

SUPREME COURT OF INDIA

Baleshwar Rajbashi

Vs.

The Board of Trustees for the Port of Calcutta

C.A.No.7394 of 2009

(Tarun Chatterjee and R. M. Lodha JJ.)

06.11.2009

JUDGEMENT

R.M. LODHA, J.

1. Delay condoned. Leave granted.

2. This appeal by special leave is directed against the judgment and order dated March 31, 2008 passed by the Division Bench of High Court of Calcutta whereby the Board of Trustees for the Port of Calcutta - Respondent No. 1 (for short, 'CPT') has been directed to approach the Ministry of Labour through Ministry of Shipping for resolution of the dispute concerning abolition of contract labour in the works of sleeper renewal of railway tracks, repairing/restoration and laying and linking of tracks in the establishment of CPT.

3. The appellants are contract labour who claim to have worked continuously from 1988 until 2006

under different contractors engaged by CPT for maintenance of railway track within their complex. Upon issue being raised by them, a Committee was constituted under Section 5 of the Contract Labour (Regulation and Abolition) Act, 1970 (for short, 'Act') by Central Advisory Contract Labour Board (for short, 'Central Board') to study the working of contract labour system in the jobs/works of sleeper renewal railway tracks, repairing/restoration and laying and linking of tracks in the establishment of CPT and make suitable recommendation, whether or not the employment of contract labour in the above jobs/works in the establishment of CPT be prohibited under the Act. The Committee in its report opined that works/jobs of sleeper renewal of railway tracks in the establishment of CPT were of regular nature attracting Section 10(2) of the Act, 1970 and, accordingly, recommended for prohibition of contract labour in respect of the said jobs.

4. Despite recommendation of the Committee constituted under Section 5 of the Act, the Central Government decided not to prohibit employment of contract labour in the jobs/works of sleeper renewal of railway tracks, repairing/restoration and laying and linking of tracks in the establishment of CPT which led to the filing of writ petition by the present appellants before the High Court at Calcutta. Vide Order dated July 22, 2004, the High Court directed the Central Government to reconsider the issue concerning abolition of contract labour in CPT and pass a fresh order after hearing all the parties concerned.

5. In pursuance of the aforesaid order of the High Court, the Central Government reconsidered the matter and issued a notification on July 7, 2005 in exercise of the powers conferred by sub-Section(1) of Section 10 of the Act, 1970 prohibiting the employment of contract labour in the works of sleeper renewal of railway tracks, repairing/restoration and laying and linking of tracks in the establishment of CPT with effect from the date of publication of the notification.

6. Issuance and publication of the notification dated July 7, 2005 led to second round of litigation between the appellants and CPT. While CPT challenged the legality and validity of the notification dated July 7, 2005 on diverse grounds, the present appellants approached the High Court for issuance of mandamus to CPT to implement the notification dated July 7, 2005 and not to engage contract labour in the matter of maintenance, laying and linking, changing of railway tracks maintained by CPT.

7. By his order dated May 15, 2007, Single Judge dismissed the writ petition filed by CPT and held that there was no irregularity or illegality in the notification dated July 7, 2005. Insofar as the writ petition filed by the present appellants was concerned, its hearing was deferred.

8. CPT challenged the order dated May 15, 2007 passed by the Single Judge before the Division Bench of the High Court in intra court appeal. The Division Bench heard the appeal preferred by CPT and also the writ petition preferred by the present appellants together and vide order dated March 31, 2008 directed CPT to approach the Ministry of Labour through Ministry of Shipping.

This is what the Division Bench directed :

"The Port Trust is thus directed to approach the Ministry of Labour through Ministry of Shipping. Both the Ministries should discuss the issue at the appropriate level and take a formal decision in the matter. The said two departments would be free to take a decision irrespective of the observations made by the learned Single Judge in the judgment and order impugned. Mr. Sengupta has drawn our attention to the latest decision in the case of City and Industrial Development Corporation, Maharashtra Ltd., & Ors. (supra) to show that the issue to be resolved by High Power Committee to be appointed by the Central Government. We feel that the issue should be left to the Central Government for formation of High Power Committee if they so desire. If the High Power Committee is formed regard may be had to the case of City and Industrial Development Corporation, Maharashtra Ltd., & Ors. (supra).

So long a decision at the appropriate level is not taken in the matter status quo as of date should be maintained by the parties. Mr. Sengupta contends that RITES is now maintaining the railway track. Let them continue till the final decision comes from the appropriate level."

9. Section 5 of the Act provides for constitution of committees by the Central Board or the State Board for such purpose as may be thought fit. It reads thus :

"5. POWER TO CONSTITUTE COMMITTEES. - (1) The Central Board or the State Board, as the case may be, may constitute such committees and for such purpose or purposes as it may think fit.

(2) The committee constituted under sub-section (1) shall meet at such time and places and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed.

(3) The members of a committee shall be paid such fees and allowances for attending its meetings as may be prescribed : Provided that no fees shall be payable to a member who is an officer of government or of any corporation established by any law for the time being in force."

10. The provision pertaining to prohibition of employment of contract labour is contained in Section 10 of the Act which empowers the appropriate Government to prohibit employment of contract labour in any process, operation or other work in any establishment. Section 10 reads thus:

"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."

