

SUPREME COURT OF INDIA

Baleshwar Rajbanshi

Vs.

Bd.of Trustees for Port Trust of Calcutta

C.A.No.2771 of 2013

(Aftab Alam and Ranjana Prakash Desai JJ.)

02.04.2013

JUDGMENT

AFTAB ALAM, J.

1. Leave granted.

2. This appeal is directed against the judgment and order dated January 29, 2010 passed by a division bench of the Calcutta High court in an intra- court appeal against the judgment of a learned single Judge of that court. By the impugned judgment, the division bench has carved out an exception in favour of the respondent, Port Trust of Calcutta (hereinafter, “Port Trust”) from a notification issued by the Central Government under section 10(1) of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter “the Act”) and held that the notification “would not in any way affect the right of the Port Trust to assign the work of laying and linkage of railway tracks as one time measure of (sic. to) RITES, another Central Government Organization”.

3. The controversy in this case centres around a notification dated July 7, 2005 issued by the Central Government under section 10(1) of the Act. The notification was issued after due consultation with the Central Advisory Central Labour Board with regard to the conditions of work and benefits provided for the contract labour and other relevant factors enumerated in sub-section 2 of section 10 and it prohibited the employment of contract labour “in the works of sleeper renewal of railway Tracks, repairing, restoration and laying and linkage of tracks in the

establishment of Kolkata Port Trust, Kolkata” with effect from the date of publication of the notification in the official gazette.

4. After the issuance of the notification, the appellants who claimed to be engaged for the works covered by the notification for more than two decades through different contractors approached the Calcutta High court in W.P. No.20171 (W) of 2005 seeking a direction from the High Court to the Port Trust to abolish the system of giving the works covered by the notification to the contractors. On the other hand, the Port Trust also approached the High Court in W.P. 22545 (W) of 2005, questioning the validity of the notification. The two writ petitions were heard together by a learned single Judge who decided to consider the writ petition filed by the Port Trust first, as the decision on the legality of the notification would have a direct bearing on the writ petition filed by the individual workmen.

5. The learned single Judge upheld the validity of the notification and by judgment and order dated May 15, 2007 dismissed the writ petition filed by the Calcutta Port Trust.

6. The Port Trust challenged the judgment, dated May 15, 2007 passed by the learned single Judge before a division bench of the High Court in intra- court appeal. The division bench by order dated March 31, 2008 directed the Port Trust to approach the Ministry of Labour through the Ministry of Shipping for resolving the issue.

7. The order passed by the division bench was challenged by some individual workmen before this court in civil appeal No.7394/2009 (arising from SLP(C) No.22912/2008). The appeal was allowed by judgment and order, dated November 6, 2009 passed by this Court[1]. The order of the division bench of the High Court dated March 31, 2008 was set aside and the High Court was asked to rehear the Port Trust’s appeal against the judgment of the single judge (MAT No.2363 of 2007 and FMA No. 430 of 2008) and to dispose it of in accordance with law.

8. After remand, the division bench of the High Court once again heard the appeal and disposed it of by a brief order, modifying the order of the learned single Judge and notwithstanding the notification under section 10 of the Act, allowing the Port Trust to assign the work of laying and linkage of railway tracks as one time measure to RITES, another Central Government organization.

9. The division bench simply noted the submission of the counsel for the Port Trust that laying and linking of the railway tracks did not come within the daily affairs of the Port Trust; that it was required for the purpose of easy movement of cargo; and further that such railway tracks were laid by the railway. The railways were asked to replace the old tracks and the railways perhaps got the work done through contracts. That the Port Trust had asked RITES, a Central Government undertaking under the Ministry of Railways to lay and link railway tracks as one time job and such work is nearing completion in the first phase. The High Court also noted the submission of the counsel for the Port Trust that the laying and linkage of railway tracks cannot be termed as a work of perennial nature and, therefore, the assignment of the work of laying and linkage of railway tracks to RITES who have the necessary expertise in the work cannot come within the mischief of section 10 of the Contract Labour (Regulation and Abolition) Act.

