

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Writ Petition No.24817 of 2012

Between

ONGC, Rajahmundry Asset,
Rep. by its ED/AM, Rajahmundry,
E.G. Dist.-533 106

... Petitioner

and

The Govt. of India, Rep. by its Secretary,
Ministry of Labour & Employment, New Delhi;
and 3 others

... Respondents

DATE OF JUDGMENT PRONOUNCED: 11-3-2016

THE HON'BLE SRI JUSTICE R.KANTHA RAO

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| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reports/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

* HON'BLE SRI JUSTICE R.KANTHA RAO

+ Writ Petition No.24817 of 2012

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ONGC, Rajahmundry Asset,
Rep. by its ED/AM, Rajahmundry,
E.G. Dist.-533 106

... Petitioner

Vs.

\$ The Govt. of India, Rep. by its Secretary,
Ministry of Labour & Employment,
New Delhi; and 3 others

... Respondents

! Counsel for the Petitioner: Sri E.Manohar,
Senior Counsel, Rep.
Sri Kakara Venkata Rao

Counsel for Respondents 1 to 3: Sri B.Narayan Reddy

Counsel for Respondent No.4: Sri V.Hari Haran

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> Head Note:

? Cases referred:
1. AIR 1990 SC 2072

HON'BLE SRI JUSTICE R.KANTHA RAO

Writ Petition No.24817 of 2012

Order:

This writ petition is filed by Oil and Natural Gas

Corporation, Rajahmundry Asset (the Corporation, for short) through its Executive Director/Asset Manager seeking a Writ of *mandamus* declaring the Notification S.O. 1418(E), dated 22-6-2012, published in the Gazette of India dated 22-6-2012 issued by the Government of India, Ministry of Labour and Employment, New Delhi, the 1st respondent herein, as illegal and void, and to set aside the same. The 4th respondent is the General Secretary of the ONGC Krishna Godavari Contract Workers' Union.

2. One G.Rama Swamy, the 4th respondent herein and 53 others are said to be working as Security Guards on contract basis in the petitioner-Corporation. They have been consistently demanding for abolition of the contract labour system in the petitioner-Corporation. There have been several deliberations before the respondents 1 to 3 in that regard by the contract workers and the officials of the petitioner-Corporation. According to the petitioner-Corporation, in respect of the Security Guards of ONGC installations at Rajahmundry, Kakinada etc., there are 3 rings of deployment of security.

The 1st ring of security is manned by the CISF (Central Industrial Security Force). The 2nd ring of security is manned by the Andhra Pradesh Special Force (A.P. Police). The 3rd ring of security, which is of casual nature, it is being discharged by the contract workers

engaged through a contractor. R.Rama Swamy (respondent No.4) and 53 others have been raising their grievances for regularisation of their services in the establishment of ONGC at Rajahmundry. There were conciliation proceedings before the Regional Labour Commissioner (Central), Hyderabad and the said authority submitted a failure report dated 22-9-2011 to the Ministry of Labour and Employment, Government of India. Later, the Ministry of Labour and Employment by O.M., dated 16-12-2011 addressed to the Ministry of Petroleum and Natural Gas, New Delhi informing that it was proposed to refer the dispute to the Industrial Tribunal for adjudication on the following issue – whether the demand of the workers of the Union for regularisation on tenure based employment by the ONGC, Rajahmundry Asset is justified? If so, what relief these workers are entitled to?

3. The Ministry of Petroleum and Natural Gas, New Delhi has forwarded the same to the ONGC and the ONGC objected to the same vide letter dated 14-02-2012. According to the petitioner-Corporation, the Ministry of Labour and Employment, Government of India vide Order No.L 30011/44/2011-IR(M), dated 24-4-2012 instead of dropping the proceedings referred the dispute for adjudication to the Central Government Industrial Tribunal cum Labour Court, Hyderabad in exercise of

powers conferred by Clause (d) of sub-section (1) of sub-section 2-A of the Industrial Disputes Act, 1947 (the I.D. Act, for short).

