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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision : 11th May, 2018*

+ **W.P.(C) 438/2018**

FCI HANDLING WORKERS UNION Petitioner
Through: Mr. R.M. Sinha and Mr. P.M.
Sinha, Advs.

versus

UNION OF INDIA AND ORS Respondents
Through: Mr. Shubhra Parashar along with
Mr. Brajesh Kumar, Advs. for R1.
Mr. Om Prakash, Mr. Rajeev Pathak and
Mr. Pradeep Kumar Tripathi, Advocate for
R3.

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J. (Oral)

1. In exercise of its power conferred by sub-section (1) of Section 10 of the Contract Labour (Regulations and Abolition) Act, 1970 (37 of 1970), (In short 'CLA') the Central Government after consultation with the Central Advisory Contract Labour Board (in brief 'CACLB') and having regard to the conditions of work and benefits provided for the contract labour and other relevant factors enumerated in sub-section (2) of the said Section, prohibited employment of contract labour in 226 Godowns and Depots of respondent No.3/Food Corporation of India by several notifications.

2. While deciding PIL No.84/2014 '**Court On Its Own Motion Vs. Union of India & Ors.**', on 20.11.2015, a Division Bench of Nagpur Bench of Bombay High Court directed the Government of India to decide representation of FCI to grant them exemptions under Section 31 of CLA and issue of de-notification of depots regarding which the said notification under Section 10 of CLA have been issued. The relevant extract is as under:-

- “(i) **The Government of India is directed to decide the representation made by the Food Corporation of India for grant of exemption under the provisions of Section 31** of the said Act within a period of one month from today, in the light of observations made by us herein above within a period of one month from today.
- (ii) **The Government of India shall decide the issue regarding de-notification of the depots of the Food Corporation of India**, in respect of which notification is issued u/S. 10 of the said Act, within a period of six months from today, in the light of observations made by us herein above and the report of M/s.Deloitt Consultancy and the report of High Level Committee appointed by the Government of India itself.
- (iii) We clarify that the respondent/Food Corporation of India would be entitled to transfer the services of departmental labourers from one depot to another subject to protecting their salary and all other service conditions.

- (iv) We also clarify that the respondent/Corporation would be at liberty to implement its policy of change in the Scheme of incentives.
- (v) The Government of India shall also take a decision regarding abolition of system of departmental labourers in a phased manner or absorbing their services in other establishments as recommended by the High Level Committee.”

3. This order was challenged in SLP No.19218/2016 before the Apex Court by Food Corporation of India Workers Union Registered No.8219 through its organising Secretary and on 31.07.2017, **the Hon’ble Supreme Court** while dismissing the SLP passed the following orders:-

- “1. **We do not see any merit in these special leave petitions, which are hereby dismissed.** We make it clear that **this order shall not prevent the petitioners** – Food Corporation of India Workers **Union**/Food Corporation of India Shramik Union/FCI Handling Workers Union, **to challenge any order, passed in furtherance** of the directions issued in the impugned order (dated 20.11.2015), in appropriate proceedings before an appropriate Court.
- 2. In case, such a challenge is raised by the petitioner(s), in continuation of the liberty granted to the petitioner(s), the claim raised by the petitioner(s) shall be considered in accordance with law, uninfluenced by any observations made by the High Court in the impugned order (dated 20.11.2015).”

4. In the meanwhile, admittedly, on 06.07.2016, the Ministry of Labour and Employment, by notification conveyed its approval for exemption with regard to above said 226 notified Depots of Food Corporation of India under Section 31 of CLA.
5. The petitioner seeks quashing of purported order dated 29.08.2017, which in fact is a DO Letter No.19013/9/2010-FC-III dated 29.08.2017, by which the Secretary, Department of Food & Public Distribution, under Ministry of Consumer Affairs, of the Government of India had requested the Secretary, Ministry of Labour and Employment to look into the matter to expedite de-notification of 226 FCI Depots in view of the fact that the exemption by notification dated 06.07.2016 has been granted only for a limited period of time.
6. Learned counsel for the petitioner submits that the notification under Section 10 of the CLA pertaining to 226 Depots cannot be outrightly de-notified as these notifications in fact were issued on the recommendations of CACLB. He urged that the DO letter dated 29.08.2017 deserved to be quashed since Section 10 of the CLA empowers CACLB to advise the Central Government to issue notification but does not empower to de-notify the notification. He submits that under Section 21 of General Clause Act, 1897 the power to issue notification include the power to de-notify the notification already issued at the advice of CACLB but same can be issued only after

obtaining the advice of CACLB. He submits that the said letter ex-facie bypass the procedure and deserved to be quashed.

7. It is submitted by the learned counsel for the respondents No.1 and 2 and for respondent No.3 that impugned order is only inter-departmental advice which does not infringe the rights of the petitioner in any manner.
8. I have heard learned counsel for the parties.
9. By impugned letter, the Secretary of Ministry of Consumer Affairs Department of Food Corporation, Govt. of India had only made a request to the Secretary, Ministry of Labour and Employment, Govt. of India to expedite issue of de-notification of the above said 226 FCI Depots. Simply by the advice of some other departments of the Government of India, no fundamental right of the petitioner has been infringed and grievance of the petitioner is incomprehensible. The petition is pre-mature and appears to be mis-conceived and has been filed only on mere apprehension which deserves to be dismissed. I do not find the maintainability of the petition simply on the basis of a request letter of some other department to the Secretary of the concerned Department of the Union of India.
10. In the circumstances, the petition is dismissed along with pending application being CM No.1852/2018.

VINOD GOEL, J.

MAY 11, 2018

“sandeep”