

Sankar Mukherjee And Ors vs Union Of India And Ors on 16 November, 1989

Equivalent citations: 1990 AIR 532, 1989 SCR SUPL. (2) 182, AIR 1990 SUPREME COURT 532, (1990) 2 LABLJ 443, (1989) 4 JT 330 (SC), (1989) 2 LAB LN 953, (1990) 1 UPLBEC 533, (1990) 1 SERVLR 154, (1990) 1 SERVLJ 151, (1990) 76 FJR 64, (1990) 1 CURLR 31, 1990 SCC (SUPP) 668, (1990) 1 SCJ 559, (1990) 60 FACLR 20, 1991 SCC (L&S) 456

Author: Kuldip Singh

Bench: Kuldip Singh

PETITIONER:

SANKAR MUKHERJEE AND ORS.

Vs.

RESPONDENT:

UNION OF INDIA AND ORS.

DATE OF JUDGMENT 16/11/1989

BENCH:

KULDIP SINGH (J)

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KULDIP SINGH (J)

VENKATACHALLIAH, M.N. (J)

CITATION:

1990 AIR 532	1989 SCR Supl. (2) 182
1990 SCC Supl. 668	JT 1989 (4) 330
1989 SCALE (2) 1119	

ACT:

Contract Labour (Regulation and Abolition) Act, 1970: s. 10-Notification dated February 9, 1980 prohibiting contract labour in establishments of M/s Indian Iron & Steel Co. Ltd.--Exclusion of loaders in brick department--Validity of--Whether violative of Article 14 of the Constitution.

HEADNOTE:

Section 10(1) of the Contract Labour (Regulation and Abolition) Act, 1970 empowered the appropriate Government to prohibit employment of contract labour in any process,

operation or other work in any establishment.

The Government of West Bengal issued a notification on February 9, 1980 under s. 10(1) of the Act prohibiting the employment of contract labour in certain departments in the establishments of M/s Indian Iron and Steel Company Ltd. Paragraph 9 of the Schedule thereto listing the departments, included cleaning and stacking and other allied jobs in the brick department, except loading and unloading of bricks from wagons and trucks.

In the writ petition, the affected workmen assailed this action of the State Government in excluding them from the beneficial purview of the notification as arbitrary, discriminatory and violative of Article 14 of the Constitution. It was contended for them that the job of loading and unloading was not peculiar to the brick department alone, that the work of stacking was directly dependent on the loading and unloading of bricks, and that the two jobs being allied and incidental the workmen holding these jobs could not be treated differently. For the respondents, it was contended that the job of loading and unloading of bricks in the brick department was not of perennial nature, the supply of bricks being intermittent depending upon the requirement, availability of bricks as also the availability of the wagons and trucks.

Allowing the writ petition,

HELD: 1.1 The Contract Labour (Regulation and Abolition) Act is

183

an important piece of social legislation for the welfare of the labourers and has to be liberally construed. [186D]

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, referred to.

1.2 In the instant case, it was not denied that the bricks handled by the brick department were used in furnaces of the company as refractory. Therefore, the work done by the brick department including loading and unloading of bricks was incidental to the industry carried on by the company. It was also not denied that the petitioners were, employed as contract labour by the company for the last 15/20 years. There was, therefore, no justification to treat the petitioners differently and deny them the right of regular appointment. [186E-F]

1.3 The purchase of bricks, transportation to the factory, unloading, stacking and use in the furnace were the jobs in one continuing process. It could not thus be said that all these jobs were not incidental or allied to each other. That being so, all the workmen performing these jobs were to be treated alike. On the same reasoning it could not be said that the loader's job was not, and other jobs in the brick department were, of perennial nature. There was, therefore, no justification for excluding the job of loading and un-

loading of bricks from wagons and trucks from the purview of the notification dated February 9, 1980. [187G-188A]

2. The words "except loading and unloading of bricks from wagons and trucks" in paragraph 9 of the Schedule to the notification are struck down being discriminatory and as such violative of Article 14 of the Constitution of India. [188A-B]

[The petitioners and co-workers to be treated at par with effect from the date of notification with those who were doing the job of cleaning and stacking in the brick department, and such of them who have been retrenched during the pendency of the writ petition to be put back into service with all back wages and consequential benefits.] [188B-C]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition (Civil) No. 2 123 of 1982.

(Under Article 32 of the Constitution of India).

R.K. Garg and H.K. Puri for the Petitioners. D.P. Mukherjee, G.S. Chatterjee, Ms. C.K. Sucharita, Ms. A. Subhashini and S.R. Grover for the Respondents. The Judgment of the Court was delivered by KULDIP SINGH, J. The Parliament enacted the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter called the Act) with the object of abolition of contract labour in respect of such categories as may be notified by the Appropriate Government in the light of criteria laid down in the Act and also regulating the service conditions of contract labour where abolition is not possible. Section 10 of the Act which is relevant is as under:

"Prohibition of employment of contract labour--

(1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board prohibit, by noti-

fication in the Official Gazette, employment of contract labour in any process; operation or other work in any establishment.

(2) Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors such as--

(a) Whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment;

(b) Whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, business, manufacture or occupation carried on in that establishment;

(c) Whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;

(d) Whether it is sufficient to employ considerable number of whole time workmen.

