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

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***Reserved on: 18.08.2022
Pronounced on: 08.09.2022*****+ W.P.(C) 1266/2015 and CM APPL. 2248/2015 (Stay) &
CM APPL. 9391/2015 (Directions)**

INDIAN OIL CORPORATION LTD. Petitioner

Through: Mr.Rajiv Shukla, Ms.Shivani
Kapoor and Mr.Sanjay
Kumar, Advocates

versus

UNION OF INDIA & ANR. Respondents

Through: Ms. Shiva Lakshmi, CGSC,
Ms.Ritwik Sneha and Ms.
Srishti Rawat, Advocates for
UOI
Ms. Asha Jain Madan and
Mr.Mukesh Jain, Advocates
for R-2**CORAM:
HON'BLE MR. JUSTICE GAURANG KANTH****J U D G M E N T****GAURANG KANTH, J.**

1. The case at hand pertains to the validity of the Notification dated 05.11.2014 (hereinafter referred to as the "***impugned Notification***") issued by Respondent No. 1 (Union of India) under Section 10 (1) of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as "***the Act***"). The



Petitioner, aggrieved by the Notification, has preferred this instant writ petition.

2. The impugned Notification is issued by Respondent No.1 under Section 10(1) of the Act whereby it prohibits the employment of contract labour in the activity of "watch and guard" in the establishment of Indian Oil Corporation, World Trade Centre, Babar Road, New Delhi.

Facts as stated in the Petition

3. The Petitioner, a Public Sector Undertaking, is an Oil company engaged in refining, manufacturing and distribution of petroleum products. The issue in the instant petition pertains to its Delhi State office situated at 2nd Floor, World Trade Centre, Babar Road, New Delhi, which is the administrative office for the State of Delhi and Haryana and is aggrieved by Notification dated 05.11.2014 issued by Respondent No. 1 under Section 10(1) of the Act. Vide the impugned Notification, the Central Government has prohibited the employment of contract labour in the activity of "watch and guard" in the establishment i.e. Indian Oil Corporation Limited, World Trade Centre, Babar Road, New Delhi.
4. It is the case of the Petitioner that the impugned Notification is directly in the teeth of celebrated and leading judgment of Hon'ble Supreme Court of India in *Steel Authority of India Vs. National Union Waterfront Workers & Ors*, reported as (2001) 7 SCC 1.



5. Few of the security guards who are represented through Delhi State General Workers' Congress/Respondent No. 2 in the present case had filed Writ Petition No. 889/1997 seeking the relief of absorption and regularization by the contract labourers/ security guards. During the pendency of this Writ Petition, the above said contract workers also raised a dispute under the Industrial Disputes Act, 1947 which was referred by the Government of India, Ministry of Labour, by order dated 09.06.1998 for adjudication to the Central Government Industrial Tribunal. The said reference was decided by the Tribunal vide its award dated 06.09.2006 which directed that the contract labour be regularized and absorbed in the service of the Petitioner. The said award was challenged by the Petitioner herein in another Writ Petition (C) No. 1074/2007.
6. This Court in Writ Petition (C) No. 1074/2007 vide order dated 18.07.2007 stayed the operation of the award dated 06.09.2006. The said writ petition is pending adjudication before this court.
7. The security guards employed through contractor/security agency at Petitioner's another building through a Union had filed another Writ Petition no. 4356/ 1998 before this Court contending that their activity was essentially related to "watching of buildings" and was therefore covered by the Notification dated 01.03.1977.
8. According to the Petitioner, the issue was laid to rest by the judgment of this Court in the case of ***Deo Sunder Jha and Ors. Vs. Union of India & Ors.***, reported as **86 (2000) DLT 616**



which was a matter between the same parties on similar issue whereby an earlier Notification dated 09.12.1976 issued by the Ministry of Labour under Section 10(1) of the Act was interpreted by this Court. The said Notification was held to be not applicable to the security guards engaged through Contractor agency sponsored by the Director General of Resettlement (“**DGR**”), Ministry of Defence, Government of India. The job/ process of watch and guard and of security guards was held to be not the core activity of the establishment and therefore not intended to be abolished. This Court while interpreting the aforesaid notification, held that the work of security guards would not be covered by the expression “watching of buildings” and the same was not intended to be abolished. The Court also held that if the contention of the security guards be upheld, it would sound a death knell to DGR and to the scheme of rehabilitation.

