

Dena Nath and others

Vs

National Fertilisers Ltd. and others,

Civil Appeals Nos. 2355 of 1991. with (C.A. Nos. 2356-66/91, 2366A-69/91, S.L.P. (C) Nos. 9755/91, 9830/91 and 10235-43 of 1991)

(K. Jagannatha Shetty, D Yogeshwar Dayal JJ)

22.11.1991

JUDGEMENT

YOGESHWAR DAYAL, J.:-

1. These appeals raise a question of the scope and effect of failure of compliance with S. 7 and/ or S. 12 of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as 'the Act).
2. The question involved is that if the principal employer does not get registration under S.7 of the Act and/ or the Contractor does not get a licence under S.12 of the Act whether the persons so appointed by the principal employer through the contract would be deemed to be the direct employees of the principal employer or not.
3. There is a direct conflict between the decisions of the High Courts of Punjab, Kerala on the one hand and the decisions of Madras, Bombay, Gujarat and Karnataka High Courts on the other. The view of the Punjab and Kerala High Courts is that the only consequence of non-compliance either by the principal employer of S.7 of the Act or by the contractor in complying with S.12 of the Act is that they are liable for prosecution under the Act; whereas the view of the High Courts of Madras, Bombay, Gujarat and Karnataka is that in such a situation the contract labour becomes directly the employee of the principal employer.
4. For the sake of convenience we deal with the facts of Civil Appeal No. 2355 of 1991.
5. This appeal arises from the decision of a Division Bench of the Punjab and Haryana High Court dated 27th February, 1991 passed in Writ Petn. No. 8872 of 1989. The Division Bench while deciding a batch of writ petitions followed its earlier decision in the case of Gian Singh v. F.C.I., (1991) 1 Pun LR 1. (Letters Patent Appeal No.1215 of 1990) which has since been reported in (1991) 1 Pun LR 1. The Division Bench in the aforesaid case of Gian Singh held that if the principal employer does not get registration as required under S.7 of the Act and/or the Contractor does not get the licence under S.12 of the Act, the persons who are appointed by the principal employer through the contractor, the only consequence is the penal provisions contained in Ss.23 and 24 of the Act and that the principal employer or contractor can be prosecuted under those sections, but the Act nowhere provides that such employees employed through the contractor would become the employees of the principal employer.
6. In the High Court judgment, under appeal, reliance was placed on behalf of the workmen on the

views of the High Courts of Karnataka, Madras, Gujarat and Bombay in the cases reported as F.C.I. Loading and Unloading Workers Union v. Food Corporation of India (1986) 2 Serv LR 454 (Kant), Workmen of Best & Crompton Industries Ltd. v. Management of Best & Crompton Engineering Ltd., Madras (1985) 1 Lab LJ 492 (Mad), Food Corporation of India Workers Union v. Food Corporation of India (1990) 61 Fac LR 253 : (1990 Lab IC 1968) (Guj) and United Labour Union v. Union of India (1990) 60 Fac LR 686 (Born), but the High Court took the view that it was not applicable.

7. To appreciate the correctness of one view or the other, it will be necessary to go through the object and the scheme of the Act. The objects of the Act were dealt with by the Supreme Court in the case of Gammon India Ltd. v. Union of India (1974) 1 SCC 596 : (AIR 1974 SC 960) in paragraph 14 at page 600 (of SCC) : (at p. 963 of AIR) as follows:

"The Act was passed to prevent the exploitation of contract labour and also to introduce better conditions of work. The Act provides for regulation and abolition of contract labour. The underlying policy of the Act is to abolish contract labour, wherever possible and practicable, and where it cannot be abolished altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provision of essential amenities. That is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by S.10 of the Act, S.10 of the Act deals with abolition while the rest of the Act deals mainly with regulation. The dominant idea of S.10 of the Act is to find out whether contract labour is necessary for the industry, trade, business, manufacture or occupation which is carried on in the establishment."

