

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

WRIT APPEAL NO.499 OF 2016

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-

Between:

R.Ramaswamy
Appellant

..
.. Petitioner

and

The Government of India rep. by its
Secretary, Ministry of Labour &
Employment, New Delhi and others

... Respondents

DATE OF JUDGMENT PRONOUNCED: 12.07.2016

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO**

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

SANJAY KUMAR, J

DR. B.SIVA SANKARA RAO, J

***THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO**

+WRIT APPEAL NO.499 OF 2016

% DATED 12TH JULY, 2016

Between:

R.Ramaswamy ..
Appellant .. Petitioner

and

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Secretary, Ministry of Labour &
Employment, New Delhi and others ... Respondents

<Gist:

>Head Note:

! Counsel for the appellant : Sri V.Hariharan

^Counsel for respondents 1 to 3 : Sri B.Narayana Reddy,
Assistant Solicitor General

^Counsel for respondent No.4 : Sri E.Manohar and
Sri Kakara Venkata Rao

? CASES REFERRED:

1. AIR 1990 SC 2072 = (1990) 2 SCC 562

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO**

-
WRIT APPEAL NO.499 OF 2016

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J U D G M E N T

(per Hon'ble Sri Justice Sanjay Kumar)

Aggrieved by the order dated 11.03.2016 passed by a learned Judge allowing W.P.No.24817 of 2012, the 4th respondent therein is in appeal. The said writ petition was filed by the 4th respondent herein, the Oil and Natural Gas Corporation, assailing the notification dated 22.06.2012 issued by the Government of India, exercising power under Section 10(1) of the Contract Labour (Regulation and Abolition) Act, 1970 (*hereinafter*, 'the Act of 1970'), prohibiting the employment of contract labour in the jobs of security guards and security supervisors in the establishment of the Oil and Natural Gas Corporation at Thatipaka, Amalapuram, Mori and Narasapuram of Rajahmundry Basin in Andhra Pradesh. By the order under appeal, the learned Judge held that the impugned notification was issued in clear disregard of the amendments effected to the Act of 1970 by the Contract Labour (Regulation and Abolition) (Andhra Pradesh Amendment) Act, 2003, and accordingly set it aside.

Heard Sri V.Hariharan, learned counsel for the appellant/4th respondent and Sri E.Manohar, learned senior counsel appearing for Sri Kakara Venkata Rao, learned counsel for the 4th respondent/writ petitioner.

The Act of 1970 is a welfare legislation promulgated by the Parliament and is traceable to Entry 24 of List III, the Concurrent List, in the Seventh Schedule to the Constitution of India. Entry 24 reads as under:

'Welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits.'

It is therefore clear that both the Centre and the State would have concurrent legislative power on the subject. This aspect is conceded by Sri V.Hariharan, learned counsel, and he does not dispute the power of the State Government to bring about amendments to the Act of 1970 in its application within the State.

By the Contract Labour (Regulation and Abolition) (Andhra Pradesh Amendment) Act, 2003 (*hereinafter*, 'the Amendment Act of 2003'), the Andhra Pradesh Legislative Assembly amended the Act of 1970. This Amendment Act received the assent of the President of India on 11.06.2003 and the assent was published in the Andhra Pradesh Gazette on 19.06.2003. By the Amendment Act of 2003, which was brought into effect from 22.08.2003 and extended to the whole of the erstwhile State of Andhra Pradesh, amendments were made to the Act of 1970 which are relevant for the purposes of this case. Section 2 of the Act of 1970 was amended by introducing the definition of 'core activity' under Section 2(1)(dd):

'2. Amendment of Section 2 of Central Act 37 of 1970:-- In the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as the principal Act) as in force in the State of Andhra Pradesh, in Section 2 in sub-section (1) after clause (d), the following clause shall be inserted, namely:

"(dd) "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, but does not include,--

(1) Sanitation works, including Sweeping, Cleaning, Dusting, and Collection and disposal of all kinds of waste.

(2) Watch and ward services including security service.

(3) Canteen and Catering services.

(4) Loading and Un-loading operations.

(5) Running of Hospitals, Educational & Training Institutions, Guest Houses, Clubs and the like where they are in the nature of support services of an Establishment.