9. The said Notification was quashed later by the Hon'ble Supreme Court of India in ***Steel Authority of India Vs. National Union Waterfront Workers & Ors***, reported as (2001) 7 SCC 1.
10. The aforesaid judgment of the Delhi High Court dated 15.3.2000 was challenged by the security guards in LPA No.259/2000. The Division Bench of this Court vide its order dated 12.10.2001 dismissed the LPA relying upon the Judgment of Hon'ble Supreme Court in ***Steel Authority of India Ltd. Vs***



National Union Water Front Workers Union reported as *(2001) 7 SCC 1*.

11. The contract workers/ security guards thereafter took a plea before the Central Advisory Contract Labour Board (“**CACLB**”) seeking abolition of contract labour under Section 10 of the Act on the ground that there existed a genuine contract labour system in the establishment and that they were working under the control and supervision of the contractors, but the process should be abolished under Section 10 of the Act.
12. Pursuant to this plea, a resolution was passed by the Central Advisory Contract Labour Board constituting a Committee under Section 5 whereby the terms of Reference for the Committee was as under:

"To study the working of contract labour system in jobs of watch/ guard in the establishments of Indian Oil Corporation Ltd, World Trade Centre, Babar Road, New Delhi and to make suitable recommendations whether or not the employment of contract labour in the above jobs/ works in the said establishments be prohibited keeping in view the provisions of Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 to go into the question of prohibition of employment of contract labour for 'watch and guard'."

13. The Committee constituted by CACLB under Section 5 of the Act heard both the sides. The report of the Committee was unanimously approved by the CACLB and was forwarded to the Central Government (Respondent No. 1). Thereafter, the



impugned Notification was issued by the respondent no.1 under Section 10(1) of the Act, whereby it prohibited the employment of contract labour in the job of "watch and guard" in the establishment of Indian Oil Corporation, World Trade Centre, Babar Road, New Delhi.

Submissions on behalf of the Petitioner

14.Mr. Rajiv Shukla, learned counsel for the Petitioner submitted that the impugned Notification has been issued in flagrant violation of Section 10 (1) and 10 (2) of the Act, 1970. Section 10 (1) of the Act provided for consultation with the appropriate Board. This consultation was a condition precedent before issuance of any prohibition Notification. It was the contention of the learned counsel that there was no material on record to show that the requisite consultation with the Central Board had been made before issuing the impugned Notification. Learned counsel for the Petitioner further contended that the factors laid down in Section 10 (2) of the Act were also not satisfied by the Respondent before issuing the impugned Notification.

15.It was further contended by the learned counsel for Petitioner that the abolition of contract labour in the aforesaid activity of providing security would render the entire scheme of the DGR as otiose and the intent behind the said scheme, i.e. to resettle and rehabilitate the ex-servicemen, would become ineffectual. The Petitioner relied on *Deo Sunder Jha (supra)* to drive this point home. Learned counsel also sought to distinguish between "watch and ward" and "watch and guard" activities and



submitted that the activity sought to be abolished by the impugned Notification is in the nature of specialized security service and did not pertain merely to “watch and ward” activities. It was submitted that the job of Respondent No. 2 was like that of a policeman or a CISF men because the Security agency also trained their men who were mostly Ex-servicemen.

16. Learned counsel for the Petitioner further contended that the incoherence between the terms of reference of the committee under Section 5 of the Act and the report submitted by the committee demonstrates non-application of mind before issuance of the impugned Notification. Learned counsel submitted that as per the terms of reference, the committee constituted under Section 5 of the Act was to study the nature of “watch and guard” activities whereas the report submitted by the committee mentioned “watch and ward.”

17. It was further submitted by the learned counsel for the Petitioner that Section 3 of the Act was violated inasmuch as the CACLB did not have any representation from the Contractor/ Security Agencies through which the security personnel have been engaged.

