

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 5494 of 2022

MECON Limited
Vs
Union of India & Ors.

For the Petitioner : Mr. Soumya Majumder, Sr. Adv.
Mr. Barnamoy Basak.

For the Respondent Nos. 1 to 3 : Mr. Indrajeet Dasgupta.

Judgment reserved on : 28.11.2025

Judgment delivered on : 20.01.2026

Shampa Dutt (Paul), J.:

1. The writ petition has been preferred praying for direction upon the respondent nos. 3 and 4 authorities to revoke and withdraw the communication dated 10th February, 2022 and 16th March, 2022 and further directions to issue licence to such sub-contractors engaged by the petitioner, who employ or will employ 20 or more workmen/contract labour in the premises of the establishment in relation to Steel Authority of India Limited, Durgapur Steel Plant and permit Durgapur Steel Plant to engage contract labour of such contractors/sub-contractors.

2. The petitioner's case is that the petitioner company entered into a contract with Steel Authority of India Limited (hereinafter referred to as "SAIL") for work of installation of 4th Stove of Blast Furnace No. 04 at the Durgapur Steel Plant. The contract expressly permits the petitioner to engage sub-contractors with the knowledge and consent of the respondent no. 4. The nature of work entails several types of civil work, mechanical, erection and electrical work. The petitioner company being an engineering consultancy establishment can only supervise such work which will be actually carried out by the sub-contractors engaged at the establishment of SAIL.
3. Thus the petitioner in turn had awarded contract to other contractors for execution of the project and such sub-contractors may be employing 20 or more workmen, or some of them may employ even less than 20 workmen.
4. The petitioner company as a contractor has not employed even a single workman in the establishment of SAIL at Durgapur Steel Plant. Therefore, it is stated that the petitioner company, even though a contractor in relation to the establishment of SAIL, is not entitled and does not qualify to obtain a licence under Section 12 of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as "the said Act of 1970").
5. Petitioner further states that the respondent no. 4 has forwarded to the petitioner a copy of a letter dated 10th February, 2022 issued by the respondent no. 3 to the respondent no. 4 wherefrom, it appears that the respondent no. 3 had informed the respondent no. 4 that **the petitioner**

herein should obtain labour licence covering the manpower of all sub-contractors and the sub-contractor should also obtain labour licence accordingly.

6. The petitioner had made representation to the respondent no. 4 on 19th February, 2022 in respect of the aforesaid letter dated 10th February, 2022 enclosing copies of clarification issued by the Ministry of Steel and Mines on **22nd July, 1983**, whereby it was specifically clarified that the petitioner was not required to be registered as contractor under the said Act of 1970. The respondent No. 4 has responded to such letter dated 19th February, 2022 by an email dated 25.02.2022.
7. The petitioner had made another communication dated 10th March, 2022 to the respondent no. 4 clarifying the issue.
8. On 16th March, 2022, the respondent no. 2 had issued a communication to the petitioner rejecting the contention of the petitioner and purportedly clarifying that unless the main contractor is licensed, the existence of sub-contractors cannot be legally established, and that **the sub-contractors are not liable to the principal employer.**
9. In view of the stand taken by the authority under the Act of 1970, the petitioner has applied for certificate from principal employer by letter dated 18th March, 2022 and on 19.03.2022, a certificate has been issued by the principal employer. The petitioner has however, not applied for issuance of licence before the licensing authority since the petitioner is not eligible to be licensed under the Act.

- 10.** The petitioner states that SAIL is the principal employer in relation to the establishment and it has obtained Certificate of Registration in terms of Section 7 of the said Act of 1970 from the Registering Officer.
- 11.** The petitioner further states that application for licence by a contractor has to be made in terms of Rule 21 of the Contract Labour (Regulation and Abolition) Central Rules, 1971 read with Form No. II (earlier form IV) whereunder, amongst others, particulars of establishment where contract labour is to be employed, and the particulars of contract labour are to be mentioned.
- 12.** Such application for grant of licence is to be accompanied by a certificate of a principal employer in Form No. III (earlier form V) to the effect that the applicant contractor has been employed by the principal employer as a contractor in relation to the establishment of the principal employer and that the principal employer undertakes to be bound by all the provisions of the Act and the Rules made thereunder insofar as the provisions are applicable to the principal employer in respect of the employment of contract labour by the applicant contractor.
- 13.** It is further stated that the licensing authority of the jurisdictional area has already issued contract licence to one sub contractor in relation to the establishment. The sub contractor for whom licence has been withheld by the concerned authority is M/s. Mahalakshmi Udyog. The licensing authority has already issued licence in favour of M/s. Edifice Engineering. The other sub-contractors have been told that they will not be issued certificates by the principal employer in view of the notices dated 10th February 2022 and 16th March 2022.

