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IN THE HIGH COURT OF DELHI AT NEW DELHI

Pronounced on: 12.07.2023

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W.P.(C) 426/1999

INDIAN OIL CORPORATION LTD.

..... Petitioner

versus

UOI & ORS

..... Respondents

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CONT.CAS(C) 244/2000

GOPAL JEE GUPTA

..... Petitioner

versus

M.A. PATHAN & ORS.

..... Respondents

Through: Mr. V.N. Koura, Sr. Advocate with Ms. Paramjeet Benipal and Mr. Nirbhay Narain Singh, Advocates for IOCL.

Mr. Rajesh Gogna, CGSC for UOI
Mr. Kailash Vasdev, Sr. Advocate with Mr. Umrao Singh Rawat, Advocates for R-3 in W.P.(C) 426/1999.

Mr. Parvinder Chauhan and Mr. Sushil Dixit, Advocates for Mr. Gopal Jee Gupta.

Mr. Harsh Jaidka, Advocate for Interveners.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

J U D G M E N T

NAJMI WAZIRI, J.

W.P.(C) 426/1999, CM APPL. 3225/2000, CM APPL. 5764/2004, CM



APPL. 1809/2012, CM APPL. 51973, CM APPL.42801/2022 & CM APPL.43224/2022

1. The petitioner challenges the legality and validity of the notification dated 09.11.1998, issued by the Union of India, under section 10(1) of the Contract Labour (Regulation and Abolition) Act, 1970, prohibiting the employment of contract labour in various departments of Mathura Refinery and Marketing Division of the Petitioner at Mathura (“**Impugned Notification**”), on the ground, *inter-alia*, that it is based on irrelevant considerations and without taking into account relevant factors.

CIRCUMSTANCES LEADING TO THE ISSUANCE OF IMPUGNED NOTIFICATION

2. Mathura Refinery was commissioned in 1981-82 to meet the demand of petroleum products in north-western region of India and to provide employment and development in this “less developed” region. During the construction phase of the refinery, large number of workmen had been employed through various contractors, in various departments of refinery. In 1985, the petitioner retrenched 48 contract workers through their respective contractors. A union named ‘*The Mathura Refinery Mazdoor Sangh*’ was formed to represent these workmen. They challenged the said retrenchment in the Supreme Court of India by way of a writ petition¹, seeking permanent absorption into the work force of the Mathura Refinery. On 16.01.1986, the Supreme Court held that the Central Government should refer the case to the Industrial Tribunal for adjudication of the following issues:

¹ W.P. No. 2867/1986



- a) Whether the Petitioners and the 48 workmen whose services have been terminated are employees of the Indian Oil Corporation Limited, Mathura Refinery Project, Mathura?
- b) Whether the termination of services of the 48 workmen was justified?
- c) To what reliefs are the workmen entitled?

The Supreme Court inter-alia restrained the petitioner from retrenching the contract workers till the final disposal of the matter.

3. The Central Government Industrial Tribunal by its award dated 15.09.1989, held that that the contract labour employed at the Mathura refinery are, in law, not employees of the petitioner i.e., Indian Oil Corporation Limited but employees of the contractors. It also advised the petitioner to make a reference to the Central Advisory Board constituted under the Contract Labour (Regulation & Abolition) Act, 1970 (hereinafter 'the Contract Labour Act') to undertake a study apropos the desirability of continuance or otherwise, whether wholly or to a limited extent, of the contract labour system at the Mathura Refinery. It also held that till such time the Central Advisory Board makes its recommendations and action is taken, the management shall ensure that the contract labour be paid at least the minimum pay scale of its regular employees.
4. Aggrieved by the order of the Industrial Tribunal, the Mazdoor Sangh filed a civil appeal before the Supreme Court. The appeal was dismissed and the order of the tribunal was upheld.
5. The Mazdoor Sangh approached the Central Advisory Contract Labour Board (CACLB) and sought initiation of proceedings under Section 10 of the Contract Labour Act. By resolution No. U-23013(10)/90/LW, dated



30.05.1990, the CACLB constituted a Tripartite Committee to consider the issue of abolition of contract labour system in various departments of the Mathura Refinery and the Marketing division of petitioner.

6. In its Report submitted in June 1995, the Majority of the Tripartite Committee concluded that contract labour in certain department/jobs should be abolished. The petitioner filed its objections/comments to the said Report. After considering the Report of the Tripartite Committee and the objections raised by the petitioner, the CACLB appointed the Chief Labour Commissioner to re-examine the matter and submit his report.
7. The latter deputed the Joint Chief Labour Commissioner (Central) to visit the Mathura Refinery to study the Contract Labour system existent there and submit a report. The Jt. CLC (Central) after visiting the refinery submitted his report on 10.09.1997. His recommendations included, *inter-alia*, prohibition of contract workers in certain jobs which were perennial in nature at the Refinery. Although in his final submissions, he stated that the prohibition of employment of Contract labour may be counterproductive as it may lead to a large-scale retrenchment; the best course of action would be to advise management and Union to settle the matter through negotiation within a given time frame.
8. On the basis of said the recommendations the CACLB at its 33rd meeting on 3rd October 1997, opined that IOC Mathura Refinery and the Union of workers should settle the issue through negotiations. The Jt. CLC (Central) was directed to assist in the negotiations and submit his report by 30th November 1997.
9. No settlement could be reached, therefore, the Board recommended to the government that the system of Contract Labour in this case may be



prohibited. However, Chairman, as his personal opinion, also informed the government that it would be desirable, if an agreement could be reached by giving more time to the parties, as such an agreement would avoid loss of jobs to a large number of contract workers. Attempts at settlement failed.

10. On 09.11.1998, the government issued a notification under sub-section (1) of the Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970, prohibiting the employment of contract labour in various departments of the Mathura Refinery and the Marketing Division of the Petitioner at Mathura. It has been impugned by IOC in this petition.