18. Learned counsel for the Petitioner further submitted that the Respondents first raised a dispute before the CGIT for regularization of their service claiming that the contract in question was a sham one and the Petitioner was their actual employer. On the other hand, in their representation to CACLB, they raised a plea for abolition of the service claiming that they



were contract labourers. It was contended by the learned counsel for the Petitioner that this vacillating stance taken by Respondent No.2 before different Forums to secure the purported relief constituted an abuse of the process of law.

Submissions on behalf of Respondent No.1

19.It was submitted by learned counsel for Respondent No. 1 that the impugned Notification was issued after following due procedure as provided under the Act. The Notification under challenge was based on the recommendation of Sub-Committee appointed and duly notified by CACLB. It was further submitted that only upon due consultation and after the recommendation of the Central Advisory Board constituted by the Government, had the Government issued this Notification under Section 10 of the Act.

20.Learned counsel for Respondent No.1, placed reliance on the award of the CGIT dated 06.09.2006. While examining the relationship between the contract workers and the management (IOCL), it was observed by CGIT that the workmen working for the Petitioner were under direct control and supervision of the Petitioner. The Contractors acted as name lenders only. They provided contract labourers to the Petitioner, and thereafter their supervision and control was and had always been under the Petitioner. It was further submitted that the job performed by the workmen in the Petitioner's establishment was regular and perennial in nature and the same workmen had been working



continuously since 1993 in the same establishment under the names of different Contractors.

21. It was further submitted by learned counsel for Respondent No. 1 that the Notification had been issued only after due consideration to the nature of the work and other such considerations as mentioned under the Act. Further, the nature of work was of perennial nature and engagement of contract workers for perennial and regular nature of job was prohibited and since the security function was a perennial nature of job, it had been abolished as per the law.

Submissions on behalf of Respondent No.2

22. Ms. Asha Jain Madan, learned counsel for Respondent No. 2 submitted that the object of bringing forth the Act, being a social legislation, was to progressively abolish the contract labour system. She has quoted the statement of objects and reasons accompanying the bill to justify her stand. The same is being stated below:

"The system of employment of contract labour lends itself to various abuses. The question of its abolition has been under the consideration of Government for a long time. In the second Five Year Plan, the Planning Commission made certain recommendations, namely, problem of contract labour, progressive abolition of the system and improvement of service conditions of contract labour where the abolition was not possible. The matter was discussed at various meetings of Tripartite Committees at which the State Governments were also represented and general



consensus of opinion was that the system should be abolished wherever possible or practicable and that in case where this system could not be abolished altogether, the working conditions of contract labour should be regulated as to ensure payment of wages and provision of essential amenities.”

23. It was further submitted by learned counsel for Respondent No. 2 that once the Board had accepted the report of the Committee and the Government had issued the Notification then the explanation to Section 10 of the Act made the said decision of the Central Government to be final. Drawing support from this provision, the learned counsel submitted that the finding that the job of security/watch is of permanent and perennial nature, had attained finality. Learned counsel contended that if the Board accepted the report of the committee then the Government was bound to respect the said advice of the Board, except for just and strong compelling reasons.
24. It was further submitted by learned counsel that all the requirements of section 10 (1) and 10 (2) of the Act stood established. It was submitted that “consultation” with CACLB as envisaged by Section 10 (1) of the Act did take place. Moreover, an exercise was undertaken by the Committee to satisfy how the 'security services' were incidental/necessary. This fulfilled the requirements of Section 10 (2) of the Act. Learned counsel placed reliance on the minutes of the 78th Meeting of the Committee dated 17.2.2011 and the 84th meeting



of the Board dated 8th-9th May, 2014 to substantiate this submission.

25. Learned counsel for Respondent No. 2 further submitted that the earlier Notification dated 09.12.1976 prohibited employment of contract labour system inter-alia for the job of “watch and ward.” Since the different managements had impugned the said notification on the ground inter-alia that it was for watch and ward and not for security and that the security guards were not covered by the said Notification, the Government had this time erased the said distinction by prohibiting employment of contract labour for the work inter-alia of security.