14. The petitioner states that by reason of the communication dated 10th February, 2022 and 16th March, 2022, the respondent no. 4 will not be in a position to issue gate passes to the employees of the sub contractors and in fact no licence will be granted to any sub contractor intending to execute the work of the project at the establishment of the respondent no. 4. A project of national importance is therefore likely to suffer.

15. It is further stated that the petitioner has not employed any contract labour at the establishment of the respondent no. 4. It is therefore not a contractor which is required to obtain licence under the said Act of 1970. Within the meaning of the said Act of 1970, a sub-contractor is also a contractor and such contractors/sub-contractors, which expression has been interchangeably used in the statute are required to obtain labour licence, if they employ 20 or more workmen in the establishment of the respondent no. 4.

16. The respondents in their affidavit-in-opposition have stated as follows:-

The respondents deny the statement that the contract expressly permits the petitioner to engage sub-contractors. In fact, Article 7 of the Contract restricts the use of Sub-contractors without the approval of the Employer (Respondent No. 4). The said Article specifically states that **such approval shall not relieve the Contractor from any of its obligations, the duties or responsibilities under the contract.** The respondents deny the statement that the petitioner company being an engineering consultancy establishment can only supervise the work

which will actually be carried out by the sub-contractors. It is further stated that from the Contract as well as the Work Order it will be evident that the obligation to carry out the work of installation of 4th Stove of Blast Furnace No. 04 at Durgapur Steel Plant and the contractual obligations as per the agreement are not supervisory in nature.

17. The respondents further state that the petitioner has engaged sub-contractors to execute the contract work in the establishment of the principal employer. The sub-contractors engage contract labour who are working in the establishment of the principal employer. But **there is no contractual obligation between the principal employer and the sub-contractor of the petitioner/contractor.** Therefore, the petitioner/contractor is required to obtain licence in respect of all the contract labour engaged by them as well as engaged by their sub-contractors to establish relationship between principal employer and contract labour for enforcement of labour laws in respect of these poor unorganized contract labour. That engagement of subcontractors by the contractor resulting in distribution of the number of contract workers across several subcontractors does not and cannot extricate the contractor from the application of the Act.
18. The respondents further state that the petitioner has decided to apply for licence vide their letter no. 11.51.kp027U/11/03 dated 31.03.2022, which has already been issued to the contractor (Petitioner).
19. Licence in respect of sub-contractor namely M/s Mahalaxmi Udyog has also been granted on 18.04.2022.

20. That proper licensing of the contractor of sub-contractors is mandatory as per statute, and as the petitioner as contractor as per contract document engaged the contractor labour through sub-contractors, they have to obtain licence if the total number of contract labour is more than 20.
21. The respondents rely upon the judgment in **Gammon India Ltd. v. Union of India (1974) 1 SCC 596**, wherein the Supreme Court held as follows:-

“17. A contractor under the Act in relation to an establishment is a person who undertakes to produce a given result for the establishment through contract labour. A contractor is a person who supplies contract labour for any work of the establishment. The entire context shows that the work of the establishment is the work site. The work site is an establishment and belongs to the principal employer who has a right of supervision and control, who is the owner of the premises and the end product and from whom the contract labour receives its payment either directly or through a contractor. It is the place where the establishment intends to carry on its business, trade, industry, manufacture, occupation after the construction is complete.

18. According to the petitioners, the contract labour employed by their sub-contractors will be within the provision of the Act but when the petitioners will be engaged by a trade, or industry, with the petitioners will not be a contractor and the workmen directly employed by the petitioners will not be contract labour. This is a strange and anomalous submission. The Act must be construed as a whole. The Act must apply to contract labour in

connection with the work of an establishment when the contract labour is hired by the contractor or by the sub-contractor of the contractor."

22. As such it is submitted that since the petitioner is engaged as "contractor" by the respondent no. 4, the petitioner has to obtain licence if the total number of contract labour engaged by them directly and/or through sub-contractor is 20 or more.