8. As the long title and the preamble of the Act shows that (sic) it is an Act to regulate the employment of contract labour in certain establishments and to provide for abolition in certain circumstances and for matters connected therewith. The Statement of Objects and Reasons mentions that the system of employment of contract labour has tended itself to various abuses and the question of its abolition had been under consideration of the Government for a long time. The Planning Commission had made certain recommendations in the Second Five Year Plan viz. it undertook a study in this behalf on improvement of service conditions of contract labour where the abolition was not possible. The general consensus thereafter was that the contract labour system should be abolished wherever possible and practicable and further that in a case where the system could not be abolished altogether, the working conditions of contract labour should be regulated so as to ensure payment of wages and provision of essential amenities.

9. The above objects have been brought into the Act which was enacted in 1970. S.2 gives the definition of various words while S.3 deals with the Constitution of Central Advisory Board and S.4 deals with the Constitution of State Advisory Board. These Boards are empowered to constitute various committees as mentioned in S.5. Chapter III is important and deals with 'registration' of establishment employing contract labour while Chap. IV deals with 'licensing' of contractors employed by these establishments. S.7 deals with registration of certain establishment notified by the Government and these establishments are obviously the principal employers as defined in S.2(g). S.8 provides for revocation of registration in certain cases and S.9 deals with the effect of non-registration. Under S.9 no principal employer of an establishment, to which the Act applies shall; (a) in case of an establishment required to be registered under S.7, but which has not been registered within the time fixed for the purpose under that section; (b) in the case of an establishment the registration in respect of which has been revoked under S.8 employ contract

labour in the establishment after the expiry of the period referred to in Cl. (a) or after the revocation of registration referred to in Cl.(b), as the case may be. S.10 deals with the prohibition of employment of contract labour which 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-sec. (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."

10. Chapter IV deals with the licensing of contractors. Sub-clause (1) of S.12 states that w.e.f. such date as the appropriate Government may, by notification in the Gazette, appoint, no contractor to whom this Act applies shall undertake or execute any work through the contract labour except under and in accordance with the licence issued in that behalf by the Licensing Officer. Sub-cl. (2) of S.12 provides that subject to the provisions of the Act, a licence in sub-sec. (1) may contain such conditions including, in particular conditions as to hours of work, fixation of wages and other essential amenities in respect of the labour contract as the appropriate Government may deem fit to impose in accordance with the rules, if any, made under S.35 and shall be issued on payment of such fees and on the deposit of such sum, if any, as security for due performance of the conditions as may be prescribed. S.14 provides for revocation, suspension and amendment of the licences while S.15 provides for an appeal. Chapter VI deals with the penalties and procedures. S.22 deals with the obstructions. S. 23 deals with contravention of provisions regarding employment of contract labour and Ss.24 and 25 deals with other offences and offences by companies. Chap.VII makes certain miscellaneous provisions and S.30 provides that laws and agreements inconsistent with the provisions of the Act shall be void except where such agreements or contracts or standing orders afforded more favourable facilities to the employees than provided under the Act. We shall also refer to R.25 of the Rules which mentions the conditions subject to which licence could be issued to a contractor under S.12. The said rule inter alia provides that a licence issued to a contractor shall not be transferable, that contractor cannot employ workmen in excess of the number specified therein and that rate of wages payable to the workmen shall be the rate prescribed under the Minimum Wages Act, 1948. Clause (v)(a) of the Rules 25(2) is important and reads as follows:

"In cases where the workmen employed by the contractor perform the same or similar kind of work as the workmen directly employed by the principal employer of the establishment, the wage rates, holidays, hours of work and other conditions of service of the workmen of the contractor shall be the same as applicable to the workmen directly employed by the principal employer of the establishment on the same or similar kind of work."

11. Rule 25(2) further provides for accommodation for women and children and for the times of work of females.

12. From the above provisions it is clear that the Act serves two-fold purposes (1) regulation of the conditions of service of the workers employed by the contractor who is engaged by a principal employer and; (2) also provides for the appropriate Government abolishing contract labour altogether, in certain notified processes, operation or other works in any establishment. Neither the Act nor the Rules framed by the Central Government or by any appropriate Government provide that upon abolition of contract labour, the said labour would be directly absorbed by the principal employer.

13. The question arises when the Act does not provide for such a measure, but contents itself by merely regulating the conditions of service of the contract labour, can the Court in proceedings under Art.226 of the Constitution, where the principal employer or the licence contractor violates the provisions of S.9 or 12 respectively, direct that the contract labour so employed would become directly the employee of the principal employer.

