respondent 15 (the State of Madhya Pradesh) and the respondent 21 (the State of Punjab) have filed their respective counter-affidavits.

4. In its counter-affidavit the State of Madhya Pradesh has stated that the said Government have framed rules under the Act (which came into force on February 10, 1971) for implementation of its provisions, that the Act is being implemented in its entirety in the said State, that it has constituted an independent State Advisory Contract Labour Board which was advising the State Government on such matters as are referred to it, that it has also constituted a committee on March 31, 1981 in exercise of the powers conferred on it under Section 5 of the Act, and that in the case of 22 branches, prosecutions were launched for non-compliance with the provisions of the Act.

5. In the counter-affidavit filed on behalf of respondent 21 (the State of Punjab), it is stated that the appropriate Government for the purpose of the Act for the regional office of the Corporation in the Punjab State, is the State Government.

6. Before considering the claims of the petitioners, we will have a look at some of the provisions of the Act, which if properly implemented would have, in some measure at least, satisfied the labour. Section 10 of the Act reads as follows :

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.

This section enables the appropriate Government by a suitable notifications after making a study of the conditions laid down therein to prohibit employment of contract labour in any "process, operation, or other work" in any establishment. The petitioner's grievance is that despite several disputes and representations made to all the State Government as well as the Union of India, nothing has so far been done to give the benefit of Section 10 to the contract labour in the Corporation. This complaint appears to be justified.

7. We will now examine the relevant provisions of the Act to find out as to which are the industries or establishments to which the Act applies and which is the appropriate Government in its contemplation, on whom is entrusted the duty to ameliorate the conditions of labour. We read Section 1(4)(a), (b) and Proviso and Section 1(5)(a) and (b) and the Explanation :

1(4) It applies -

(a) to every establishment in which twenty or more workmen are employed or were employed on any day of the preceding twelve months as contract labour;

(b) to every contractor who employs or who employed on any day of the preceding twelve months twenty or more workmen;

Provided that the appropriate Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment or contractor employing such number of workmen less than twenty as may be specified in the notification.

(5)(a) It shall not apply to establishments in which work only of an intermittent or casual nature is performed.

(b) If a question arises whether work performed in an establishment is of an intermittent or casual nature, the appropriate Government shall decide that question after consultation with the Central Board or, as the case may be, a State Board, and its decision shall be final.

Explanation. - For the purpose of this sub-section, work performed in an establishment shall not be deemed to be of an intermittent nature -

(i) if it was performed for more than one hundred and twenty days in the preceding twelve months, or

(ii) if it is of a seasonal character and is performed for more than sixty days in a year.

Section 1(4) deals with the application of the Act to establishments and contractors answering to the description given therein. It was not disputed before us that the establishment in question and the contractors it employs come within the ambit of the provisions of this Act. However, an investigation is necessary to collect factual details to ascertain whether the Corporation comes within the exemption indicated in clause 1(5) quoted above.

8. Section 3 speaks of a Central Advisory Board to advise the Central Government on matters arising out of the administration of the Act and Section 4 speaks similarly of State Advisory Boards. Section 5 confers on the Central Board or the State Board/s as the case may be the power to constitute committees for the proper implementation of the provisions of the Act. Section 7 requires registration of establishments to which the Act applies. On such registration, the principal employer will get a certificate of registration containing the necessary particulars. Chapter IV deals with the licence of a contractor and Chapter V with the welfare and health of the contract labour. Chapter VI deals with penalties and procedure.

9. The petitioner's case is that though the Act came into force on February 10, 1971 no contractor has complied with the provisions of the Act and each of them has by infringement of the provisions of the Act rendered himself liable to be prosecuted. Since the contractors have not got themselves licensed, the labourers find it difficult to invoke the relevant provisions of the Rules to secure the benefits to them under the Act.

10. Now the question as to which is the appropriate Government for the implementation of the provisions of the Act can be considered. A decision on this question is necessary before any direction can be issued in this writ petition. The State Governments, except those of State of Madhya Pradesh and Punjab, have not filed their counter-affidavits. In the writ petition the petitioners have indicated that the Central and the State Governments have taken up conflicting stand on this question.