23. The respondent relies upon Section 1 (4) of the said Act, which clearly states that, *"It applies to:-*

a) to every establishment in which twenty or more workmen are employed or were employed on any day of the preceding twelve months as contract labour,

(b) to every contractor who employs or who employed on any day of the preceding twelve months twenty or more workmen."

24. It is stated that Clause (a) clearly makes it applicable to an establishment in which twenty or more workmen are employed on any day of the preceding twelve months as contract labour. The petitioner is trying to make out a case that clause (b) above is an exemption in its favour since the petitioner as a contractor has not engaged more than 20 workmen in the said establishment. Such interpretation of the petitioner is obviously incorrect since the petitioner would come within the scope of clause 4 if it has on any day of the preceding twelve months employed twenty or more workmen.

25. The respondents further state that the interpretation of applicability of the act, as contended by the petitioner, by looking only at Clause (b) Sub-section (4) of the said Act and ignoring all other provisions of the

said Act cannot be accepted in as much as, **such narrow interpretation would allow all contractors to engage less than 20 workers and engage sub-contractors, who would in turn again engage less than 20 workers without obtaining licence, thereby frustrating the whole purpose of the act. The rejection of the writ petition is prayed for.**

26. Notes of argument have been filed by both sides.

27. The petitioner's argument in this case is :

- i.** The contract between SAIL and Mecon Limited permits the contractor to engage sub-contractors.
- ii.** The office of the Labour Commissioner instructed Mecon Limited to obtain labour licence under the Contract Labour (Regulation & Abolition) Act, 1970.
- iii.** Simultaneously the Government had granted licence to another sub-contractor.
- iv.** Objection of the petitioner is founded on the Ministry's clarification of 1983 wherein the Ministry has clarified in similar circumstances at hand that sub-contractors are to be licensed and not the contractor.
- v.** As a contractor, the petitioner cannot obtain licence unless it employs 20 or more persons in the establishment, where the work is being executed (Section 1(4)(b) of the Contract Labour (Regulation & Abolition) Act, 1970).
- vi.** Section 2(1)(c) of the Act of 1970, while defining "contractor" includes sub-contractor, therefore, for the purpose of the Contract

Labour (Regulation & Abolition) Act, 1970, a sub-contractor is also to **be reckoned as a contractor**, and therefore, required to have a licence under Section 7 thereof.

- vii.** The liability of the contractor to pay wages for contract labour employed by it and the statutory duties of the contractor to provide facilities and conditions of work for the contract labourers cannot be split into two tiers, namely, the contractor and the sub-contractor. The object of the statute is to bind the licensee contractor into statutory obligations as regards the conditions of work and benefits of the contract labourers. This is possible only in a direct master servant relationship. **In this case, the relationship exists between the sub-contractors and the contract labourers.**
- viii.** The object of the Contract Labour (Regulation & Abolition) Act, 1970 is inter-alia, to regulate the employment of contract labour in certain establishments. The employment of contract labour is done by the sub-contractors in the instant case. **Therefore, all statutory duties and responsibilities dischargeable by the contractor, in the given case would mean, that of the sub-contractors.**
- ix.** **The Act does not envisage three different tiers (a) principal employer, (b) contractor and (c) sub-contractor, for the purpose of certain conditions of work and facilities of contract labourers.**

- x.** To eradicate such doubt, the legislators thought it fit that the definition of "contractor" would include a sub-contractor. Thus, there is no concept of a contractor and a sub-contractor existing simultaneously in the premises of the principal employer, for the purpose of licensing. The condition for renewal of licence by the contractor under Rule 25 of the Contract Labour (Regulation and Abolition) Central Rules, 1971 gives support to the mandate of the principal Act in this respect.
- xi.** When the principal employer takes registration under Section 12 of the Contract Labour (Regulation & Abolition) Act, 1970, it only mentions about the deployment of contractors (which includes sub-contractors).
- xii.** In the given case, the Government had issued labour licence to the sub-contractor as well.
- xiii. **Petitioner cannot be reckoned as a ‘contractor’ since it does not employ 20 employees in relation to the establishment of the project work.****
- xiv.** It is argued that the judgment in ***Gammon India Ltd. (Supra)*** (**Para 10 & 11**) relied upon by the respondents is not applicable in the present case. Wherein the respondents also relying upon the same judgment have stressed on **Para 17 and 18** therein:-

“.....This is a strange and anomalous submission. The Act must be construed as a whole. The Act must apply to contract labour in connection with the work of an establishment when the contract labour is hired by the contractor or by the sub-contractor of the contractor.”