4. Ultimately, the matter came to be heard by the Central Advisory Contract Labour Board (CACLB) before which R.Rama Swamy and 53 others demanded for abolition of contract labour system in the establishment of ONGC, East Godavari district for which the petitioner-Corporation submitted a written representation dated 29-9-2010 opposing the request for abolition. It was submitted by the workers before the Board that they have been engaged as Security Guards and Security Supervisors through contractors for the last 20 years, that there are around 186 contract workers, that they have been performing 8 hours duty daily and that the work of security is necessary and incidental to the work of ONGC.

5. Thereupon the Board considering the number of workers, period of employment on contract basis, the necessity and perennial nature of the job and the wages difference of contract employees took the view that the case fulfills the conditions laid down under Section 10(2) of the Contract Labour (Regulation and Abolition) Act, 1970. Thus, the Board recommended the abolition of contract labour system in the said establishment in the jobs of Security Guards and Security Supervisors.

Opposing the said decision of the Board, the Chairman and Managing Director, ONGC sent a letter dated 05-5-2011 to the Secretary to the Government of India, Ministry of Petroleum and Natural Gas, New Delhi enclosing therewith the comments of ONGC to the minutes of the 78th meeting of the Board. The Under Secretary of Ministry of Petroleum and Natural Gas vide letter dated 20-7-2011 informed the Chairman and Managing Director, ONGC that the matter has been examined by the Director General, Labour Welfare, Ministry of Labour and Employment and it has been decided by them to refer the matter to the Central Advisory Contract Labour Board for reconsideration. Consequently, the Board informed the petitioner-Corporation vide letter dated 28-9-2011 that the subject will be discussed on 20-10-2011 and written representation may be submitted. The petitioner-Corporation accordingly submitted a written representation dated 20-10-2011. Ultimately, the Government had referred back the issue to the CACLB for reconsideration. The Board took a final decision reiterating that all the conditions under Section 10(2) of the Contract Labour (Regulation and Abolition) Act, 1970 are satisfied in the present case and therefore, there is no necessity to change the earlier recommendation of the Board.

6. It is submitted by the petitioner-Corporation that the 1st respondent without further examining and considering the matter passed the order in S.O. 1419(E), dated 22-6-2012 and the notification was published in the Gazette of India, dated 22-6-2012, which was communicated and received by the corporate office of the petitioner-Corporation, New Delhi on 11-7-2012 who forwarded the same to the petitioner-Corporation on 28-7-2012. By this notification, the 1st respondent prohibited the employment of contract labour in the jobs of Security Guards and Security Supervisors in the establishments of ONGC, namely, Thatipaka, Amalapuram, Mori and Narsapuram of Rajahmundry Basin with effect from the date of publication of the notification in the Official Gazette.

7. It is under these circumstances, the petitioner-Corporation filed the present writ petition seeking the aforementioned reliefs.

8. The 4th respondent-Union filed counter-affidavit contending, *inter alia*, as follows:

(a) The contract labour are themselves sham in nature and in order to avoid its obligations and liabilities, the contract labour system has been introduced and perpetuated over the years. It is true that the establishment set up for oil and natural gas exploration

and exploitation activities requires security as a part of its core activity. The invidious differentiation sought to be projected between core activity and non-core activity is an attempt to wish away its responsibilities and an attempt to mislead the Court in regard to the same. The security is of perennial nature and if there is any *ad hocism* in the appointment, it is in violation of the service conditions. The workmen, namely, the Security Guards have been appointed for nearly two decades in performance of their duties including the members of the 4th respondent-Union herein. The Board took note of the representation of the petitioner-Corporation and also the admission of the petitioner-Corporation that the security is a necessity for their establishment and is of perennial in nature, thus having taken all the issues into consideration rightly recommended for abolition of the contract labour system in the said establishment in the jobs of Security Guards and Security Supervisors.