DISPOSAL AND REVIVAL OF THE PETITION AND ISSUES OF AUTHORITY TO REPRESENT WORKMEN

11. The petitioner submits that during the pendency of the writ petition, a settlement was arrived at between the representatives of the respondent/Union and the petitioner, therefore, a joint application² was moved by the petitioner and respondent nos. 2 and 3 seeking quashing of the Notification.

12. By order dated 18.05.2004, the aforesaid application was allowed and the petition itself was disposed-off in terms of the settlement, as under:

“This is a joint application under Section 151 CPC by which the parties have settled the dispute which arises from the present writ petition. The terms of the settlement have been signed by the parties and the application is signed by their counsel. I have gone through the terms of settlement which are just and reasonable. The application is allowed. Accordingly, the writ petition stands disposed of in terms of the settlement.”

² CM APP No. 5764/2004



13. The said order was recalled on 04.10.2004, on the application³ of Shri Sohan Lal Sharma, who stated that he was now the Secretary of respondent no.3 and that he had not been heard before the settlement was approved. Para 3 of the order dated 4.10.2004 sets out the reasons for recall of the order dated 4.10.2004:

3. ...I am satisfied that the Order dated 18th May, 2003 (sic: 2004) should be recalled on the ground that it was passed without service of the copy of the compromise application on the existing counsel for respondent No.3. The Court at this stage is not concerned with the internal dispute of the union as to who is in control of the Union and the Court is more concerned with the counsel who represented the parties and it is appropriate that in case any application, affecting the rights of the parties is filed, it ought to be entertained only when the service upon the existing counsel is complete...Therefore the appropriate order in the present situation would be to recall the order dated 18th May, 2004 without expressing any opinion on the merits of the settlement or without prejudice to the pleas of the parties which may be raised before the appropriate Court in support of the settlement that it is just and reasonable and ought to be accepted. These pleas can be raised before the Court hearing labour roster. Accordingly, the order dated 18th May, 2004 passed in CM 5164/2004 (sic: 5764/2004) in WP(C) 426/99 is recalled.

14. Extensive submissions were made on the authority and capacity of respondent No. 2 & 3 to represent the Mathura Refinery Mazdoor Sangh. However, this question need not detain this Court further for two reasons:

- (i) The Impugned Notification is challenged by the petitioner, and issued by the respondent No. 1, which is defending the same both in its Counter Affidavit as well as during submissions. In considering the challenge to

³ CM Appl 6852/2004.



the Impugned Notification to the extent raised by the petitioner, only the stands of these two parties are relevant.

(ii) As doubted by a predecessor, contended by respondent No. 1, and in the view of this Court, Section 30 of the Act renders moot the question of whether the purported settlement can be the basis of quashing the Impugned Notification. The order dated 13.05.2010 too hints at this. R-1 has contended that such purported settlement cannot override or undo a statutory notification. This court agrees with the contention. Only if the Settlement, was more favourable than the Impugned Notification, it will have effect in terms of Section 30(2), otherwise it will not in any manner affect the sustainability of the Impugned Notification.

15. Thus, this Court refrains from commenting on who, if any, can represent the said Sangh or as to the legal standing on the Sangh *per se*.

CONTENTIONS OF THE PETITIONER

Lack of notice to Petitioner before issuance of the Impugned Notification

16. The learned counsel for the petitioner places reliance upon the dicta of the Supreme Court in *Maneka Gandhi Vs. Union of India*, AIR 1978 SC 597, which observed that wherever a statutory power is given to the Government to take a particular action on the basis of objective criteria incorporated in the statute, the principles of natural justice will be read into the statute for the exercise of such power, unless specifically excluded by the Statute. He submits that principles of natural justice will be applicable irrespective of whether the statutory power being exercised is a power of conditional legislation or is an administrative



power⁴. He submits that it is a settled law that decision of Government under Section 10 of the Contract Labour (Regulation & Abolition) Act is an administrative decision⁵.

17. The petitioner contends that the government's decision is also required to deal with the objections raised by the stakeholders and must be relevant for and germane to the conditions or criteria set out in the statute; that the Court can examine not only the decision making process, but also the decision itself, and the materials on which it is based, to determine whether the criteria or conditions prescribed by the statute for the exercise of the power have been satisfied.

18. He submits that the decision-making process is in two phases: in the first phase, the Central Government makes a reference to the Central Advisory Contract Labour Board (CACLB) to give its advice under Section 3 of the Contract Labour (Regulation & Abolition) Act, 1970 to a proposal received for the abolition of contract labour. The Board may, if it deems fit, constitute a Committee to advise on the reference. In the second phase, Central Government considers the advice received from the CACLB, decides on whether it should accept the advice in whole or part, and to what extent and accordingly a notification is issued in exercise of its powers in Section 10(1) of the Act.

Conditions of Section 10 of the Contract Labour (Regulation & Abolition) Act, 1970 not duly met:

19. The Central Government is required to take into consideration the

⁴ State of T.N. v. K. Sabanayagam and another, (1998) 1 SCC 318 and Indian Oil Corporation v. Union of India (2013) 202 DLT 404

⁵ Steel Authority of India Ltd. V. Union of India, (2006) 12 SCC 233



factors mentioned in Section 10(2) of the Act including but not limited to the following:

- a. Is the contract labour being exploited or are the conditions of work and benefits provided to the contract labour reasonable?
- b. Is the process, operation or other work incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment?
- c. Is the activity or work of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation that is carried on in that establishment?
- d. Is the activity or work done ordinarily through regular workmen in that establishment or an establishment similar thereto?
- e. Whether, if the employment of contract labour in the activity or work is prohibited, will the work be sufficient to employ considerable number of whole time workmen?
- f. Are there any other factors to be considered which is relevant to the decision?

20.Explanation of Section 10(2) of the Contract Labour (Regulation & Abolition) Act, 1970 states that the Central Government has to consider the views expressed and objections to the proposal taken by the stakeholders and must apply its mind thereto and render a decision thereon, and if such decision relates to whether or not a process or operation or other works is perennial or not, the decision of the Central Government thereon shall be final.