28. The respondents in their written notes have reiterated their statements in their affidavit-in-opposition.

29. On hearing the parties and considering the pleadings on record the following is evident:-

- a) Article 7.1 in the '**contract agreement**' between the respondent no. 4 and the petitioner provides as follows:-

"7.1. Sub-contracting

*The Contractor shall not sub-contract the work either in full or in part without prior approval of Employer and shall engage only those Sub-Contractors who are approved by the Employer. **Such approval by the Employer for any of the Sub-Contractors/Vendors shall not relieve the Contractor from any of its obligations, duties or responsibilities under the Contract.**"*

- b) Vide the letter under challenge dated 10.02.2022 the Assistant Labour Commissioner (Central) Raniganj at Durgapur advised the respondent no. 4 as follows :-

"it is very clear that M/s. Mecon Ltd. is the contractor and M/s Edifice Engineering Enterprise Pvt. Ltd. is the sub-contractor who are working in your establishment. The provision of the act and rule are much applicable on them. The Mecon Ltd. should obtain labour licence covering the manpower of all sub-contractors engaged by them. The sub-contractor should also obtain labour licence accordingly."

- c) The petitioner herein relies upon the document at page 104 wherein the petitioner had been informed by the Department of Labour, Govt. of India about the clarification regarding the definitions of the

term “Contractor” under the provisions of the Contract Labour (R & A) Act, 1970. The relevant extract is as follows :-

*“1. **MECON would not be a contractor** as the entire work has been sub-let and no worker is stated to have been employed by it.*

*2. Accordingly, **no licence is required to be taken by MECON.**”*

30. It has also been clarified therein that the **Steel Plant is the “Principal Employer”**.

31. The petitioner’s contention is that it does not employ 20 or more persons in the establishment and as the Sub-contractors engaged by them have employed the contractual workers herein, the petitioner claims that the relationship of Employer-Employee is between the Sub-Contractor and its’ contract workers and, as such, the petitioner does not require to take any licence.

32. The relevant provisions in the present case under the Contract Labour (Regulation and Abolition) Act 1970 are as follows :-

Section 2(b) of the Contract Labour (Regulation and Abolition) Act, 1970, lays down:-

*“**Section 2(b)** a workman shall be deemed to be employed as "contract labour" in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer.”*

Section 2(c) of the Contract Labour (Regulation and Abolition) Act, 1970, lays down:-

*“**Section 2(c)** "contractor", in relation to an establishment, means a person who undertakes to produce a given result for the establishment, other than*

a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor.”

33. Thus it is clear that a “Sub-Contractor” is included in the definition of “Contractor”.

34. Provision for **Sub-Contracting** has also been provided for Article 7 of the Agreement.

“7.1. Sub-contracting

*The Contractor shall not sub-contract the work either in full or in part without prior approval of Employer and shall engage only those Sub-Contractors who are approved by the Employer. **Such approval by the Employer for any of the Sub-Contractors/Vendors shall not relieve the Contractor from any of its obligations, duties or responsibilities under the Contract.”***

35. It appears that the terms and conditions in the contract, between the respondent no. 4 and the petitioner herein, puts no responsibility upon the sub contractors who are engaged by the contractor/petitioner, herein to provide contract workers, who are employed to carry out the work for the principal Employer, who engaged the contractor/petitioner as per the agreement to provide the same.

36. The sub-Contractors in this case have been engaged by the petitioner/contractor for carrying out different work/projects for the principal Employer.

37. It is the contention of the petitioner that as he does not employ more than 20 workers, he is not liable to take licence under the Act of 1970.

38. The contention of the petitioner is that the Sub-Contractors herein being included in the definition of the word “Contractor”, are responsible and liable for the Contract workers, having engaged them and the petitioner even though a contractor as per the agreement has no responsibility, even though the agreement between the petitioner and the respondent no. 4 makes it clear that the **petitioner is the Contractor** and the **respondent no. 4 is the principal Employer**.
39. Thus from the said facts it is apparent that the principal Employer recognizes only the “contractor” with whom he has an agreement and none else and as such the responsibility of the Sub-Contractors along with their contract workers becomes the responsibility of the Contractor/petitioner herein, because the said contract workers were engaged for the sole purpose of **doing the work of the principal employer through a contractor/petitioner via a Sub-Contractor**.
40. **Herein, the petitioner/contractor includes its Sub-Contractors and their responsibility becomes a joint responsibility, but finally the liability rests with the principal employer herein, who is bound by an agreement of contract with the petitioner/contractor under Section 21(4) of the Central Labour (R & A) Act, 1970.**
41. The petitioner herein claims exemption relying upon the letter dated 22nd July, 1983, wherein the petitioner was held to be “not a Contractor” as the entire work was ‘sublet’ and no worker was engaged by it and as such no licence was required to be taken by the petitioner.
42. Here the contents of the letter under challenge dated 16.03.2022 becomes relevant and is as follows:-