14. The view of the Bombay High Court in the case of *United Labour Union v. Union of India* (1990 (60) Fac LR 686) (supra) was really concerned with the appropriate Government for purposes of notification being issued under Section 10(1) of the Act. It took the view that the Central Government was the appropriate Government in relation to Air India Corporation but after analysing the provisions of Sections 2(ii)(b), 7, 8, 12, 20, 21 and 29 the Bombay High Court took the view -

"The combined effect of these provisions makes it clear that for a valid employment of contract labour, two conditions must be fulfilled, viz., (1) every principal employer of an establishment must be registered and (2) the contractor must have valid licence. In other words, the mere registration by the principal employer or the holding of licence by contractor alone will not enable the management to treat the workmen as contract labour. Whilst considering the provisions of the Act, it must be kept in mind that this Act is a piece of beneficial legislation. The aim of the Act is to regulate conditions of service of contract labourers and to abolish contract labour under certain circumstances. It is therefore meant for securing proper conditions of service to under contract labour. It is not the purpose of the Act to render workmen jobless. The interpretation which must be given is one which would further these objects and not one which results in greater hardship. It must be noted that there is no provision which states that the relationship of principal employer and workmen comes to an end on the abolition of contract labour. On the contrary as already stated there is a deemed contract labour only if the two conditions of registration and licence are fulfilled. In such a case i.e., where either or both the conditions are not fulfilled, the necessary implication would be that the workmen remain workmen of the principal, employer. It must be remembered that on a failure of the contractor to

provide amenities or to pay wages the principal employer remains liable for the same. The same would be the position on a failure by reason of there being no valid contract labour.

Mr. Dhanuka, however, submitted that the Act provides certain penal consequences for non-registration. He submits that there being no such provision in the Act, the same cannot be implied. He submits that in the absence of any such provision the Court cannot give any direction to that effect. In my view, the penal provisions are provided to dissuade employers from attempting to commit a breach of the provisions of the Act and the Rules made thereunder. They do not detract from the position that there can be no deemed contract labour if the two conditions are not satisfied. If the protection or right given by reason of a deeming provision is not available then the natural consequence must follow in addition to the penal consequence, unless there is a provision to the contrary. As already stated, in the Act there is no provision that the services of the workmen, qua the principal employer, stand terminated on the contract labour becoming invalid and/ or abolished. (Emphasis supplied).

15. The question arising before us directly came up for consideration before a division bench of the Gujarat High Court in the case of Food Corporation of India Workers' Union v. Food Corporation of India (1990 Lab IC 1968) (supra) which observed (Paras 7 and 20, at pp. 1973 and 1977 of Lab IC)

"It is evident that (i) the principal employer should obtain a Certificate of Registration and (ii) the workmen can be employed on contract labour basis only through licensed contractor. The Certificate of Registration is required to be obtained by the principal employer, issued by the appropriate Government under the provisions of Section 7 of the Act. The licence is to be obtained by the contractors under the provisions of Sec.12 of the Act. The workmen can be employed as contract labour only through licensed contractors. Unless both these conditions are complied with, the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 would not be attracted. Both these conditions are required to be fulfilled, if one wishes to avail of the provisions of the Act. Even if one of the conditions is not complied with, the provisions of the Contract Labour (Regulation & Abolition) Act, 1970 would not be attracted. Therefore, in a situation wherein either of these two conditions is not satisfied, the position would be that a workman employed by an intermediary would be deemed to have been employed by the principal employer. In the result it is declared that during the period when the two conditions of obtaining registration under Section 7 by the principal employer and of holding licence by the contractor are not complied with and the workmen are employed by contractor, the workmen can claim to be direct employees of the principal employer."