21.Mr. VN. Koura the learned Senior Advocate for IOC contends that in



the present case, before taking a decision the Central Government has not given any notice of the proposed decision to the stakeholders, much less to the petitioner Corporation nor has the Government invited any representation to the proposal from the stakeholders, including the petitioner, nor have any reasons been recorded for the decision under Section 10(2) of the Contract Labour (Regulation & Abolition) Act, 1970. He contends that, the basic tenets of natural justice, which are a pre-condition to arriving at such a decision, have, not been met, the decision making process and decision is in itself procedurally defective. Procedural Defect is a ground for judicial interference in administrative and policy decision.⁶

22. He further contends that, the primary condition for attracting the jurisdiction under Section 10, namely, exploitation of the contract labour by exploitative conditions of service and wages and benefits of the contract labour, has *ex facie* not been met. Relying on the report of the Tripartite Committee, he submits that most of the contract labour employed in the Refinery are well paid and well looked after; that employment of contract labourers in Mathura Refinery was systematic and organized; Contract labourers were getting more wages and benefits than contract labour engaged in other establishments; most of them were beneficiaries of Provident Fund Scheme; they worked for eight (8) hours a day with a recess of one hour; they were paid annual bonus, over time and the benefit of medical allowance; they were also paid transport allowance, shift allowance, uniform allowance and soap allowance etc. and they were provided Earned Leave and Sick Leave.

⁶ Tata Cellular vs. Union of India [reported as 1994(6)SCC 651]



23. Therefore, he submits that the basic requirement of exploitation of the contract labour which is the first consideration to be taken into account is, absent. He says that another important consideration would be whether the abolition of contract labour will create employment for a considerable number of full time employees. He submits that in the present case, CLC's Report gives no reasons in support of any recommendation for the abolition of the contract labour in any activity.

CONTENTIONS OF RESPONDENT NO.1/ UNION OF INDIA

Conditions of Section 30 of the Contract Labour (Regulation & Abolition) Act, 1970 met

24. The learned Standing Counsel for the Union of India defends the notification banning the contract labour at the Mathura Refinery and, Indian Oil Corporation. He submits that all arguments advanced by the petitioner in favour of an endeavour to settle the *lis* between the management and the labour are without basis because Section 30⁷ of the Act specifically bars it.

25. He contends that the notice for abolishing contract labour is rooted in detailed empirical data and assessment at the site by the two Committees, which had concluded that it was not in the interest of the either workmen or

⁷ **30. Effect of laws and agreements inconsistent with this Act.**—(1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any agreement or contract of service, or in any standing orders applicable to the establishment whether made before or after the commencement of this Act: Provided that where under any such agreement, contract of service or standing orders the contract labour employed in the establishment are entitled to benefits in respect of any matter which are more favourable to them than those to which they would be entitled under this Act, the contract labour shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that they receive benefits in respect of other matters under this Act. (2) Nothing contained in this Act shall be construed as precluding any such contract labour from entering into an agreement with the principal employer or the contractor, as the case may be, for granting them rights or privileges in respect of any matter which are more favourable to them than those to which they would be entitled under this Act.



the industry that contract labour should continue with the petitioner at the Mathura refinery; that it is clearly evident from the working of IOC that in at least 15 departments which have requirements for permanent employment, hardly any of them had any regular employees, and this is against the ethos of the rules under the Industrial Disputes Act, 1947. Indeed till date; the IOC has not specified the number of persons required in the 15 departments. There are glaring discrepancies in the manner in which the Corporation treated their regular employees and the contract labourers, one of the most egregious being the fact that less than minimum wage was paid to the contract labourers i.e. Rs 49 per day, when the monthly minimum wages were Rs. 1200-1400/- per month. The relevant portion of the majority report of the Tripartite Committee stating the same is reproduced below:

“...These workers are paid wages @ of Rs. 49 per day w.e.f. 1.10.94. These workers do not get any other benefits.

It has been observed that the management is not carrying out same or similar nature of jobs through regular workmen in the contract works mentioned at Sl. No. a) to c)”.

Giving effect to Articles 42 and 43 of the Constitution of India

26.He further submits that it is the obligation of the State to implement the Directive Principles contained in Articles 42 and 43 of the Constitution of India, which requires *inter alia* that fair wages should be paid to the workmen. When the three-Member Committee has specifically stated in the aforesaid report that even the minimum wages have not been paid to the workmen and the Management was not prepared to lend any assurance to the contract labourers regarding continuance of their continued



employment, the vigilant State is, therefore, compelled to ensure the just compensation and rights of the workmen and to prevent exploitation of the workmen who are legally not impoverished. It is asserted that this is also the duty of the State as per the Statement of Objects of the Contract Labour (Regulation and Abolition) Act, 1970. The aforesaid justification of the abolition of contract labour in the 15 departments as specified in the impugned notification reflects the vast discrepancy between the wages of a contract labourer and regular employees. The inequity between the two is so stark that it need not be stressed upon.

27. He further adds that even after 20 years, the Corporation has not submitted any data as to how many personnel are required in the said departments, none of the departments are dispensable, nor are the workmen in them; without these 15 departments functioning, the Refinery itself would come to a standstill. Each of these departments is essential and integral to the functioning of the Refinery. The workmen in them are rendering the most essential services and they ought to have been regularised or taken into the rolls of the Corporation in terms of the notification.
28. At this stage, Mr. Kailash Vasdev, the learned Senior Advocate for respondent no. 3 submits that the IOC runs many other refineries in the country but it has not specified as to how are the corresponding 15 departments functioning in the other Refineries at Panipat, Haldia, Baroni, Guwahati, Paradeep, and Baroda, as to whether those departments function with regular employees or contract workmen.
29. Mr. Gogna submits that the government accommodated the IOC for almost a decade, trying to find a solution to the workmen's regular employment, so their interests are safeguarded. It is only in the absence of any progress



being made by the Corporation with the Government to effectively settle the dispute and that the Notification of abolishing Contract Labour was issued. Reference is made to the 33rd meeting of the Central Advisory Contract Labour Board held on 03.10.1997, which *inter alia* recorded as under:

“ITEM NO.18 CONSIDERATION OF THE REPORT OF THE COMMITTEE CONSTITUTED TO GO INTO THE QUESTION OF ABOLITION OF CONTRACT LABOUR SYSTEM IN VARIOUS DEPARTMENTS OF MATHURA REFINERY AND MARKETING DIVISION OF I.O.C., MATHURA

The Board considered the study report of the Jt. CLC (C) in the matter. The Board noted that the report has recommended for consideration prohibition of employment of contract labour in respect of certain operations in Mathura Refinery and Marketing Division of IOC Mathura, as they fulfil the tests laid down in Section 10 of the CL (R&A) Act, 1970. The township has been excluded from its study in view of the decision of Kerala High Court in Power v. LEO(C). At the same time, the report had suggested that as prohibition may lead to retrenchment of contract labour being in excess of requirement of contract labour being in excess of requirement, the management and union should be advised to settle the matter through negotiations within a given timeframe. The management representative expressed that they are willing to settle the matter through negotiations and for working out concrete proposals, they would need time as approval of higher level has to be obtained. The union representative, however, mentioned that the management is only trying to adopt dilatory tactics and that they have never been invited for discussions though willing to discuss the matter. Shri L.R. Singh, Member was of the view that this matter is lingering for ten years and as per the report prohibition should be recommended. The other members representing employees were of the opinion that in the process downsizing should not be allowed. After



discussions, the Board decided that Jt. CLC (C) will assist in the negotiations that the management and union(s) should hold to settle the matter finally and submit his report to the Board before 30.11.1997. In the event no settlement is reached, the Board authorized the Chairman to recommend to the Government abolition of contract labour in the operations specified in the report...”

30. In the same meeting, the Government also explored the applicability of contract labour throughout the country. It is recorded *inter alia* as under:

“ITEM NO.21: NOTE ON WORKING OF CONTRACT LABOUR (REGULATION AND ABOLITION) ACT, 1970 IN THE CENTRAL SPHERE.

The Board considered the note on working of the CL(R&A) Act, 1970 in the central sphere and reviewed it. Chairman expressed his view that in order to gauge the prevalence of contract labour system vis-a-vis the working of the Act, it would be essential to know the number of contract labour being engaged in the country, as a whole”.

31. The learned counsel for the Government relies upon the dicta of the Supreme Court, in *D.S. Nakra v. Union of India* (1983) 1 SCC 305 and *Catering Cleaners of Southern Railway v. Union of India & Anr.* (1987) 1 SCC 700 where contract labour by government-owned institutions was strongly deprecated. He stresses upon the observations of the Supreme Court against the pernicious practice of employment of contract labour in the organized and unorganized sector, even extending to the public sector, which otherwise should be a model employer. He submits that it is the duty of the State to rise to the occasion to protect the rights of the people who cannot defend their rights and the workmen in the industrial sector are most vulnerable. He relies on the judgement of the Supreme Court in *Sankar*



Mukherjee and Ors. v. Union of India & Ors. 1990 (Supp.) SCC 668, which held that-

“...6. It is surprising that more than forty years after the independence the practice of employing labour through contractors by big companies including public sector companies is still being accepted as a normal feature of labour-employment. There is no security of service to the workmen and their wages are far below than that of the regular workmen of the company. This Court in Standard-Vacuum Refining Co. of India Ltd. v. Its Workmen, [1960] 3 SCR 466 and Catering Cleaners of Southern Railway v. Union of India & Anr., [1987] 1 SCC 700 has disapproved the system of contract labour holding it to be 'archaic', 'primitive' and of 'baneful nature'. The system, which is nothing but an improved version of bonded-labour, is sought to be abolished by the Act. The Act is an important piece of social legislation for the welfare of labourers and has to be liberally construed.

32. The UOI contends that in discharge of this responsibility, it has conducted extensive study regarding the midterm employment of workmen and it is after taking into due consideration of all aspects that the notification banning contract labour at the said refinery was issued. Therefore, the said notification is based on ground realities and is justified. It is argued that all statutory requirements have been duly complied with during the decision-making process. During this process, the IOC was duly heard not once but on many occasions and its contentions had been recorded and duly considered.
33. The learned standing counsel for UOI refers and relies upon the decision in *Oil India Ltd. v. Union of India* (2002) 3 Gauhati Law Reports 15 (paras 11 to 16).

“... 11. But the above view of the Supreme Court cannot be



straight way applied in the instant case because of apparent differences in the notification. The notification impugned in the Steel Authority of India (supra) was in respect of unspecified establishment, which, appear to be omnibus in its manifestation. That apart, the Hon'ble Supreme Court was not satisfied that the appropriate Government, i.e., the Central Government in that case considered the factors mentioned in Sub-section (2) in respect of the establishments, severally or jointly. But the notification under challenge in this writ petition has been issued in respect of establishment of the Oil India Limited (Pipe Line Division) with effect from 25th January, 2000. The notification details the jobs in respect of which contract labour is abolished. Therefore, ex-facie it is not possible to repudiate this notification as omnibus so as to conclude in the way the Hon'ble Supreme Court has done in the Steel Authority of India (supra). Moreso, the petitioner-company has challenged the notification on the ground of inadequate and insufficient investigation with regard to factors mentioned in Sub-section (2). From the writ petition itself it transpires that despite short notice a meeting was held at LGNB International Airport at Guwahati. The Central Government was seized with the matter since long when the Union filed representation for abolition of contract labour after disposal of the Civil Rule No. 4320 of 1996 on 27.1.1998. Therefore, the plea that the Management was not given opportunity to represent its case, the Central Advisory Board did not apply mind and that the Committee constituted to look into the matter did not visit the work-site are not adequate enough for supersession of the final decision taken by the appropriate Government.

