

**`IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.9921 OF 2014
WITH
CIVIL APPLICATION NO. 995 OF 2016
WITH
CIVIL APPLICATION NO. 755 OF 2017**

The Director, Maharashtra State
Bureau of Text Book, Production and
Curriculum Research.

... Petitioner

V/s.

State of Maharashtra and ors.

... Respondents

Mr.Y.S.Jahagirdar, Sr. Advocate with Ms.Suhasini Mutalik, Advocate
for the Petitioner.

Ms.Nisha Mehra, AGP for Respondent Nos. 1 and 3 to 5.

Mr.P.P.Chavan with Mr.Ravindra Rajaram Chile, Advocate for
Respondent Nos. 7 to 18.

**CORAM : ANOOP V. MOHTA AND
RAVINDRA V. GHUGE, JJ.**

DATE : 10 APRIL 2017.

ORDER :

1. We have heard the learned Senior Advocate on behalf of the
Petitioner and the learned Advocates and the learned AGP on
behalf of the Respondents. Ad-interim relief has been granted by
this Court vide order dated 30th April, 2015.

2. It is undisputed that the Petitioner had engaged about 12 labourers for the purpose mentioned in the memo of the Petition. The Petitioner being the Maharashtra State Bureau of Text Book Protection and Curriculum Research is required to enter into a contract with agencies, which would perform the job of distribution of the textbooks. This is normally done over a period of about 3 months from March to June each year. The Petitioner has its administrative offices at Mumbai, Panvel, Goregaon, Kolhapur, Nashik, Aurangabad, Latur, Amaravati and Nagpur.

3. It is equally undisputed that the Petitioner-Establishment at Kolhapur in reference to which the impugned order of abolition of contract system has been passed, has not been registered under the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to 1970 Act.). It was in 2014 that some of the labourers who were deployed with the Petitioner at Kolhapur, raised a demand notice on 11th April, 2014 claiming regularization in the service of the Petitioner-Establishment at Kolhapur. A notice of hearing dated 5th May, 2014 was issued by Respondent No.5. By communication dated 19th May, 2014, the Petitioner submitted a detailed explanation. Respondent No. 5 by communication dated 27th May, 2014 informed the Petitioner that the hearing is scheduled on 29th May, 2014 at 11.00 a.m. before the Hon'ble Labour Minister and the Advisory Board under 1970 Act. The Petitioner responded to the same by submitting an explanation dated 30th May, 2014. On 31st July, 2014, the Ministry of Industries, Energy and Labour, passed an order of abolition of

contract labour system only at the establishment of the Petitioner at Kolhapur.

4. There can be no debate that before passing the impugned order, the appropriate Government has to cause a proper hearing in relation to the objections/complaint filed by the contract labourers and by keeping in view the contingencies set out in Section 10 of the 1970 Act. Section 10 reads as under :

“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.”

5. It is evident from section 10 that in order to issue an order of abolition of contract labour system, regard must be had to the nature of the work performed. It must appear to the appropriate authority that the nature of work is of a perennial character, is performed all round the year and is a core activity of the business of the Petitioner. Regard must also be had to the fact that such work is ordinarily done by the regular workmen in the establishment on a whole time basis and such work must be available perennially, in the sense that the work is available all round the year. We find that the impugned order dated 31st July, 2014, prima facie is a cryptic order and does not indicate any reasons. We also find that Section 10 has been disregarded/ignored by the authority passing the said order.

6. In the light of the above, Rule. The interim relief granted by this Court on 30th April, 2015 stands confirmed.

7. Learned counsel for the respective Respondents waive service on Rule.

8. Consequently, Civil Application No. 755 of 2017 stands allowed and the applicant-Petitioner is permitted to engage an agency to supply contract labour for the Kolhapur region for the Bureau from 1st April, 2017 to 31st July, 2017 and for further such periods till disposal of the Writ Petition.

9. At the request of the learned Advocates, list this matter for final hearing on 29th June, 2017.

10. Learned counsel for the Respondent-workmen submits that during the pendency of this Petition some of the Respondents have refused to accept the work as was offered to them. They have raised an industrial dispute which is pending in the form of Reference IDA No. 16 of 2005 to 27 of 2005 before the 2nd Labour Court, Kolhapur. Needless to state, this order shall not be an impediment for the Reference Court to decide the said Reference proceedings on their merits.

11. Civil Application No. 995 of 2016 does not survive and hence disposed of.

(RAVINDRA V. GHUGE,J.)

(ANOOP V.MOHTA,J.)

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