26. Learned counsel further submitted that the reliance of the Petitioner on the decision of the Hon'ble Supreme Court in the case of *Steel Authority of India Vs. National Union Waterfront Workers & Ors, (2001) 7 SCC 1* was misplaced as the said notification was quashed for the only reason that the same was an omnibus Notification for the entire country and not establishment-wise. It was submitted that this time the Notification was issued only with respect to the establishment of the Indian Oil Corporation, World Trade Centre, New Delhi.

27. Learned counsel further contended that the DGR guidelines/regulations could never come in the way of the Government issuing a prohibition Notification under Section 10 of the Act. She submitted that the object of the Notification under Section 10 of the Act was that for work of permanent and



perennial nature, the management should create posts and give regular appointment to the employees which would include even the ex-servicemen. She submitted that the Notification under Section 10 of the Act was thus not contrary to the interest of ex-servicemen as projected by the Petitioner for ulterior purposes. Learned counsel further submitted that the present Notification was necessary to save the workmen including the ex-servicemen from exploitation.

28. It was further contended by learned counsel for Respondent No.2 that the present stand of the workmen before the Board was not diametrically opposite to their previously adopted stand before CGIT. She contended that the present stand before the Board was in the alternative to the stand of the workmen covered in the Writ Petition (C) No. 1074/2007 pending before this Hon'ble court. Such alternative stands were always permissible in law. It was further submitted by learned counsel that the judgment in the case of *Steel Authority of India Ltd. Vs. Union of India* reported as (2006) 12 SCC 233 was not applicable to the present case as in the case in question, it was the admitted position of the workmen that they were contract workers, which they wanted to change by way of amendment. However, in the present case, the case of the Respondent No.2 since beginning had been that they were the direct employees of the Petitioner and that in the alternative, even otherwise the work performed by them was of permanent and perennial nature and all requirements of Section 10 stood satisfied and that



therefore contract labour system should be abolished in the establishment in question.

Legal analysis on basis of the facts:

29. This Court has heard the counsels for the parties and also examined the documents placed on record and the judgments relied upon by the parties.

30. From perusal of the present writ petition, the following points emerge for the purpose of legal analysis:

- a) The first point of analysis is the question of exercise of jurisdiction of this Court under Article 226 of the Constitution of India to determine the alleged nature of the relationship between the Petitioner and Respondent No. 2.
- b) The next point of analysis is the challenge to the impugned Notification emerging from the alleged violation of Section 10 of the Act.
- c) The third point of analysis is the alleged functional collapse of the DGR scheme.

31. This Court shall now proceed to analyse the abovementioned points.

32. On the question of jurisdiction of this Court to determine the nature of relationship between the Petitioner and Respondent No. 2, it is to be noted that the Respondent No. 2 has alleged that its relationship was of perennial nature and the contract in question was merely a sham as the security guards were in reality the employees of the Petitioner. Based on this contention



of Respondent No. 2, Respondent No. 1/Union of India has sought to abolish the aforesaid activity in the establishment in question vide the impugned Notification.

33. In the Constitution-Bench judgment of the Hon'ble Supreme Court in the case of ***Steel Authority of India Vs. National Union Waterfront Workers & Ors***, reported as (2001) 7 SCC 1, the Court has held:

“125. (5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labour in the concerned establishment subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.

(6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the concerned establishment has been issued by the appropriate Government, prohibiting employment of contract



labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.”

“126. We have used the expression industrial adjudicator by design as determination of the questions aforementioned requires inquiry into disputed questions of facts which cannot conveniently be made by High Courts in exercise of jurisdiction under Article 226 of the Constitution. Therefore, in such cases the appropriate authority to go into those issues will be industrial tribunal/court whose determination will be amenable to judicial review.”

(emphasis supplied)

34. This view was reiterated in ***Steel Authority of India Limited Vs. Union Of India, (2006) 12 SCC 233*** at **Para 20**, wherein the Hon’ble Supreme Court observed:

“The 1970 Act is a complete code by itself. It not only provides for regulation of contract labour but also abolition thereof. Relationship of employer and employee is essentially a question of fact. Determination of the said question would depend upon a large number of factors. Ordinarily, a writ court would not go into such a question.”



35. The Hon'ble Court further went on to reiterate at **Para 22**:

“We may reiterate that neither the Labour Court nor the writ court could determine the question as to whether the contract labour should be abolished or not, the same being within the exclusive domain of the Appropriate Government.”