16. The decision of the Madras High Court in *The Workmen of Best & Crompton Industries Ltd. v. The Management of Best & Crompton Engineering Ltd.*, Madras (1985 (1) Lab LJ 492), really arose out of an award given by the Labour Court in an industrial dispute. The industrial dispute had been raised by the workmen of the principal employer. They challenged the termination of service of workmen by the Management as the Management did not requisition the service of 75 workmen after 16th October, 1978 on the ground that they were employed by the licensed contractor. This led to an industrial dispute and on a reference made of the said industrial dispute, the Labour Court rejected the contention of the Management and held that the so-called contractor was a, mere name-lender and did not hold licence under the Act and directed the reinstatement of the workmen with

backwages and other benefits. This award of the Labour Court was challenged before the High Court by the Management by a writ petition. The learned single Judge of the Madras High Court took the view that the conclusion of the Labour Court that the labour contractor was not really a labour contractor, but he was merely acting as a tool in the hands of the Management is not supported either by the pleadings of the parties or by the evidence. According to the learned single Judge there was absolutely nothing to displace the weighty documentary evidence in favour of the Management and therefore, he characterised the finding entered by the Labour Court to the contrary as being perverse and vitiated. The division bench in Letters Patent Appeal reversed this finding of the learned single Judge.

17. The High Court observed at p. 497 -

"In order to enable the Management to have the benefit of the contract labour, the Act has now legalised the employment of such contract labour, provided the intermediary contractor holds a valid licence and provided the Management also holds a valid licence as principal employer. This is subject to the prohibition contemplated under S.10. There is no need for us to examine the content of S.10 in this case. In order to regulate the employment of contract labour and to provide for abolition in certain circumstances, the said Act came to be passed. According to S.7:

"Provided that the registering officer may entertain any such application for registration after expiry of the period fixed in this behalf, if the registering officer is satisfied that the applicant was prevented by sufficient cause from making the application in time.

(2) If the application for registration is complete in all respects, the registering officer shall register the establishment and issue to the principal employer of the establishment a certificate of registration containing such particulars as may be prescribed."

Under S. 12 of the Act, no contractor to whom this Act applies, shall undertake or execute any work through contract labour except under and in accordance with a licence issued in that behalf by the licensing officer. Sub-s.(2) of S.12 provides:

"Subject to the provisions of this Act, a licence under sub-s.(1) may contain such conditions including in particular conditions as to hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with the rules, if any, made under S. 35 and shall be issued on payment of such fees and the deposit of such sum, if any, as security for the due performance of the conditions as may be prescribed."

The combined effect of these two provisions in our view makes it clear that for a valid employment of -

"(1) Every principal employer of an establishment to which this Act applies shall, within such period as the appropriate Government may, by notification in the Official Gazette, fix in this behalf with respect to establishments generally or with respect to any class of them, make an application to the registering officer in the prescribed manner for registration of the establishment; contract labour, two conditions should

be satisfied, viz., not only the principal employer but also the contractor should possess the requisite licence. In other words, the holding of licence by one alone will not enable the management to treat the workmen as contract labour."

18. The High Court of Kerala in the case of *P. Karunakaran v. The Chief Commercial Superintendent* 1988 Lab IC 1346 took the same view as was taken by the Punjab & Haryana High Court in the judgment under appeal. A similar view was expressed by the Delhi High Court in the case of *New Delhi General Mazdoor Union v. Standing Conference of Public Enterprises (scope)* (1991) 2 Delhi Lawyer 189.

19. The reference to the Labour Court/ Industrial Tribunal could be as to whether it is necessary for the Management to employ contract labour directly or indirectly; a question can as well be referred whether the engagement of contract labour was bona fide or it was a camouflage. In appropriate cases in industrial adjudication appropriate directions can be given to the principal employer in this behalf. This has been the subject matter of decisions by the Tribunal/Labour Courts and by this Court also. The case of *Standard Vacuum Refining Co. v. Their Workmen* (1960) 2 Lab LJ 233 : (AIR 1960 SC 948) is a case on this point. It was a case where the workmen employed by an oil refinery demanded that the contract system of labour adopted by the company for cleaning maintenance of the refinery belonging to the company should be abolished and the said demand was referred for adjudication. It was found that the work for which the contract was given is incidental to the manufacturing process and is necessary for it and of a perennial nature which must be done every day and in these circumstances the Industrial Tribunal directed the Company to abolish the contract system of labour with effect from a particular date and to have the said work done through workmen engaged by itself. This direction was given in view of the fact that the work was of a permanent nature and the labour employed through contractor was receiving much less wages than the unskilled workmen of the company and they were not having any other benefits and amenities like provident fund, gratuity, bonus, privilege leave etc. On the Award of the Industrial Tribunal the Supreme Court gave the finding that it was an industrial dispute as defined under Section 2(k) of the Industrial Disputes Act. In dealing with the question whether the Tribunal was justified in giving the directions for abolishing the contract system the Supreme Court noted that industrial adjudication generally does not encourage employment of contract labour in modern times and it would be necessary to examine the merits of the dispute apart from general consideration that contract labour should not be encouraged; and that in any case the decision should rest not merely on theoretical or abstract objections to contract labour but also on the terms and conditions of the contract labour and the grievance made by the workmen thereof. On facts the Supreme Court observed (at p. 952 of AIR 1960 SC 948):