(6) Courier Services which are in nature of support services of an Establishment.

(7) Civil and other constructional works, including maintenance.

(8) Gardening and maintenance of Lawns etc.,

(9) House keeping and laundry services etc., where they are in nature support services of an Establishment.

(10) Transport services including Ambulance Services;

(11) Any activity of intermittent in nature even if that constitutes a core-activity of an Establishment and

(12) Any other activity which is incidental to the core activity.

Provided that the above activities by themselves are not the "Core

Activities” of such establishment.’

So far as Section 10 of the Act of 1970 is concerned, it was completely substituted by the Amendment Act of 2003. The original Section 10 of the Act of 1970, providing for prohibition of employment of contract labour, stated 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.’

The substituted Section 10, which applied throughout the erstwhile State of Andhra Pradesh, reads thus:

‘Prohibition of employment of Contract Labour:--

10.(1) Notwithstanding anything contained in this Act, 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, if

- (a) The normal functioning of the establishment is such that the activity is ordinarily done through Contractors, or
- (b) The activities are such that they do not require full time workers for the major portion of the working hours in a day or for longer periods as the case may be
- (c) Any sudden increase of volume of work in the core-activity which needs to be accomplished in a specified time;

(2): Designated Authority:-- (a) The ‘Appropriate Government’ may by notification in the official gazette appoint a designated authority to advise them

on the question whether any activity of a given establishment is a core activity or otherwise;

(b) If a question arises as to whether any activity of an establishment is a core activity or otherwise the aggrieved party may make an application in such a form and manner as may be prescribed, to the appropriate Government for decision;

(c) The appropriate Government may refer any question by itself or such application made to them by any aggrieved party as prescribed in clause (b), as the case may be, to the designated authority, which on the basis of relevant material in its possession, or after making such an enquiry as deemed fit shall forward the report to the appropriate Government, within a prescribed period, and thereafter the appropriate Government shall decide the question within the prescribed period”.’

Thus, pursuant to the aforesaid amendments, a sea change was brought about in the operation of the Act of 1970 in the erstwhile State of Andhra Pradesh. The very scheme of Section 10 of the Act of 1970 underwent a complete transformation, as the earlier Section 10 of the Act of 1970 required the ‘appropriate Government’ to publish a notification in the Official Gazette prohibiting employment of contract labour in identified processes, operations or other works in an establishment, whereas the substituted Section 10 of the Act of 1970, in its application to the erstwhile State of Andhra Pradesh, straightaway prohibited employment of contract labour in the ‘core activities’ of an establishment. Therefore, no notification was required to be published by the ‘appropriate Government’ for effecting such prohibition. The proviso to the substituted Section 10(1) of the Act of 1970 however empowered the principal employer to engage contract labour or a contractor even for ‘core activities’ if the parameters laid down in Clauses (a), (b) and (c) thereof were satisfied. Under amended Section 10(2)(a) of the Act of 1970, the ‘appropriate Government’ was empowered, by notification in the Official Gazette, to appoint a designated authority to advise it on the question as to whether an activity of a given establishment is a ‘core activity’ or otherwise. Sections 10(2)(b) and 10(2)(c) related to resolution of disputes with regard to the question as to whether a particular activity is a ‘core activity’ or otherwise.

In the context of the aforesaid amended provisions of the Act of 1970 which exclusively applies within the present State of Andhra Pradesh, one of the successors-in-interest of the erstwhile State of Andhra Pradesh, we find merit in the submission of Sri E.Manohar, learned senior counsel, that the

question of issuing a notification prohibiting the employment of contract labour in particular operations, processes or works of an establishment within the present State of Andhra Pradesh did not arise at all. It appears that the Central Government was completely ignorant and unmindful of the amendments made to the Act of 1970 in so far as it applies to the present State of Andhra Pradesh.