12. I have examined the relevant office file produced. It appears that the matter was initiated primarily with reference to the decision of this Court in Civil Rule No. 4320 of 1996 disposed of on 27.1.1998. The matter was placed before the Central Advisory Board on 24th and 25th April, 1998 which in turn constituted a Committee vide Resolution dated 17.11.1998. The Committee submitted its report on 26th April, 1999. The Committee recommended abolition of the contract labour after studying the work of the contract labour system. Of course, an alternative



suggestion was brought forward by one of the members of the Committee to the effect that the employment of the contract labour may be allowed to continue if 285 contractual labourer covered by the tripartite settlement dated 23.12.1992 are paid at par with the corresponding regular employee of the Oil India Limited including all the benefits and service conditions applicable to such regular employees and the remaining contract labours are paid wages etc. as are being paid to these 285 contract labourers at present. The report of the Committee was placed before the Central Advisory Board (CACLB) in its 41st meeting held on 7th and 8th of July, 1999. The Board considered the report of the Committee. The alternative suggestion given by one of the Members of the Committee was also particularly addressed by the Board and, thereafter, the Board decided to recommend to the Government the abolition of contract labour in the Pipe Line Division of Oil India Limited, Guwahati. The brief submitted to the Central Advisory Board indicates that the report of the Committee, the views of the Workers' Union and the particulars furnished by the Management of the Oil India Limited including that of the tripartite settlement dated 23.12.1992 were placed before the Central Advisory Board held on 7th and 8th of July, 1999. The resolution reads as follows :-

"Item No. 8 Order dated 27.1.1998 of Hon'ble High Court of Guwahati in Civil Rule No. 4320 filed by the Oil India Pipeline mazdoor (Casual) Union v. Union of India and Others for issuance of necessary notification, under Section 10 of the Contract Labourer (Regulation & Abolition) Act, 1970.

The Board considered the report of the Committee and observed that the member-convenor has suggested two options in his recommendations namely prohibition of employment of contract labour in all the jobs/works in the establishment of Oil India Ltd. (Pipeline Division) Narangi, Guwahati or alternatively, to allow engagement of contract labour if the 285 contract labourers covered by the tripartite settlement dated 23.12.1992 are paid at par with the corresponding regular employees of Oil India Ltd.



including all the benefits and service conditions applicable to such regular employees and remaining contract labourers are paid wages as are being paid to these 285 at present. Shri Sankar Sana, member while generally agreeing with the member-convenor, had recommended that he was in agreement with the member-convenor, had recommended that he was in agreement with the first option that is abolition of contract labour because the workmen have completed more than 240 days continuous service in the establishment and should be absorbed with retrospective effect. Shri Khisty, member in his dissenting note, had recommended that the contract labour may not be prohibited. However, same wages should be paid to these categories of contract workers employed by M/s Oil India Limited (Pipeline Division) as are being paid to the contract workers as per the settlement dated 23.12.92 between the management and the union.

After hearing the parties and detailed deliberations, the Board decided by a majority of one to recommend to the Government abolition of contract labour in all the jobs/works in the establishment of Oil India Ltd. (Pipeline Division), Guwahati; referred to in the report of the Committee, as they satisfy the criteria laid down in Section 10(2) of the Contract Labourer (Regulation and Abolition) Act, 1970."

13. The above materials clearly indicate that the Central Advisory Board after hearing the parties decided to recommend to the Government the abolition of the contract labour in respect of jobs/works in the establishment of Oil India Limited (Pipe Line Division). On the face of these documents, it would be difficult for this Court to conclude that the conditions laid down in Sub-section (2) of Section 10 of the Act of 1970 have not been taken due care of.

14. The true import of a notification under Sub-section (1) of Section 10 has been dealt with by the Supreme Court in Steel Authority of India (supra). The Supreme Court held as follows :

"88. In the light of the above discussion we are unable to



perceive in Section 10 any implicit requirement of automatic absorption of contract labour by the principal employer in the concerned establishment on issuance of notification by the appropriate Government under Section 10(1) prohibiting employment of contract labour in a given establishment.

104. The principle that a beneficial legislation needs to be construed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the Legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. We have already noticed about the intendment of the CLRA Act that it regulates the conditions of service of the contract labour and authorizes in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in Sub-section (2) of Section 10 of the Act among other relevant factors. But the presence of some or all those factors, in our view, provide no ground for absorption of contract labour on issuing notification under Sub-section (1) of Section 10. Admittedly, when the concept of automatic absorption of contract labour as a consequence of issuing notification under Section 10(1) by the appropriate Government is not alluded to either in Section 10 or in any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or this Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel, be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible. We have already held above, on consideration of various aspects, that it is difficult to accept that the Parliament intended absorption of contract labour on issue of abolition notification under Section 10(1) of CLRA Act."



15. The above observations clearly indicate that there is a departure from the earlier view. Therefore, abolition of contract labour by a notification under Sub-section (1) of Section 10 does not mean automatic absorption. The consequences available in paragraph 124(6) reads as follows :

"124(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."

The above decision of the Supreme Court clearly indicate that exercise still remains to be done in a case where contract labour is abolished before regular absorption is ordered.

16. It would appear from the above discussion that the appropriate Government after consultation with the Central Advisory Board prohibited by notification employment of contract labour in the Oil India Limited (Pipe Line Division) with effect from 25th January, 2000. Before that a Committee was constituted by the Central Advisory Board under provisions of Rule 16 of the Rules of 1971 to go into the question. The Committee recommendations with alternative suggestions were placed before the Board. The Resolution of the Board quoted hereinbefore clearly indicates that there was threadbare discussion and deliberation before the Board resolved to recommend abolition of



contract labour. No objection appears to have been made by the representative of the Oil India Limited during the course of deliberation. The Board also took due consideration of the representation of the Workers' Union and the views of the Management. The brief placed before the Board clearly indicates that all factual details necessary for compliance of the provisions of Sub-section (2) of Section 10 of the Act of 1970 were placed before it. This Court is unable to discern any aberration in the decision making process. Hence, the irresistible conclusion is that this Court is not to interfere with the impugned notification assailed by the Company.