36. In the same vein, in **A.P. SRTC and Others v. G. Srinivas Reddy and Others** cited as (2006) 3 SCC 674 at **Para 11**, the Hon'ble Supreme Court held:

“The High Court could not, in exercise of its jurisdiction under Article 226, direct absorption of respondents, on the ground that work for which respondents were engaged as contract labour, was perennial in nature.”

37. In the light of the above analysis, it is concluded that the task of determination of the perennial nature of the service and the alleged employer-employee relationship between the Petitioners and Respondent No. 2 lies in the domain of Industrial adjudication and cannot be gone into by the Court in this case. The Court also notes that the same issue has been decided in favour of Respondent No. 2 by the industrial adjudicator. The aforesaid adjudication has been challenged before this Court in Writ Petition (C) No. 1074/2007 and is presently *sub-judice*. The point regarding the nature of the service and the relationship between the Petitioner and Respondent No. 2 cannot be decided by this Court in the present case as the same depends on the decision in Writ Petition (C) No. 1074/2007.



38. What the Court is concerned with here is the validity of the impugned Notification under the Contract Labour [Regulation & Abolition] Act, 1970. This brings the Court to the next point of analysis. The impugned Notification has been challenged by the Petitioner on the ground of the alleged violation of Section 10 of the Act.
39. Under Section 10 of the Act, the Parliament has vested in the appropriate Government the power to prohibit the employment of contract labour in any process, operation or other work in any establishment. The appropriate Government is required to consult the Central Board or the State Board, as the case may be, before arriving at its decision. This decision of the appropriate government, as held by the Hon'ble Supreme Court in the case of *Catering Cleaners of Southern Railway v. Union of India and Anr.*, reported as AIR 1987 SC 777 at Para 11, is subject to judicial review.
40. Learned counsel for the Petitioner has relied upon the decision of this Hon'ble Court in *Buddhadev Maity Vs. Union of India* reported as 2010 (4) LLJ 451 for demonstrating the import of the consultation as envisaged in Section 10 of the Act. Relying on this interpretation, learned counsel has contended that the consultation in the case at hand was not effective consultation. It will be apt at this juncture to quote the relevant para from the judgment:



“20. "Consultation" is a word of many hues. Its meaning/interpretation is contextual. In my view, the word "consultation" in Section 10 has to take colour from and/or be read in the context of the obligation/duty of the Board in Section 3 to advise the Government. In the present case no advice has been given by the Board. All that the Board has done is to constitute a Committee and to forward the report of the said Committee to the Government. The views, suggestions, observations, recommendations of the members of the Committee cannot be considered as the advice of the Board to the Central Government. More so, when the same were not unanimous. As aforesaid, the members of the Committee were not the members of the Board. They were outsiders appointed to investigate facts and place the report with their views before the Board. The obligation/duty under the Act to advise the Central Government is not of the members of the said Committee but of the Board. The Board as aforesaid has been prescribed to comprise of a Chairman to be appointed by the Central Government, the Chief Labour Commissioner and such other members from the Government, Railways, Coal Industry, Mining Industry, contractors, workmen or any other interest, which, in the opinion of the Government, ought to be represented on the Board. It is assumed that the Government, in appointing the Chairman of the Board will have due regard to the duties to be performed by him. The person appointed as a Chairman is expected to be an expert or having experience and qualification in the subject. The role of such a highly specialized body, containing representatives from several fields, as the Board is under Section 3 of the Act, cannot be reduced only to appointment of a committee and of forwarding the report of the committee to the Central Government. The qualifications prescribed of the



members of the Board are not to be utilized in the appointment of the committee and/or in selecting the members of the committees but in rendering advice to the Government on whether the employment of contract labour in any process, operation or other work in any establishment should be prohibited or not. I am afraid the Board in the present case has not rendered any advice whatsoever as it was required to and in the absence of any advice rendered, there could not be any consultation of the Central Government with the Board, only whereafter the Central Government is to take a decision on whether to prohibit contract labour or not.”