"It may be accepted that the contractor in the present case is an independent person and the system is genuine and there is no question of the company carrying on this work itself and camouflaging it as if it was done through contractors in order to pay less to the workmen. But the fact that the contract in this case is a bona fide contract would not necessarily mean that it should not be touched by the industrial tribunals. If the contract had been mala fide and a cloak for suppressing the fact that the workmen were really the workmen of the company, the tribunal would have been justified in ordering the company to take over the entire body of workmen and treat it as its own workmen. But because the contract in this case was bona fide, the tribunal has not ordered the company to take over the entire body of workmen. It has left to it to decide for itself how many workmen it should employ and on what terms and has merely directed that when selection is being made preference should be given to the

workmen employed by the present contractor."

The Supreme Court also noticed that the industrial dispute was confined to the cleaning maintenance of the plant; the work was incidental to manufacturing process and the work is necessary for it and was of a perennial nature which must be done every day and such work is generally done by workmen in the regular employment of the employer and there would be no difficulty in having regular workmen for this kind of work. It noted that the matter would be different if the work done was of an intermittent or temporary nature or was so little that it would not be possible to employ full-time workmen for the purpose.

20. It would be noticed that after the aforesaid observations of the Supreme Court in the case of Standard Vacuum Refining Company (AIR 1960 SC 948) (Supra) the Parliament while giving power to the Appropriate Government to prohibit employment of contract labour in any process or operation or other work in any establishment gave the guidelines in clauses (a),(b), (c) and (d) of sub-section (2) of Section 10, as noticed earlier, and guidelines are practically based on the guidelines given to the Tribunals in the aforesaid case of Standard Vacuum Refining Company by this court. The Act as can be seen from the scheme of the Act merely regulates the employment of contract labour in certain establishment and provides for its abolition in certain circumstances. The Act does not provide for total abolition of contract labour but it provides for abolition by the appropriate Government in appropriate cases under Section 10 of the Act.

21. In the present case and the other connected Special Leave Petitions no notification has been issued by the appropriate Government under Section 10 of the Act vis-a-vis the type of establishment with which we are concerned.

22. It is not for the High Court to inquire into the question and decide whether the employment of contract labour in any process, operation or in any other work in any establishment should be abolished or not. It is a matter for the decision of the Government after considering the matter, as required to be considered under Section 10 of the Act. The only consequences provided in the Act where either the principal employer or the labour contractor violates the provision of Sections 9 and 12 respectively is the penal provision, as envisaged under the Act for which reference may be made to Sections 23 and 25 of the Act. We are thus of the firm view that in proceedings under Article 226 of the Constitution merely because contractor or the employer had violated any provision of the Act or the rules, the Court could not issue any mandamus for deeming the contract labour as having become the employees of the principal employer. We would not like to express any view on the decision of the Karnataka High Court or of the Gujarat High Court (supra) since these decisions are under challenge in this court, but we would place on record that we do not agree with the aforequoted observations of the Madras High Court about the effect of non-registration of the principal employer or the non-licensing of the labour contractor nor with the view of Bombay High Court in the aforesaid case. We are of the view that the decisions of the Kerala High Court and Delhi High Court are correct and we approve the same.

23. In the result C.A. 2355 of 1991 fails and is dismissed and in view of the observations in C.A. 2355 of 1991, C.A. Nos. 2356-66/91, 2366A-69/91 and S.L.P. (C) Nos.9755/91, 9830/91 & 10235-43/91 are also hereby dismissed. In the circumstances of the case, parties are left to bear their own costs of the present proceedings.

Appeal dismissed.

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