34. Although some submissions were made on the propriety of a Government organisation maintaining a Writ Petition against an order of the Government, including as to the maintainability of the present Petition itself in such circumstances, the court is of the view that since the Petition has been heard on merit, and in view of the judgement in *Electronics Corporation of India Ltd v. Union of India and Others*, (2011) 3 SCC 404, the question is rendered moot.
35. Lastly, the UOI contends that it is not keen on obtaining a settlement. Instead, it is the Corporation which has been pushing the matter before the various authorities and has been trying to obtain a settlement which is neither sustainable in law nor would it be effective in securing the rights of the workmen. Therefore, all efforts in this regard should be treated as superfluous.
36. The affidavit filed by the Director, Ministry of Labour at page 826 of the petition, states that it is in the best interest of the parties that a settlement should be arrived at. The learned counsel for the Government, when queried in this regard, submitted that the said affidavit is misconstrued and ought to be treated as withdrawn. He submits that the said affidavit could at best be



construed as an endeavour to secure the permanent right of the workmen, which was not coming forth. In any case, the government reiterates its stand as filed in the counter affidavit dated 03.08.1999 and the subsequent affidavit may be disregarded. He submits that there can be no estoppel against law. As the author of the Impugned Notification, the government cannot be precluded by the said affidavit, from defending its notification. As already discussed earlier, section 30 makes it abundantly clear that the settlement will not disable Respondent No. 1 from defending its Notification.

37. The submissions made on behalf of the respondents No. 2 & 3, as well as the interveners, are being recorded here as a matter of order. As observed earlier, this Court need not go into the question of who is authorised to represent the Sangh, and whether the Sangh, *per se*, exists. Nor does the Court need more than the stand of the petitioner and respondent No. 1 to consider the validity of the Impugned Notification.

CONTENTIONS OF RESPONDENT NO.2

38. Mr. Chauhan, the learned Counsel for respondent No. 2 submitted that:

- a. The Petition is not maintainable as it was not referred to the Committee on Disputes.
- b. The Impugned Notification cannot be quashed on the basis of a settlement between the Management and workers. It can only be quashed by the respondent No. 1, by way of review, which power is not conferred.
- c. The Act has already been upheld by the Supreme Court as not unconstitutional, in *Gammon India Ltd. & Ors. vs. Union of India &*



Ors., (1974) 1 SCC 596.

- d. CGIT has not given complete immunity to the petitioner, IOC apropos employment of contractual workers. He submits that the order of the CGIT, while permitting engagement of contract workers, still required that they be paid minimum of pay scale of wages of regular employees. He submits that this was never paid, and must now be paid.
- e. Both the CGIT's order and the Report of the Committee have observed that work being done by many of the contract workers are of a perennial nature.
- f. IOC itself has realised that workmen in these 15 departments are essential and their work is perennial in nature, as is apparent from the undertaking given by IOC in the order dated 25.1.1999, where it voluntarily undertook that services of these workmen will not be terminated.
- g. On the date of the Notification, 1111 contract workmen were employed by the IOC. Since then, many hundreds of workmen have been engaged by the IOC in the positions that these contractual workmen retired from. This demonstrates the lack of substance in the claim of the IOC that these workmen have been foisted on it.
- h. The contention of large-scale unemployment / retrenchment if the Impugned Notification were to be sustained is sham and a mere bogey. Hundreds of workmen have been employed after voluntary retirement or superannuation or termination from service of the 1111 workmen. He submits that though data on this is available, it is not forthcoming as workmen are fearful of losing their jobs.



CONTENTIONS OF RESPONDENT NO.3

39. Aside from defending the *locus standi* of his client, Mr. Vasdev, the learned Senior Counsel for respondent No. 3 too opposed the petition. He submitted that there are no contractual or casual labourers at any other refinery of the IOC, that there is no justification for the Mathura Refinery to be singled out when regular employees have been provided regular employment in the same departments under the Notification.

CONTENTIONS OF THE INTERVENERS

40. Mr. Harsh Jaidka, the learned counsel who represents 249 labourers/workers as interveners in W.P. (C) 426/1999 supports the contention of the IOC. His submissions too, are being recorded herein, as a matter of order. He submitted that:

- a. If the Impugned Notification is sustained, the 249 workmen he represents are likely to lose their present employment.
- b. They will also likely be unemployable elsewhere as they have spent most of their lifetime with IOC.
- c. Though, as recorded in the Order dated 19.9.2006, Respondent No. 1 was agreeable to review its Notification within six months thereof, it is now defending the Impugned Notification in its entirety, which is unjustified.
- d. Relying on the judgment in *Steel Authority of India Ltd. and others v. National Union Waterfront Workers and others*, 2001 (7) SCC 1⁸, he

⁸ "...68. We have extracted above Section 10 of the CLRA Act which empowers the appropriate Government to prohibit employment of contract labour in any process, operation or other work in any establishment, lays down the procedure and specifies the relevant factors which shall be taken into consideration for issuing notification under sub-section (1) of Section 10. It is a common ground that the consequence of prohibition notification under Section 10(1) of the CLRA Act, prohibiting employment of contract labour, is neither spelt out in Section 10 nor indicated anywhere in the Act. In our view, the following consequences follow on issuing a notification under Section 10(1) of the CLRA Act:



submitted that once the notification under Section 10 (1) of the Contract Labour (Regulation and Abolition) Act, 1970 is issued, the workman ceases to be the employed with the principal employer and after-effects of the social fallout of the unemployment will have to be kept in mind.

- e. He submits that albeit the objective of the Impugned Notification in favour of the workmen, protecting their rights is to be striven for. He submits that practical difficulties would have to be taken into consideration i.e. imposition of the ban should not lead to large-scale unemployment.