41. The rule that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden has stood the test of time. It is attracted with full force in the present case. It is to be noted that in the case in question there was no discussion on the report of the committee and the same is not the case in the present matter where the report of the committee has been unanimously accepted by the Board and forwarded to the Central Government. However, a perusal of the relevant annexures recording the minutes of the meetings of the Committee and the Board reveals that the “consultation” in the present case was merely a façade of consultation. Once this veil is pierced, lack of consultation between CACLB and the Central Government and non-application of mind on behalf of the authorities in question become manifest. This can be gleaned



from the incoherence between the committee report and the impugned Notification. It is pertinent to note that as per the terms of reference, the committee constituted under Section 5 of the Act was to study the nature of “watch and guard” activities whereas the report submitted by the committee mentioned “watch and ward.” It is to be noted that the impugned Notification has prohibited employment of contract labour for the activity of “watch and guard.”

42. Guidance can be had on this point from the pronouncement of this Hon’ble Court in the case of **Deo Sunder Jha (supra)** wherein a distinction was made between the terms “watching of buildings” and “watch and ward” activities. It would be apt to quote the relevant paragraph from the judgment at this juncture:

“Keeping in view the aforesaid nature of the security services and surveillance, namely, complete security cover being provided by these contractors who engage ex-servicemen, to such sensitive installations, it cannot be said that the work being done by these security guards is ‘watching the buildings’ Notification dated 9.12.1976 which was issued more than 20 years ago could not have contemplated such kind of specialised Security Services while abolishing the contract in the field of ‘watching the buildings’. I agree with the submissions of the learned counsel for the respondents that the expression ‘watching the buildings’ was at that time used for those who were watchman or chowkidar. It was never contemplated that it would cover the cases of ex-servicemen employed under the aforesaid scheme by the specialised security agencies for providing surveillance and security cover to sensitive



installations. The very purpose of providing such kind of security would otherwise be defeated. It is clear from the various documents produced on record that the notification dated 9.12.1976 was in the knowledge of the Government while framing such scheme for rehabilitation and in fact reference is made to the said notification specifically. Thus the Central Government which had issued notification dated 9.12.1976 prohibiting contract labour for 'watching the buildings' was conscious of that fact and it is apparent that the same Central Government while framing the scheme had interpreted that the specialised security services would not be covered by the expression "watching the buildings". One can also draw support from the provisions of Section 2(i) of the Security Guards Regulation Act, 1981 as per which security work and watch and ward are treated separately. Once we have the material of the kind available on record which clearly distinguishes watch and ward from security guards, one cannot come to different conclusion based on the traditional meaning of the word 'watch' as defined in various dictionaries. In such cases, one has to take pragmatic approach and Court cannot turn its blind eye to the realities of life. The very purpose of providing such specialised and sensitive nature of security cover and surveillance would be defeated if such contract labour is treated as abolished by applying notification dated 9.12.1976."

43. The Court further elaborated on the specialized nature of the activity in the following words:

"Of course, it can be argued that if contract labour is abolished, the ex-servicemen become direct employees of the principal employers and therefore these ex-servicemen who know the specialised job



will keep on providing the security. However this argument missed the essential point, namely, it is not only the providing of security services by these ex-servicemen but entire security cover which is the specialised job of the security agency who manages the show and plans the job requirement and as to how the security cover is to be provided and on that basis deploys the security personnel employed by it. If these contract workers are made direct and recruit employees of the principal employers, for example, Airports Authority of India or Indian Oil Corporation in these cases, they are ill-equipped to achieve the objective of providing security cover to the buildings/sensitive installations. It is not the work which is required to be performed by the security guards individually but planning and management and the manner in which this work is to be taken from security guards, which is of paramount importance. And this job can be handled by the contractor and not the principal employer.”

44.A perusal of the work order annexed with the petition (Annexure P-9) reveals that the activities wherein contract labour was sought to be abolished through the impugned Notification were not merely of the nature of “watch and ward”. This can be gleaned from the charter of duties annexed to the work order which consists of duties requiring specialized skills such as that of operating fire-fighting equipment.

