

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM No. 30907-M of 2004 (O&M)
Judgement reserved on : 17.02.2017
Date of Decision: 18.08.2017

M.S. Bhullar

--Petitioner

Versus

State represented through Labour
Enforcement Officer, Karnal

--Respondent

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. K.K. Gupta, Advocate for the petitioner.

Mr. Satish Saini, D.A.G., Haryana.

Mr. Arun Gosain, Central Govt. Counsel.

TEJINDER SINGH DHINDSA.J

The instant petition has been filed under Section 482 Cr.P.C seeking quashing of a complaint filed by the Labour Enforcement Officer (Central), Karnal under sections 23 and 24 of the Contract Labour (Regulation and Abolition) Act, 1970 (herein after to be referred as the 1970 Act).

The impugned complaint stands appended as Annexure P-3 along with the petition and a perusal thereof would reveal that on the basis of an inspection conducted on 24.10.2003, it is alleged that 94 contract labourers were found engaged by the Food Corporation of India at Rail Head, Taraori through M/s Durga Transport Company (Contractor) in breach of Govt. of Haryana Notification No.13(4) 84-2 Lab. Dated 29.11.1985. Violation of section 10(1) of the 1970 Act, as such, is alleged.

Since the impugned complaint is founded on a breach of the Haryana Govt. Notification dated 29.11.1985, it would be apposite to advert

to the same at Annexure P-1.

The Haryana Govt. Notification dated 29.11.1985 issued by the Labour & Employment Department reads in the following terms:-

*“HARYANA GOVERNMENT
LABOUR AND EMPLOYMENT DEPARTMENT
NOTIFICATION*

Dated 29-11-85

No.13 (4) 84-2Lab:- In exercise of the powers conferred by sub-section (1) of section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (Central Act 37 of 1970), the Governor of Haryana after consultation with the State Advisory Contract Labour Board hereby prohibits employment of contract labour in the following food storage depots including rail heads of the Food Corporation of India (Haryana Region) from the date of publication of this notification in the official gazette:-

- 1. Ambala*
- 2. Jagadhari*
- 3. Kurukshetra*
- 4. Pehowa*
- 5. Ghula Chika*
- 6. Kaithal*
- 7. Karnal*
- 8. Jundla*
- 9. Panipat*
- 10. Indri*
- 11. Tarrori*
- 12. Nissing*
- 13. Rohtak*
- 14. Sonapat*
- 15. Jind*
- 16. Gohana*
- 17. Safidon*
- 18. Narwana*

19. *Bhiwani*
20. *Hissar*
21. *Sirsa*
22. *Faridabad*

Kulwant Singh

Financial Commissioner and Secretary.”

The Haryana Govt. Notification dated 29.11.1985 prohibits employment of contract labour in certain Food Storage Depots including Rail Heads of the F.C.I (Haryana Region) from the date of publication of the notification. A list of 22 Food Storage Depots and Rail Heads of the F.C.I (Haryana Region) stand enumerated therein including Taraori at Sr. No.11.

Having heard counsel for the parties at length and having perused the pleadings on record, this Court is of the considered view that the impugned complaint cannot sustain.

Sections 23 and 24 of the 1970 Act read in the following terms:-

“23. Contravention of provisions regarding employment of contract labour.-Whoever contravenes any provision of this Act or of any rules made thereunder prohibiting, restricting or regulating the employment of contract labour, or contravenes any condition of a licence granted under this Act, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both, and in the case of a continuing contravention with an additional fine which may extend to one hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

24. Other offences.-If any person contravenes any of the provisions of this Act or any rules made thereunder for which no other penalty is elsewhere provided, he shall be punishable with imprisonment for a term which may extend to

three months, or with fine which may extend to one thousand rupees, or with both. -If any person contravenes any of the provisions of this Act or any rules made thereunder for which no other penalty is elsewhere provided, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.”

A categorical assertion has been made on behalf of the petitioner that there is no Rail Head owned by F.C.I at Taraori, Karnal. It is submitted that F.C.I owns a Food Storage Depot at Taraori. Reliance has been placed upon a certificate issued by the Station Superintendent, Taraori (Northern Railways) Station dated 1.9.2004 placed on record at Annexure P-5 and which is to the following effect:-

“ TO WHOMSOEVER IT MAY CONCERN

This is to certify that Taraori Railway Station does not have any Rail Head owned and controlled by F.C.I, Taraori. It is not a prescribed Railway Station, Food Storage Depot as per Govt. of Haryana Notification dated 29.11.1985 work of loading and transport is being carried out at Rail Head Food Storage Depot by contractor appointed by F.C.I.”

The contents of such certificate are not disputed by counsel representing the respondent.

It is also the positive stand taken on behalf of the petitioner that the Assistant Labour Commissioner (Central), Ministry of Labour has been issuing license as provided under Section 12 of the 1970 Act from time to time and it is in pursuance to such license granted that the work of loading, unloading and transportation is being carried out through the licensed contractor at Taraori. Even such assertion has not met with any rebuttal on behalf of the respondent.