The petitioner-Corporation can have no grievance on the same and the attempt now to stall the issue is only to over-reach the issue, keep extension of the benefits to the employees ad infinitum in abeyance and thus not only deprive the employees of their justful right but continue to operate in a less affair way. The 3rd respondent took all these aspects into consideration and rightly opined that no change is required in the earlier recommendation of the Board.

(b) Contending as above, the 4th respondent-Union sought to dismiss the writ petition.

9. I have heard Sri E.Manohar, learned Senior Counsel, representing Sri Kakara Venkata Rao, learned counsel for the petitioner-Corporation, Sri B.Narayan Reddy, learned counsel appearing for the respondents 1 to 3 and Sri V.Hari Haran, learned counsel appearing for the 4th respondent-Union.

10. The principal contention of the learned Senior Counsel appearing for the petitioner-Corporation is as follows:

In view of the provisions of the Contract Labour (Regulation and Abolition) (Andhra Pradesh Amendment) Act, 2003 (A.P. Act No.10/2003) [the A.P. Amendment Act of 2003, for short], which came into force in the State of Andhra Pradesh from 22-8-2003, the Principal Act was amended and Section 2(d)(d) was inserted. Chapter II relating to the Advisory Boards was omitted. Sections 10 and 31 were substituted. Section 35 was amended. By this A.P. Amendment Act of 2003, the employment of contract labour in core activities of any establishment is prohibited. The core activity of an establishment is defined in Section 2(d)(d) “means any activity for which the establishment is set up but does not include watch and ward service including security service”.

11. Thus, according to the learned Senior Counsel, in view of the aforesaid amendment, the employment of contract labour in the security service cannot be prohibited, therefore the 1st respondent has no power or jurisdiction to prohibit the same in the establishments of the petitioner-Corporation situated in the State of Andhra Pradesh and the impugned notification issued by the 1st respondent in exercise of powers under sub-section (1) of Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970, which is not in force in the State of Andhra Pradesh, is null and void and unenforceable.

12. On the other hand, it is contended by the learned counsel appearing for the 4th respondent-Union as follows:

(a) The State Legislature is neither eligible nor entitled to amend the Central Act with reference to the establishment of the petitioner-Corporation. In terms of Section 2A of the Contract Labour (Regulation and Abolition) Act, 1970, the appropriate Government in respect of the issues pertaining to the petitioner-Corporation is the Central Government and therefore, a notification, if any, issued by the State Government cannot have the effect of abridging or regulating the issues administered by the Central Government. Thus, reference to the amendment brought in by the State of

Andhra Pradesh in Section 2(d)(d) is inapplicable to the facts of the case and therefore, cannot be pressed into service. The contention that the Contract Labour (Regulation and Abolition) Act, 1970 to the extent stated is not in force in the State of Andhra Pradesh and is null and void and unenforceable is a misconception of law and therefore is liable to be rejected.

13. To arrive at a conclusion as to the validity of the A.P. Amendment Act of 2003, it is necessary to look into the judgment in **Vijay Kumar Sharma v. State of Karnataka**^[1] relied on by the learned Senior Counsel appearing for the petitioner-Corporation, wherein it is held as follows:

“2. Where, however, a law passed by the State comes into collision with a law passed by Parliament on an Entry in the Concurrent List, the State Act shall prevail to the extent of the repugnancy and the provisions of the Central Act would become void provided the State Act has been passed in accordance with clause (2) of Article 254.

3. Where, however, a law made by the State Legislature on a subject covered by the Concurrent List is inconsistent with and repugnant to a previous law made by Parliament, then such a law can be protected by obtaining the assent of the President under Article 254(2) of the Constitution. The result of obtaining the assent of the President would be that so far as the State Act is concerned, ***it will prevail in the State and overrule the provisions of the Central Act*** in its applicability to the State only. Such a state of affairs will exist only until Parliament may at any time make a law adding to, or amending, varying or repealing the law made by the State Legislature under the proviso to

Article 254.”