ANALYSIS

41. The sum of submissions made by Mr. Koura is that IOC is aggrieved by the Impugned Notification on, effectively, four counts:

- a. Failure to comply with the requirements of Section 10(2) of the Act by failing to consider all relevant factors, particularly the socio-economic background leading to employment of contract workers at the Mathura Refinery. These workers are landless unskilled persons who were engaged during the construction phase of the refinery, and who did not qualify to be absorbed. Their functioning as contract workers is their only source of livelihood, which will inevitably be lost if the Impugned Notification is sustained.
- b. Sustaining the Impugned Notification will result in naught but large-

(1) contract labour working in the establishment concerned at the time of issue of notification will cease to function;
(2) the contract of principal employer with the contractor in regard to the contract labour comes to an end;
(3) no contract labour can be employed by the principal employer in any process, operation or other work in the establishment to which the notification relates at any time thereafter; ”



scale retrenchment of workmen, who were otherwise being treated fairly in terms of conditions of work and benefits provided.

- c. Workers in these 15 departments do not perform work of a perennial nature. They have been continued not owing to their being required, but owing to *status quo* orders in various litigations.
- d. Failure to comply with principles of natural justice, i.e., failure to notify, and hear the petitioner before issuing the Impugned Notification.

Stated intent of the Impugned notification and fair treatment of workmen

42. Before dealing with the above, this Court would again notice the stated intent behind the Impugned Notification, i.e., to ensure a sense of security to the workman. This is reflected in the concluding portion of the Majority Report of June, 1995 of the Tripartite Committee as well, which observed:

The Committee, therefore, recommends prohibition of employment of contract labour in certain categories as discussed above in case the management is still not prepared to give some sort of assurance to their contract labour regarding continued employment.

(emphasis supplied)

43. The preceding paragraph discloses why this observation was occasioned:

It will be pertinent to mention that besides submitting details of the contract works some of the office bearers/members of Mathura Refinery Mazdoor Sangh, representing the contract labour and also working as contract labour under different contractors met the Committee and submitted that although the wages and other benefits have been increased and they are by and large satisfied but they wanted security in employment. In fact they expressed that in case the management would give them assurance of continued employment there was no need for prohibiting employment of contract labour in any contract work being executed at present. The management



representative who were contacted expressed their inability to give such an assurance.

(emphasis supplied)

44. Indeed, even the concerns of the Jt. CLC (Central), who submitted a report to the CACLB, as well as the CACLB, has been to avoid loss of jobs for the workmen.
45. There can be no greater sense of disempowerment and disquiet for a workman than to be under the continuous fear of uncertainty of his job. The contract worker gets a job at the mercy and at the fancy of the principal employer. This uncertainty affects not only the individual concerned but his entire family. It is at this stage that the State steps in to ensure that there should be some certainty in this regard. After all, a workman who has been rendering his services to the Corporation or any entity, for a period say from 5 years up to 9 years should know whether or not he would be given regular employment. The mere fact that they have worked there for all these years shows that they were required on a permanent basis in the various departments.
46. Though much has been submitted on fair working conditions by IOC, there were no submissions forthcoming as to the workmen being assured of security of their job. This is telling.
47. Undoubtedly, the Act requires the Government to consider factors such as *conditions of work and benefits provided for the contract labour in that establishment*, this Court cannot, in exercise of its jurisdiction under Article 226 of the Constitution of India, enter upon a merit review of the decision of the Respondent No. 1 in this regard.



Compliance with Section 10 of the Act

48. One need not multiply authorities for the proposition that this Court, in exercise of its powers under Article 226, will not review a decision but merely the decision-making process.
49. What section 10 requires is an assessment of the position obtaining in any industry apropos the working condition of the workmen. If it is unfair or onerous, then on the basis of studies conducted the government can ban the contractual activities and/or contractual labour.
50. This requisite exercise was carried out extensively by the government over a period of nearly ten years. As discussed hereinabove, both the 1st Report and the 2nd Report support the ban of contractual Labour at the Mathura Refinery. In particular, the majority report of the Tripartite Committee has noted the appalling working conditions as under:

“...The Committee has studied the contract works (detailed in the enclosure) in which the contract labour is at present engaged. In a large number of these contract works the work being carried out through contract labour is of perennial nature. Moreover, the management of the refinery-IOC are employing regular workers on same or similar nature of jobs. The work carried out by the contract labour in these contract works is necessary for running of the industry and considerable number of workmen are employed in these employments. Thus, all the conditions laid down in Section 10(2) of the Contract Labour (Regulation & Abolition) Act, 1970 are fulfilled in these cases.

These contract works are identified as under:-

- 1. Electrical jobs at different locations.*
- 2. Operation and maintenance of centralized AC Plant and package units*
- 3. Power supply for shutdown.*
- 4. Motor windings.*
- 5. Operation of Centrifugal pumps and DG sets.*
- 6. Chemical handling and solution preparation.*



7. *Handling of casual jobs in different departments.*
8. *Repair and maintenance of insulation works.*
9. *Operation and maintenance of electric jobs including sets at Mathura Refinery Nagar.*
10. *Providing office service.*

It may be mentioned here that the management is engaging contract labour in their canteens. No doubt the provision of canteen is a statutory obligation and is of perennial nature. However, it is observed that the management is not ordinarily carrying out such services through any regular workmen which could attract the conditions provided under Section 10(2) of the Contract Labour (Regulation & Abolition) Act, 1970. Such work is not being done ordinarily through any regular workman in the establishment. Therefore, this Committee does not recommend prohibition of employment of contract labour in the canteens of the Refinery.

As regards Marketing Division of the Indian Oil Corporation Limited, Mathura, it has been observed that the contract labour are engaged in below mentioned contract works:-

- a) *Bitumen Haulage/in the area of bitumen drum loading and unloading stacking yard :34 workers*
- b) *Haulage work/Admn. Building TIL & OCM.I:15 workers*
- c) *Housekeeping/Admn. Building OGM.II & Cold repair area: 12 workers*
- d) *LPG Haulage work (Loading/Unloading of LPG cylinders): 88 workers*
- e) *LPG Contract (Shifting, sealing, tagging of caps, 'O' ring fittings, segregation of 5/7 years clyd. Etc.):89 workers*

The workers are paid wages @ Rs.49/- per day with effect from 01.10.1994. These workers do not get any other benefits.