There is another relevant aspect of the matter. The State Govt. has placed on record a short reply of the Financial Commissioner & Principal Secretary to Govt., Labour Department, Haryana and wherein it has been stated that as per amendment carried out by the Central Govt. w.e.f. 28.1.1986 under the 1970 Act, the appropriate Govt. in the case of F.C.I is the Central Govt. The amended definition of the “Appropriate Government” is furnished below:-

“2. Definitions-(1) In this Act unless the context otherwise requires,

(a) “appropriate Government” means-

(i) in relation to an establishment in respect of which the appropriate Government under the Industrial Disputes Act, 1947 (14 of 1947) is the Central Government, the Central Government;

(ii) in relation to any other establishment, the Government of the State in which that other establishment is situated.”

What emerges therefrom is that by virtue of the amendment carried out by the Govt. of India in the definition of the “Appropriate Government” w.e.f. 28.1.1986 the Appropriate Government in the case of F.C.I is the Central Govt. Under such circumstances, the impugned complaint and prosecution ensuing on the strength of a previous Haryana Govt. Notification dated 29.11.1985, cannot sustain.

In the reply placed on record by the Labour Enforcement Officer, Karnal reliance has been placed upon a decision dated 31.7.2002 of the Civil Judge (Sr. Divn.), Karnal in Civil Suit No.324/2002 to contend that the competent court has already settled the matter at rest and Taraori Rail Head would be considered as a Rail Head owned by F.C.I so as to attract the prohibition envisaged under the Haryana Govt. Notification dated

29.11.1985.

Even such submission is wholly misconceived. Civil Suit No.324/2002 was a suit for declaration and permanent injunction filed by certain persons in a representative capacity having been engaged as contractual labour and were claiming the benefit of regularization. The suit was dismissed by the Civil Judge (Sr. Divn.), Karnal. The issues framed were as under:-

- 1) *Whether the plaintiff and listed persons are entitled for regularization in service in FCI on the basis of seniority, if so to what effect?OPP*
- 2) *Whether the contract labour system is abolished in Taraori Rail Head in view of the notification dated 29.11.85?OPP*
3. *Whether the plaintiff and listed persons are entitled to permanent injunction as alleged?OPP*
4. *Whether the plaintiffs have no cause of action to file and maintain the present suit?OPD*
5. *Whether the plaintiffs are estopped to file the present suit because of their act and conduct?OPD*
6. *Whether the plaintiffs should have filed the suit under Order 1 Rule 8 C.P.C, if so to what effect?OPD*
7. *Relief.”*

In so far as Issue No.2 as to whether contract labour system is abolished in Taraori Rail Head in view of the notification dated 29.11.1985 the observation made by the court was that as per Govt. of Haryana Notification dated 28.11.1985 Ex. D-1 the correct position is that the contract labour system at Taraori Rail Head has been abolished. Such finding and observation is only a reflection of the contents of the Govt. of Haryana Notification dated 29.11.1985. No finding has been returned as to whether there actually exists a Rail Head at Taraori owned and controlled

by the F.C.I.

Furthermore, it may be seen that the respondent which is a wing of the Central Govt. has filed a complaint against the F.C.I which is also a body corporate of the Central Govt. In a short affidavit of the Deputy Chief Labour Commissioner (Central), Kendriya Sadan, Chandigarh placed on record, it has been deposed that in order to settle the dispute regarding the application of notification dated 29.11.1985 issued by the State of Haryana, a Sub Committee was constituted to examine the issue of Food Storage Depots including Rail Heads of F.C.I. The Sub Committee submitted its report after hearing the parties and suggested to the Central Advisory Contract Labour Board to provide further clarification about the coverage of the said notification. Further suggestion was made that appropriate amendment may be made in the prohibitory orders making specific mention about the area of operation in F.C.I in Rail Heads at railway premises owned by Railway. The suggestions of the Sub Committee are stated to have been placed before the Central Advisory Contract Labour Board in its 80th Meeting held on 20/21.10.2011 and wherein the Board recommended that to provide more clarity about the coverage of the notification, appropriate amendment be made in the prohibitory orders making specific mention about the area of operation of F.C.I at Rail Heads in railway premises owned by Railway. In other words the respondent is itself not clear as regards the extent of operation of notification dated 29.11.1985 on the basis of which the impugned complaint has been filed.

In view of the discussion herein above and in the light of the stand taken on behalf of the respondents, the criminal complaint is held to be a total misuse of the powers under the 1970 Act and held to be not

sustainable in its present form.

Suffice it to notice that the instant petition had come up for preliminary hearing on 30.7.2004 before this Court and while issuing notice of motion proceedings before the Trial Court had been stayed.

The present petition is allowed. The impugned complaint dated 13.1.2004 (Annexure P-3) and all proceedings emanating therefrom, are set aside.

(TEJINDER SINGH DHINDSA)
JUDGE

18.08.2017

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Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No