(emphasis supplied)

14. In view of the judgment above-referred, the A.P. Amendment Act of 2003 is valid and operative in the State of Andhra Pradesh and the contention that the same being inconsistent with the Contract Labour (Regulation and Abolition) Act, 1970 is inoperative in the State of Andhra Pradesh has no force.

15. In the A.P. Amendment Act of 2003, Section 2(d) (d) defines “core activity of an establishment” means any activity for which the establishment is set up and includes any activity which is essential or necessary to the core activity. Substituted Section 10 in the A.P. Amendment Act of 2003 lays down that the employment of contract labour in Core Activities of any establishment is prohibited, provided that the Principal employer may engage Contract Labour or a Contractor to any core activity in certain circumstances. Similarly, Section 31(1) of the A.P. Amendment Act of 2003 lays down that the appropriate Government may, in public interest, direct, by notification in the Official Gazette, that subject to such conditions and restrictions, if any, and for such period or periods, as may be specified in the notification, all or any of the provisions of this Act or the rules made thereunder shall not apply to any establishment or class of establishment or any class of contractors, as the case may be.

16. It has to be kept in mind that by order in S.O. 1419(E), dated 22-6-2012 and by the notification issued pursuant thereto, the 1st respondent prohibited the employment of contract labour in the jobs of Security Guards and Security Supervisors in the establishment of ONGC, namely, Thatipaka, Amalapuram, Mori and Narsapuram of Rajahmundry Basin with effect from the date of publication of the notification in the Official Gazette, which is challenged in the present writ petition.

17. In respect of the Security Guards of ONGC installations at Rajahmundry, Kakinada, etc., there are 3 rings of deployment of security. The 1st ring of security is manned by the CISF (Central Industrial Security Force), the 2nd ring of security is manned by the A.P. Special Force (A.P. Police) and the 3rd ring of security, which is of casual nature as and when required, the workers are being deployed and they are engaged through a contractor. According to the petitioner-Corporation, the work performed by the Security Guards in the 3rd ring of security is purely on *ad hoc* basis and the Security Guards or Security Supervisors are engaged through the contractors. Therefore, the impugned order abolishing the contract labour system in the 3rd ring of security is unsustainable as it does not relate to the core activity of the Corporation.

18. The notification S.O. 1419(E), dated 22-6-2012, published in the Gazette of India, dated 22-6-2012, issued by the Government of India, Ministry of Labour and Employment, New Delhi, therefore, is contrary to the A.P. Amendment Act of 2003 and the same is liable to be set aside in the present writ petition. This, however, does not mean that the issue of regularisation has been negated in the present writ petition. The issue of regularisation is altogether a different issue and the same can be pursued by the contract workers in the appropriate forum in a separate proceeding. This writ petition only decides the issue as to whether the notification in S.O. 1419(E), dated 22-6-2012, published in the Official Gazette of India, dated 22-6-2012, issued by the Government of India, Ministry of Labour and Employment, New Delhi, is valid or liable to be aside.

19. The notification impugned dated 22-6-2012 was issued in clear disregard of the A.P. Amendment Act of 2003. The same being in contravention of the A.P. Amendment Act of 2003 is not sustainable in law. Consequently, the impugned notification S.O. 1419(E), dated 22-6-2012 published in the Gazette of India dated 22-6-2012 issued by the Government of India, Ministry of Labour and Employment, New Delhi, the 1st respondent herein, is set aside and the writ petition is allowed.

The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

R.KANTHA RAO, J.

11th March, 2016.

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Note:-

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HON'BLE SRI JUSTICE R.KANTHA RAO

Writ Petition No.24817 of 2012

11th March, 2016.
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[\[1\]](#) AIR 1990 SC 2072