Explanation--If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final." In exercise of the powers under Section 10(1) of the Act, the Government of West Bengal issued a notification dated February 9, 1980 prohibiting the employment of contract labour in 16 departments covering 65 jobs in the establishments of M/s. Indian Iron and Steel Co. Ltd. (hereinafter called the company) situated at Burnpur in the State of West Bengal. The list of the departments and the jobs is given in the schedule attached to the notification and paragraph 9 therein, relating to the Brick Department, is as under:

"Cleaning and stacking and other allied jobs except loading and unloading of bricks from wagons and trucks."

It is thus obvious that the job of loading and unloading of bricks from wagons and trucks in the Brick Department has been specifically excluded from the beneficial purview of the notification. The said action of the State Government has been challenged in this writ petition under Article 32 of the Constitution of India by the affected workmen on the ground that the petitioners have been subjected to hostile discrimination so much so that the workmen doing the same job in other departments and allied jobs in the same department have been rescued from the archaic system of contract labour whereas the petitioners have been singled-out and left to be grinded under the pernicious effect of this primitive system. The action according to the petitioners is arbitrary, discriminatory and is violative of Article 14 of the Constitution of India.

Mr. R.K. Garg, learned counsel appearing for the petitioners has contended that the job of loading and unloading is not peculiar to the Brick Department rather such jobs are being operated in the stores (iron and steel), Traffic (steel) and Coke ovens Departments. The benefit of notification dated February 9, 1980 has been extended to the loaders in all these departments. He further argued that the work of stacking is directly dependent on the loading and unloading of bricks. The two jobs according to him are allied and incidental and as such the workmen holding these jobs cannot be treated differently.

The learned counsel for the respondents on the other hand has argued that the job of loading and unloading of bricks in the Brick Department is not of perennial nature, the supply of bricks is intermitent depending upon the requirement, availability of bricks as also the availability of the wagons and trucks. It is further submitted that the decision of the appropriate Government to the effect that the job is not of perennial nature is final under the Act.

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.

It is not denied that the bricks handled by the Brick Department are used in furnaces of the company as refractory. Therefore the work done by the Brick Department including loading and unloading of bricks is incidental to the industry carried on by the company. It is also not denied that the petitioners are employed as contract labour by the company for the last 15/20 years. Then where is the justification to treat the petitioners differently and deny them the right of regular appointment?

We may examine the case from another aspect. The petitioners have specifically averred in paras 7 and 11 of the writ petition that the job of loading and unloading of bricks is allied and incidental to the job of stacking of bricks. Para 7 is as under:

"It is submitted that loading and unloading of bricks from wagons and trucks is an essential feature of; and/or a job allied and/or incidental to the job of stacking of bricks. It is further submitted that the job of loading and unloading of bricks from wagons and trucks cannot be separated from the job of stacking and other allied jobs in the case of the petitioners."

Further para 11 is as under:

"It may be stated here that 'stacking' as such was never the job of contract labour. The job of stacking and the job of loading and unloading of bricks are job ancillary, including and/or supplemented to each other. It may be made clear that the job of stacking and/or loading and unloading of bricks has to be done by competent and technical hands. The bricks used in the furnace are a very costly and technical material requiring perfect dimensions and precision. These bricks are also imported from outside India. Such bricks are manufactured indigenously too, but depending upon the consumption and demand, the bricks are purchased locally and/or imported from outside India. Such a costly material has to be handled by skilled workmen. The job of loading and unloading of such bricks their stacking is done by skilled workmen and this work cannot be done by casual labour which may be engaged or disengaged as contract labour depending upon the sweet will of the management. It is submitted that loading and unloading and stacking of bricks are jobs which are supplementary to each other carried out by the same set of workmen and is

essential for the day-to-day production. The petitioners submit that it is not possible to engage one set of workmen for stacking and another set of workmen for loading and unloading of bricks."

In the counter affidavit on behalf of the company filed by its Dy. Chief Personnel Manager, there is no specific denial to the above averments. Though it has been stated that the petitioners are not doing the job of stacking the bricks, there is no denial nor any averment or material on the record to show that the job of loading and unloading of bricks is not incidental or allied to the stacking of the bricks. Even otherwise we fail to understand how the stacking of bricks is a job which is not incidental to loading and unloading. The purchase of bricks, transportation to the factory, unloading, stacking and use in the furnace are the jobs in one continuing process and it is difficult to accept that these jobs are not incidental or allied to each other. That being so all the workmen performing these jobs are to be treated alike. On the same reasoning it cannot be said that the loader's job is not, and other jobs in the Brick Department are, of perennial nature. In any case there is no material or basis to show that the job of loading and unloading of bricks is not of perennial nature.

We, therefore, see no justification for excluding the job of loading and unloading of bricks from wagons and trucks from the purview of the notification dated February 9, 1980. We allow the writ petition and strike down the words "except loading and unloading of bricks from wagons and trucks" in paragraph 9 of the said notification issued by Government of West Bengal being discriminatory and as such violative of Article 14 of the Constitution of India. We direct that the petitioners and other workers doing the job of loading and unloading of bricks from wagons and trucks in the Brick Deptt. be treated at par, with effect from the date of notification, with those who are doing the job of cleaning and stacking in the said department. It is further directed that the workmen doing the job of loading and unloading who have been retrenched during the pendency of the writ petition be put back into service with all back wages and consequential benefits. There shall be no order as to costs.

P.S.S.

Petition allowed.