“After going through the above letter, it is observed that Mecon Limited is the main contractor of Durgapur Steel Plant, SAIL who in turn intended to offload the work to their sub-contractors. Being the main contractor, the Mecon Limited has to obtain labour licence and thereafter sub-contractors engaged by the main contractor have to be licensed under the C.L (R&A) Act, 1970.

It is also to clarify that unless the main contractor is licensed, the existence of sub-contractors cannot be legally established. The sub-contractors are not liable to response their legal obligation to the Principal Employer since they are not directly engaged by the Principal Employer. In case, the sub-contractors violate any provision of C.L. (R&A) ACT, 1970 and other labour laws, the enforcement agency cannot force the Principal Employer to insist the sub-contractors to comply with the provisions laid down under various labour laws.

*In this connection, it is pertinent to mention here that as per the Departmental Manual of Chief Labour Commissioner (Central), New Delhi wherein at point No. 47, it is clearly stated that **“the contractor and sub-contractors are contractors in relation to the Principal Employer’s establishment.** The main contractor as well as sub-contractor have to be licenced separately when both the above are contractually obliged with the Principal Employer to produce given results separately as per CLC’s instruction 12/77 dated 28.03.1977. The decision of Bombay High Court (Nagpur) in the case of M/s. Gammon India Ltd. vrs. Assistant Labour Commissioner, Nagpur (1976 Labour IC 245) supports the above elaboration.*

The matter of obtaining license by the main contractor has also been discussed with the Chief Labour

*Commissioner (Central), New Delhi who has opined that the main contractor has to obtain license for entire work under a single tender of contract and for entire work force to be engaged by its sub-contractors. **Main contractor cannot get away with their legal obligation by subletting the work to the sub-contractor(s).***

In view of the above circumstances, it is hereby advised to obtain labour license in respect of Mecon Limited as main contractor and ensure that no contractor should be engaged without obtaining the labour license to avoid any legal complicity.

Yours faithfully,

(M.K. Dhurua)

Dy. Chief Labour Commissioner (Central), Asansol

43. In the present case there is admittedly a **Contract Agreement** between the **petitioner** and the respondent no. 4, wherein the petitioner is referred to as the **“Contractor”** and the respondent no. 4 is referred to as **“Employer”**.

44. As such the clarification by the Department of Labour is prima facie not in accordance with law. Clarification at no. 2 being based on clarification no. 1 is also thus not in accordance with law.

45. Thus, in this case:-

- (i)** The petitioner is the “Contractor” as per the agreement between the principal employer and the contractor/petitioner.
- (ii)** The contractor includes the sub-contractors and are to be treated as one, under the same contract as per Section 2(i)(c) of the Contract Labour Act, 1970.

(iii) The number of contract workers/employees through the sub-contractors are to be **treated as the workers of the contractor** and when/as in this case, exceeds 20 (twenty) in number, **the contractor along with its sub-contractors are to obtain licence under the Act, 1970.**

(iv) As per Section 1(4) of the Act, the petitioner/contractor cannot avoid its liability by engaging sub-contractors to shift its' liability, as the agreement is between the principal employer and the contractor (petitioner herein) and not the sub-contractors, who are only amenable to the contractor, who in turn is bound by the agreement with the principal employer.

46. Thus, the letters dated 10th February, 2022 issued by the Respondent no. 3, Assistant Labour Commissioner (Central), Raniganj, Durgapur and 16th March, 2022 issued by the Respondent no. 2, Deputy Chief Labour Commissioner (Central), Asansol, being in accordance with law, require no interference.

47. The writ petition is thus dismissed.

48. Connected application, if any, stands disposed of.

49. Interim order, if any, stands vacated.

50. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties expeditiously after due compliance.

(Shampa Dutt (Paul), J.)