45.From a perusal of the aforementioned documents, it becomes clear that the aforesaid unanimous decision taken by the CACLB on the question of abolition of contract labour in the activity of “watch and guard” in the present establishment was



taken in a mechanical manner. A careful consideration of the report would have revealed the inconsistencies and incoherence between the report of the sub-committee and its terms of reference. Two terms which are of distinct import have been equated by the committee while making its recommendations to the Board.

46. In view of the above analysis, it can be concluded that the condition precedent of consultation under Section 10 of the Act was not fulfilled. It can also be concluded that there was non-application of mind on behalf of the concerned authorities before issuing the impugned Notification.

47. The next point for analysis is the alleged functional collapse of the DGR scheme.

48. Learned counsel for the Petitioner contended that such abolition shall render the whole scheme of DGR as otiose and intent behind the said scheme shall become ineffectual. It will be pertinent here to quote the relevant paragraph from the pronouncement of this Court in the case of *Deo Sunder Jha (supra)* which has extensively elaborated on the intent behind the DGR scheme permitting the employment of contract labour for performing the activity of security in Public Sector Enterprises.

“It may be mentioned at this stage that need to hire specialised security agencies employing these ex-servicemen who have acquired specialised training being part of defence forces was also felt keeping in view the changing trends of security and safety scenario particularly with the upsurge of terrorist



activities and new kinds of law and order situation being faced. The specialised kind of securities which the establishment like Airports Authority of India or Indian Oil Corporation need today hardly requires any emphasis. A watchman or a chowkidar, understood in traditional sense, is ill-fit to provide such sensitive and highly specialised security and surveillance. Therefore such public sector undertakings were directed to appoint security agencies sponsored by DGR as their contractors inasmuch as such security agencies who are sponsored by DGR are supposed to employ Ex-servicemen. Thus, it served twin purpose namely i) rehabilitation of ex-servicemen by providing them with jobs and ii) providing such public sector undertakings specialised and highly skilled security cover which they require. These security agencies like in the instant cases are providing security cover to the principal employer and not only manpower for watch and ward duties.”

49. Another relevant paragraph from the pronouncement of this Court in the same case can be quoted to discern the ripple effect that the impugned Notification would have on the DGR scheme.

“One has also to keep in mind the objective with which the scheme for rehabilitation was formed and DGR created. If the contention of the petitioner is accepted, the very purpose would be defeated and it would do more harm than good, to these ex-servicemen. May be those ex-servicemen employed presently through contractors would gain marginally by getting direct employment with the principal employers. But simultaneously by sounding death knell to the DGR and the scheme for rehabilitation, it would completely stall the



process of rehabilitation of such ex-servicemen in future.”

50. This Court concurs with the observation of the learned Judge in the aforementioned case. From a perusal of the relevant documents, it can be concluded that the impugned Notification would frustrate the intent of the employment scheme brought forth by DGR to prevent exploitation of the ex-servicemen and to ensure their rehabilitation. Greater harm would result out of upholding the validity of the impugned Notification than quashing it.

51. In view of the facts and the reasoning as discussed herein above, the impugned Notification No. S.O. 2825 (E) dated 05.11.2014 as published in the Gazette issued by Respondent No.1, is quashed. It is clarified that this Court has quashed the impugned Notification on the ground of non-compliance with the mandatory requirements laid down in Section 10 of the Act and non-application of mind by the concerned authorities. This Court has not decided upon the validity of the award of the industrial adjudicator. This Court has also not expressed any opinion on the nature of the service performed by the workmen in the present case or the nature of their relationship with the Petitioner. These questions are the subject-matter of Writ Petition (C) No. 1074/2007 which is presently *sub-judice* before this Court. It is further clarified that the Respondent No. 2 is free to seek the relief of regularization pursuant to Paragraph



125 (5) of the judgment of the Hon'ble Supreme Court in *Steel Authority of India Vs. National Union Waterfront Workers & Ors.* Should the award of the Central Government Industrial Tribunal, which found the contract between the security guards and the Petitioner to be a sham and bogus one, be upheld in the aforementioned Writ Petition.

52. In view of the above, the present Writ Petition is allowed and the pending applications are disposed of accordingly. The parties are left to bear their own cost.

GAURANG KANTH, J.

SEPTEMBER 08, 2022

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