11. 'Appropriate Government' is defined in Section 2(1)(a) of the Act to read as under :

2(1)(a) "Appropriate Government" means, -

(1) in relation to -

(i) any establishment pertaining to any industry carried on by or under the authority of the Central Government, or pertaining to any such controlled industry as may be specified in this behalf by the Central Government, or

(ii) any establishment of any railway, Cantonment Board, major port, mine or oil-field, or

(iii) any establishment of a banking or insurance company, the Central Government,

(2) in relation to any other establishment the Government of the State in which that other establishment is situated.

12. A bare reading will show that sub-clauses (ii) and (iii) of Section 2(1)(a) are not attracted in this case. The question then is whether various establishments of the Corporation spread all over the country could be said to be establishments pertaining to any industry carried on by or under the authority of the Central Government or pertaining to any such controlled industry as may be specified in this behalf by the Central Government ? Before we determine the width and ambit of sub-clause (i) of sub-section (1) of Section 2(1)(a), it would be advantageous to refer to the definition of 'establishment' set out in Section 2(1)(e). It reads as under :

2(1)(e) 'establishment' means -

(i) any office or department of the Government or a local authority, or

(ii) any place where any industry, trade, business, manufacture or occupation is carried on.

We would be concerned with sub-clause (ii) of Section 2(1)(e) which provides that the establishment would be an establishment where any industry, trade, business, manufacture or occupation is carried on. Thus various warehouses, godowns and places alike set up by the Corporation would be establishments where the trade of the Corporation is being carried on. Could

these establishments be said to be pertaining to an industry carried on by or under the authority of the Central Government ? Before we find out correct meaning of the expression "any industry carried on by or under the authority of the Central Government," it is necessary to draw attention to the definition of 'appropriate Government' as set out in Section 2(a)(1) of the Industrial Disputes Act, 1947, which provides that 'appropriate Government' means : "(i) in relation to any industrial dispute concerning any industry carried on by or under the authority of Central Government (omitting the words not necessary for the present purpose) ... or in relation to an industrial dispute concerning the ... Food Corporation of India established under Section 3, or a Board of Management established for two or more contiguous States under Section 16 of the Food Corporation Act, 1964 ..., the Central Government". Obviously, therefore, for the purpose of Industrial Disputes Act, 1947, in relation to any industrial dispute concerning the Food Corporation of India, the Central Government is the appropriate Government. There is an express reference to the Food Corporation of India. If the Food Corporation of India was an establishment in an industry carried on by or under the authority of the Central Government, it would be tautologous to specifically refer it and include it. It is a well established canon of statutory construction that Legislature is known to avoid tautology and redundancy. If Food Corporation of India was an industry carried on by or under the authority of the Central Government, it would have been comprehended in the first part of sub-section (1) but that being not the position, it was specifically referred to by name. Having examined this definition, it is necessary to bring to fore the contradistinction between the definition of the expression 'appropriate Government' in the Industrial Disputes Act, 1947 and the definition in the Act under examination. It may be pointed out that the expression in the Act does not include by name the Food Corporation of India as the one in respect of which the appropriate Government would be the Central Government, while it is mentioned so in the definition in the Industrial Disputes Act even though both the statutes use the general expression "any industry carried on by or under the authority of the Central Government".

13. Having noticed this contradistinction, let us examine the width and content of the expression "any industry carried on by or under the authority of the Central Government". The matter is no more res integra. In *Heavy Engineering Mazdoor Union v. State of Bihar* ((1969) 3 SCR 995 : (1969) 1 SCC 765 : AIR 1970 SC 82), this Court held that the expression "an industry carried on by or under the authority of the Central Government" as used in the definition of expression 'appropriate Government' in Section 2(a)(i) of the Industrial Disputes Act, 1947, would mean "pursuant to the authority, such as where an agent or a servant acts under or pursuant to the authority of his principal or master". This Court took notice of the fact that the entire share capital of the Heavy Engineering Corporation Ltd., was contributed by the Central Government and extensive powers were conferred on it and yet the Corporation was none other than a company and could not be said to be an industry carried on by or under the authority of the Central Government. Therefore, the case would be covered by the residuary clause and the appropriate Government was held to be the State Government and the reference under Section 10 made by the State of Bihar was held valid and competent. Looking to the placement of the expression in the definition clause of the Act and the purpose for which it is enacted, the expression "any industry carried on by or under the authority of the Central Government" must receive the same interpretation as was done in that aforementioned case. In a recent decision of this Court in *Rashtriya Mills Mazdoor Sangh, Nagpur v. Model Mills, Nagpur* (AIR 1984 SC 1813 : 1984 Supp SCC 443 : 1985 SCC (L&S) 154 : (1984) 2 LLJ 507), to which both of us were parties while interpreting more or less an identical expression occurring in Section 32(iv) of the Bonus Act, 1965, this Court held that in relation to an undertaking in textile industry in respect of which an authorised controller was appointed under the provisions of the Industries (Development and Regulation) Act, 1951, the appropriate Government was the State