It has been observed that the management is not carrying out some or similar nature of jobs through regular workmen in the contract works mentioned at Serial No. (a) to (c).



As regards the contract works mentioned at Serial No. (d) & (e) above, while the contract labour is carrying out the work of loading/unloading of gas cylinders, placing them on conveyors etc., the regular employees are also working side by side with contract labour and are filling gas in the cylinders placed on the conveyor by the contract labour. This work is of perennial nature and considerable number of whole time workmen are employed.

51. The view of the Tripartite Committee, as well as the CACLB, and even of the Joint Chief Labour Commissioner (Central) was unanimous in that the system of contract labour in the Mathura Refinery must be abolished. The material placed before the respondent No. 1, were accepted and resulted in the issuance of the Impugned Notification. In effect, prior to the issuance of notification, ground reality was assessed, the parties were heard, there was application of mind and the order banning the contract labour at Mathura refinery was supported with reasons.
52. It cannot, by any stretch of imagination, be said that the requirements of Section 10 of the Act are not complied with by the respondent No. 1 before issuing the Impugned Notification. The Supreme Court, in *Baleshwar Rajbanshi v. Port Trust of Calcutta*, (2013) 4 SCC 258 in similar circumstances, took strong exception to a High Court interfering with a notification under Section 10 of the Act.
53. No material has been produced before this Court to discredit these findings of facts, which, this Court will in any event not engage in assessing, when exercising jurisdiction under Article 226. To the contrary, the silence of IOC on the aspect of job security for workmen makes it more than apparent that the findings of the Committee were rightly relied on by the respondent No. 1.



Non-consideration of socio-economic background leading to employment of contract workers

54. Though it was submitted that the respondent No. 1 has issued the Impugned Notification without understanding the socio-economic background leading to employment of contract workers, I find this submission to be unsustainable.
55. This exact contention-of the workers being landless unskilled persons who were engaged during the construction phase of the refinery, and who did not qualify to be absorbed-was raised by the IOC in its Objections/Comments dated 06.09.1995, addressed to the respondent No. 1 Ministry. Indeed, this was something that even the Ministry of Petroleum and Natural Gas had raised in a letter dated 08.09.1995 to the respondent No. 1 Ministry.
56. Indeed, similar is the position with the contention that the respondent No. 1 has failed to consider the fact that issuing the Impugned Notification will result in large-scale retrenchment. The petitioner had warned in its objections that it will be capable of making alternate arrangements for meeting its requirements if contract labour is abolished, implying retrenchment of contract workers.
57. There is no material placed before this Court to indicate that the representations of the petitioner, or the Ministry of Petroleum and Natural Gas were not considered by the respondent No. 1.
58. Indeed, this Court finds it inconceivable that communication received from another Ministry will be ignored, or not given its due weightage, by the respondent No. 1 Ministry.
59. As no material has been produced to indicate to the contrary, the mere *ipse dixit* of the petitioner cannot be the basis for such a conclusion being drawn



by the Court.

60. Certainly none that this Court, in exercise of its *certiorari* jurisdiction, can assess.

Breach of principles of natural justice

61. In this regard, the stand of the IOC was two-fold: (a) failure to notify and hear the IOC prior to deciding to issue the Impugned Notification, (b) failure to hear the IOC on the material that is considered for arriving at the Impugned Notification.

62. It is apparent, from the record, that: (a) IOC has been heard by the Tripartite Committee before issuing its Report, (b) IOC had occasion to file its objections to the report of the Tripartite Committee, (c) IOC was heard by the Joint Chief Labour Commissioner (Central) when he visited the Refinery on a fact-finding mission, (d) IOC was heard by the CACLB, before whom a representative of the IOC was present on 3.10.1997, (e) IOC was heard by the Joint Chief Labour Commissioner (Central) when he was assisting in negotiating between IOC and the workmen and (f) IOC had occasion to address letters to the respondent No. 1 Ministry on 20.9.1998 on the issue.

63. It is apparent from the above is that IOC was heard at appropriate stages and its views were considered by authorities before they tendered their recommendations. There is nothing on record to indicate that the representation/objection of the petitioner was ignored by the respondent no 1. There can be compliance of the requirements of natural justice of hearing when a right to represent is given and the decision is made on a



consideration thereof⁹.

64. The scheme of the Act does not require the respondent No. 1 to necessarily hear the petitioner before issuing the Impugned Notification. As is apparent, the scheme of the Act requires the respondent No. 1 to consult with the Central Board, have regard to conditions of work and benefits and other relevant factors set out therein.
65. The reports and recommendations that the respondent No. 1 considered deal with (a) the views of the Central Board, i.e., the CACLB, as well (b) facts and views on conditions of work and benefits and other relevant factors as set out in Section 10 of the Act. A view leading to the decision was drawn up, after the petitioner was heard at every juncture, despite there being no such requirement under the Act.
66. The petitioner had occasion to place its stand on both the above factors by way of its representation/objection, notwithstanding the fact that it was heard by the various authorities before they tendered their respective views/report. Even before this Court, the petitioner has not been able to demonstrate that any prejudice was occasioned by its not being heard by the respondent No. 1.
67. In view of the above, the inexorable conclusion is that the principles of natural justice were duly complied with before the Impugned Notification was issued.
68. The petition deserves to be and is dismissed, and the Impugned Notification is upheld.

⁹ Carborundum Universal Ltd. v. Central Board of Direct Taxes, 1989 Supp (2) SCC 462

**CONT.CAS(C) 244/2000 & CM APPL. 131/2001**

69. In view of the above, list this matter before the Roster Bench on 24.08.2023 for further hearing.

NAJMI WAZIRI, J.

JULY 12, 2023

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