10. Accepting the submission made on behalf of the Board Trust, the division bench held and directed as under:-

“We have considered the rival contentions. We have perused the judgment and order of the learned Single Judge. We are in full agreement when His Lordship deals with the issue of maintenance of the railway tracks by way of repair or otherwise. We are, however, of the opinion that laying and linking as one time measure could not be said to be a perennial duty. In any event, laying of railway tracks is no part of the duty of the Port Trust. The duties and responsibilities of the Port Trust do not include laying of railway tracks. Railway tracks are laid only for the purpose of smooth movement of the cargo discharged through the Port. In any event, such laying can only be done by expert. The Railways have that expertise and RITES is one such Corporation under the Ministry of railways. Hence, we are of the view that the Notification under challenge would not, in any way, affect the right of the Port Trust to assign the work of laying and linking of railway tracks as one time measure of RITES, another Central Government Organisation.”

(emphasis added)

11. We are unable to appreciate or to even follow the view taken by the High Court. The Contract Labour (Regulation and Abolition) Act, 1970, is a special Act that was framed to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith.

12. Section 3 of the Act provides for constitution of Central Advisory Board and it is as under:-

“Central Advisory Board. –

(1) The Central Government shall, as soon as may be, constitute a board to be called the Central Advisory Contract Labour Board (hereinafter referred to as the Central Board) to advise the Central Government on such matters arising out of the administration of this Act as may be referred to it and to carry out other functions assigned to it under this Act.

2) The Central Board shall consist of –

a) a chairman to be appointed by the Central Government; b) the Chief Labour Commissioner (Central), ex officio; c) such number of members, not exceeding seventeen but not less than eleven, as the Central Government may nominate to represent that Government, the Railways, the coal industry, the mining industry, the contractors, the workmen and any other interests which, in the opinion of the Central Government, ought to be represented on the Central Board.

3) The number of persons to be appointed as members from each of the categories specified in sub-section(2), the term of office and other conditions of service of, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among, the members of the Central Board shall be such as may be prescribed:

Provided that 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.

13. Section 4 provides for the constitution of the State Advisory Board.

14. Section 5 deals with the power of the Central Board or the State Board to constitute committees and it is as under:- “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 times 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.”

15. Section 10 deals with prohibition of employment of contract labour and it is as under:-

“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.”

In this case, the Central Board first constituted a Committee under section 5 of the Act to go into the question of abolition of contract labour in the establishment of Calcutta Port Trust. The Committee examined the matter in detail and made its recommendations as follows:-

From the above elaboration of work, the job in question needs to be examined in the contract (sic. context?) of provisions of section 10(2) of the Contract Labour (RA) 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 unloading of cargo from or on the vessels as 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 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 the 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 employees are also involved on day- to- day track maintenance job which includes the repairing of 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 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 context of the above facts and observation, the Committee is of the opinion that work/jobs of sleeper 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.

The matter was then considered by the Central Board and it recommended to the Central Government for prohibition of employment of contract labour in the jobs of sleeper renewal for railway contracts repairing/restoration, laying and linking of tracks in the establishment of Calcutta Port Trust. The Advisory Board in its recommendation stated as under:-The Committee had recommended prohibition of employment of Contract Labour on the ground that the work seems 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 types of maintenance jobs, 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 are 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.

Based upon the aforesaid recommendations, the Central Government issued the notification under section 10(1) of the Act which inter alia covers laying and linking of tracks in the establishment of Calcutta Port Trust.

16. From the provisions of the Contract Labour (Regulation and Abolition) Act, as are noted above, it is quite clear that the notification is issued after following a statutory scheme and it is based on a detailed investigation of issues of facts followed by two tiers of recommendations, first by the committee constituted under section 5 of the Act and the second by the Advisory Board constituted under section 3 of the Act.

17. Whether the work of laying and linking of tracks is of perennial nature and whether workers engaged through contractors are employed by the Port trust for that work are pure questions of fact that were investigated by the statutory committee constituted under section 5 of the Act and are covered by the recommendations made both by the Committee and by the Advisory Board. It was, therefore, quite wrong for the division bench of the High Court to completely nullify that part of the notification in a highly casual and off- hand manner and simply on the ipse dixit of the respondent; more so as the division bench did not otherwise find any illegality in the notification in question.

18. In light of the discussion made above, we see no justification for the division bench of the High Court to carve out the exception and to rationalize the assignment of the contract to RITES merely on the ground that it is another Central Government organization. The High Court clearly exceeded its jurisdiction in passing the impugned order.

19. We are, therefore, unable to sustain the impugned order passed by the division bench. The order of the division bench of the High Court is set aside and the order of the learned single Judge is restored.

20. The appeal is allowed but with no order as to costs.

[1] (2010) 1 SCC 116