Government and not the Central Government observing that even where an authorised controller is appointed by the Central Government, it merely substitutes Board of Director of a company managing the industrial undertaking by an authorised controller appointed by the Central Government, but the undertaking nonetheless remains an undertaking managed under the provisions of the Companies Act, 1956, and it could not be said to be an undertaking in any industry carried on by or under the authority of the Central Government. The same approach holds good for the purpose of construction of the expression "any industry carried on by or under the authority of the Central Government" under the Act. Let it be made clear that it was not suggested that the various establishments of the Corporation pertain to any controlled industry. Therefore, sub-clause (i) of sub-section (1) of Section 2(a) of the Act is not attracted and therefore, the case would be governed by the residuary provision in sub-section (2) and the State Government would be the appropriate Government.

14. The question as to which is the 'appropriate Government' has been briefly dealt with in the counter-affidavits filed by the Corporation, State of Madhya Pradesh and the State of Punjab. In the counter-affidavit filed by the Corporation, it is stated that this question was examined by the Labour Ministry and that the said Ministry had clarified that the respective State Governments are the 'appropriate Governments' for the Corporation's establishments situated in the States. The Union of India, the second respondent, in its counter-affidavit has also taken the stand that the 'appropriate Government' for the purpose of the Zonal establishments situated in the respective States is the State Government and not the Central Government.

15. The State of Punjab and the State of Madhya Pradesh have also stated in their respective counter-affidavits that the 'appropriate Government' for the purpose of the Act for the regional offices of the Corporation in their respective States is the State Government. These pleadings are indicative of the fact that the State Governments understood them to be the 'appropriate Government' for the Zonal offices in their respective State.

16. On the interpretation of the relevant sections extracted above, we hold that the 'appropriate Government' for the purpose of this case pertaining to the regional offices and their warehouses in the respective States is the State Government and not the Central Government.

17. However, we are of the opinion that it may not be possible or proper for us to grant the reliefs prayed for by the petitioner in full on the materials on record. The materials are scanty and insufficient for a comprehensive adjudication of the claims of the petitioners and to grant them reliefs as prayed for. The Act contains provisions enabling the 'appropriate Government' to get reports as to how to implement the provisions of the Act. The machinery provided for by the Act has not been brought into action in any State except the State of Madhya Pradesh. Under the circumstances, the only course open to us is to issue appropriate direction to the State Governments to constitute committees under Section 5 of the Act, to make necessary enquiries, and to submit a report as to whether it would be possible to abolish contract labour in the Corporation altogether. In so doing, we will have to exclude the State of Madhya Pradesh because the counter-affidavit filed by that State shows that necessary action is being taken under the Act. Accordingly a writ of mandamus will be issued to all the State Governments except the State of Madhya Pradesh for appointing a committee under Section 5 of the Act within three months from today to enquire whether contract labour in the Corporation should be abolished. The committee shall submit a report within four months of its constitution and the Government is directed to take action on such report within two months thereafter. The necessary expenses for the committees will be borne by the Corporation. Since the Madhya Pradesh Government has already constituted committees under

Section 5, the said State is directed to ask the committees so appointed to make their reports expeditiously and to take appropriate action on the report as indicated above. The Corporation will be at liberty to place materials before the committee/s whether it comes within the exemption clause. The writ petition is allowed as indicated above with costs to the petitioner quantified at Rs. 2000 payable by the Corporation.

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