It is no doubt true that the Central Government is the 'appropriate Government' for the Oil and Natural Gas Corporation for the purposes of the Act of 1970, as contended by Sri V.Hariharan, learned counsel. However, it would be the 'appropriate Government' only for the purpose of giving effect to the provisions of the Act of 1970 as applicable within the present State of Andhra Pradesh and in terms of the amendments made under the Amendment Act of 2003, which would prevail as it received the assent of the President of India. In terms of the said amendments, the Central Government, being the 'appropriate Government', has power only to determine the issue as to whether a particular activity would fall within the ambit of 'core activity'. This power of determination is also subject to the definition of 'core activity' under Section 2(1)(dd) inserted in the Act of 1970 by the Amendment Act of 2003. Significantly, the Amendment Act of 2003 inserted this definition and simultaneously introduced the substituted Section 10, including Section 10(2)(a) to (c). These provisions would therefore have to be construed harmoniously and by doing so, the sole interpretation that logically follows is that, only if a particular activity does not fall within the ambit of the definition of 'core activity' under Section 2(1)(dd), duly taking note of the exclusions thereunder, a question would arise as to whether it qualifies as a 'core activity' calling for determination by the 'appropriate Government' under Section 10(2)(a) to (c). This is however subject to such excepted activities, falling under sub-clauses (1) to (12) of Section 2(1)(dd), not being the core activities of the establishment by themselves. In so far as the jobs of security guards and security supervisors in a general establishment are concerned, Section 2(1)(dd) of the Act of 1970 clearly excludes them from the ambit of 'core activity' as they fall in sub-clause (2) – 'watch and ward services including security service'.

Sri V.Hariharan, learned counsel, would however contend that the definition has to be read differently. According to him, the definition of 'core activity' merely posits that any activity which is essential or necessary to the

core activity of an establishment would be its 'core activity' and as the State Legislature indicated that such 'core activity' does not include the activities mentioned under sub-clauses (1) to (12) of Section 2(1)(dd), it means that these aspects are not core activities generally but as to whether they can fall within the ambit of 'core activities' of a particular establishment would be for the 'appropriate Government' to decide under Section 10(2)(a) to (c).

We have no hesitation in rejecting this specious argument. Section 2(1)(dd) and Section 10(2)(a) to (c) were introduced in the statute in its application to the erstwhile State of Andhra Pradesh by the very same Amendment Act of 2003. The Statement of Objects and Reasons of the Amendment Act of 2003 states to the effect that, in order to reduce the cost of establishments, it had been decided to exclude certain services such as watch and ward, sanitation and other cleaning works, canteen works, canteen and catering service, civil and other construction work and loading and unloading, from the core activity of such establishments. Given the purpose underlying the amendments and the fact that the two provisions were brought into the statute at the same time requiring them to be harmoniously interpreted, we are of the opinion that 'core activity' as defined under Section 2(1)(dd) of the Act of 1970 would have to be given full scope and all activities stipulated under sub-clauses (1) to (12) thereof, which are unequivocally stated to be not included in the 'core activity' of an establishment, necessarily stand excluded from its ambit and the question of again determining as to whether they form part of the 'core activity' does not arise. It is only if there is any other activity in a general establishment not falling within sub-clauses (1) to (12) of Section 2(1)(dd) that a question would arise for determination as to its status under Section 10(2)(a) to (c).

We therefore find no merit in the submission of Sri V.Hariharan, learned counsel, that there is no repugnancy between the provisions of the Act of 1970 in so far as it applies to other States and in its application to the present State of Andhra Pradesh, by virtue of the amendments made under the Amendment Act of 2003. As pointed out *supra*, a complete shift in approach was effected by the Amendment Act of 2003 in so far as application of the Act of 1970 in the erstwhile State of Andhra Pradesh was concerned and once the President of India gave his assent thereto, the amended provisions, which were at variance with those in the principal Act of 1970, would prevail till the Central

Government makes a law adding to or bringing amendment to or repealing the provisions of the Amendment Act of 2003. This settled legal position, reflective of Article 254(2) of the Constitution, was clearly enunciated in **VIJAY KUMAR SHARMA V/s. STATE OF KARNATAKA**^[1] and does not require reiteration.

On the above analysis, we find no reason to interfere with the order under appeal. The writ appeal is accordingly dismissed. No order as to costs.

SANJAY KUMAR, J

DR. B.SIVA SANKARA RAO, J

12th JULY, 2016

Note: L.R. copy to the marked.
B/o Svv

^[1] AIR 1990 SC 2072 = (1990) 2 SCC 562