11. As noticed above, the Central Board constituted a Committee under Section 5 of the Act to go into the question of abolition of contract labour in the establishment of CPT. The Committee examined the diverse aspects of the matter and made its recommendations as follows :

"RECOMMENDATIONS"

"From the above elaboration of work, the job in question needs to be examined in the contract of provisions of section 10(2) of the Contract Labour (R&A) Act, 1970.

1. Whether the work is incidental to or necessary for the industry of Calcutta Port Trust the Committee is of the opinion that works of CPT involved loading and in landing of Cargo from or on the vassals of also the stores of Cargo. The railway track in Calcutta Dock System has been laid to facilitate the movement of rail bound caused to and from CPT so the work is very much incidental to the main operation of CPT.

2. The question whether work is of the provisional nature and is of sufficient duration, the committee observes that if renewal/cancellation of Tracks and sleepers have been going on almost continuously may be in some or other part of the Railway tracks and contract workers are working for full 8 hours so job deemed to be a perennial nature.

3. The question whether it is also done by the regular workmen, it has already been explained the total 71 of regular employee are also involved on day to day track maintenance job which includes the repairing to tracks after derailment and in routine gauging lubrication of point and crossing, cleaning of check rail, Dusking etc. which are also done by the contract workers after the replacement, renewal of sleepers and tracks and also in laying or linking of new railway lines.

The Committee also feels that it will be relevant to mention about the notification No. U-23013/21/98 LW dated 20th June 2000 issued by the Ministry of Labour, Government of India, by which the employment of contract labour has been prohibited on the job of regular track maintenance such as through packing casual renewal and maintenance work required for day to day maintenance in the establishment of Eastern Railway.

In the contract above facts and observation, the committee is of opinion at work jobs of sleepers renewal of Railway tracks repairing/restoration laying and linking of Tracks in the establishment of Calcutta Port Trust seem to be of regular nature and attracts the provisions of Section 10(2) of the Contract Labour (Regulation and Abolition) Act, 1970. Hence the committee recommended for prohibition of contract labour on the above mentioned job."

12. The matter was reconsidered by Central Board in the light of the order of Calcutta High Court passed on July 22, 2004 and it recommended to the Central Government for prohibition of employment of contract labour in the jobs of sleeper renewal of railway tracks, repairing/restoration, laying and linking of tracks in the establishment of CPT. This is what Advisory Board said in its recommendation :

".....The Committee had recommended prohibition of employment of Contract Labour on the ground that the work seem to be of regular nature and since 1988 contracts have been engaged for renewal/construction of tracks and sleepers in some or other part of the railways tracks belonging to KOPT. Secondly the job performed by the regular employees were almost identical to that of job performed by contract workers and both type of maintenance job, i.e. day to day maintenance and periodical maintenance are required to be done on regular basis. The Committee has also observed that since February 2000, miscellaneous work in connection with strengthening of KOPT railway track, as and when required, including supply of materials have been given on contract. This is at variance with the statement of KOPT that there is no contract in the said jobs since 1998.

The management, on enquiry by the Board, categorically stated that no contract labour system exists now in the jobs under consideration and they would not be adversely affected even if the contract labour system is abolished. The management was also not able to satisfactorily convince the Board, on the query whether the renewal of track/sleepers would be done only once in 10-12 years at one go and not in parts on continuous basis. This gives rise to an inference that the jobs under consideration is of perennial type and are required to be done by regular employees. In view of the recommendations of the Committee and categorical statement of KOPT, and the fact that the requirements under Section 10(2) of the Act are satisfied, the Board recommends to the Government prohibition of employment of contract labour in the jobs of sleeper renewal of railways tracks, repairing/restoration, laying and linking of tracks in the establishment of KOPT, Kolkata."

13. It is in the light of the aforesaid backdrop that the Central Government issued notification under Section 10(1) of the Act, 1970 prohibiting the employment of contract labour in the works of sleeper renewal of railways tracks, repairing/restoration, laying and linking of tracks in the establishment of CPT. The Single Judge did not find any infirmity or illegality in the said notification. However, Division Bench without going into the merits of the controversy, interfered with the order of the Single Judge by directing CPT to approach the Ministry of Labour through Ministry of Shipping and both ministries were directed to discuss the issue at the appropriate level and take a formal decision in the matter. We find it difficult to countenance the approach of the Division Bench. The Division Bench gravely erred in overlooking and ignoring the fact that the Central Government had already taken a decision in exercise of its power under Section 10(1) after following the consultative process provided in sub-Section (2) of Section 10 and the relevant aspects mentioned therein. There was no occasion much less justification to direct CPT to approach the Ministry of Labour through Ministry of Shipping. The Division Bench ought to have considered the matter on its own merit within the permissible limits of judicial review. If the impugned order is allowed to stand, it would tantamount to setting at naught the whole exercise undertaken by the Central Government under section 10 of the Act without the Division Bench having considered whether the notification dated July 7, 2005 suffers from any infirmity and illegality. On this short ground alone, we are satisfied that matter needs to be remitted back to the High Court for fresh consideration.

14. Appeal is, accordingly, allowed to the aforesaid extent. M.A.T. No. 2363 of 2007 and F.M.A. No. 430 of 2008 are restored to the file of the High Court at Calcutta for fresh hearing and disposal in accordance with the law. We request the High Court to dispose of the aforesaid matters as expeditiously as may be possible. No orders as to costs.