

Catering Cleaners Of Southern Railway vs Union Of India (Uoi) And Anr. on 4 February, 1987

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Bench: O. Chinnappa Reddy, V. Khalid

JUDGMENT

O. Chinnappa Reddy, J.

1. The petitioners describe themselves as 'catering cleaners of Southern Railways represented by V. China Thambi and M.Mohan of the Vegetarian Refreshment Room, Central Station, Madras'. The petition is claimed to be filed in a representative capacity on behalf of about three hundred and odd catering cleaners working in the catering establishments in various railway junctions of the Southern Railway and in the pantry cars of long distance trains running under the control of the Southern Railway. Since a long time they have been agitating for the abolition of the Contract system under which they are employed to do cleaning work in the catering establishments and the pantry cars and for their absorption as regular employees of the principal employer, namely, the Southern Railway. They complain that they are not even paid minimum wages. They are paid a pittance averaging from Rs. 2 00/- to Rs. 2.50/- per day. Although the contract system has been abolished in almost all the other Railways, the Southern Railway persists in employing contract labour for cleaning its catering establishments and pantry cars. As the several representations made by them to the authorities concerned proved fruitless they have been forced to seek the intervention of this Court under Article 32 of the Constitution to direct the respondents to exercise their powers under Section 10(1) of the Contract Labour (Regulation and Abolition) Act 1970 and to abolish the contract system in respect of catering cleaners in the Southern Railway and further to direct the respondents to regularise the services of the existing catering cleaners employed in the catering establishments at various junctions and in the "pantry care of long distance trains and to absorb them as employees of the catering establishments of the Southern Railway. They also seek a

direction to extend to them the service benefits presently available to other categories of employees in the catering establishments of the Railways.

2. We issued notice to the respondents on January 21, 1986. After some considerable time the writ petition was listed before us on August 5, 1986. We were informed at that time that in almost all the railways except the Southern Railway, the contract labour system had been abolished in regard to catering cleaners. We wondered why the Southern Railway could not also fall in line and directed the Southern Railway Administration to consider whether the contract labour system could not be abolished in the Southern Railway also and whether the services of the catering cleaners could not be suitably regularised. The learned Counsel for the workmen complained before us that the workmen were not even being paid the minimum wages. As the Railway Administration was the principal employer, we directed the Railway Administration to take immediate steps to see that the minimum wages were paid to the catering cleaners. As the interim order of the Court regarding payment of wages was not complied with, the petition was adjourned from time to time. On April 19, 1986 we also made a further order that the Southern Railway Administration should not take any further action pursuant to the tenders invited by them for contract labour. On December 4, 1986 the Additional Solicitor General who appeared on behalf of the Railway Administration undertook to deposit the arrears due from August upto date with the Deputy Labour Commissioner, Madras. We also directed the learned Counsel for the employees to file a list of the employees entitled to be paid wages. We directed that the amount should be paid after verification by the Deputy Chief Superintendent, Southern Railway. We were told that there is some dispute about the names of the employees. We now direct that the Deputy Labour Commissioner, Madras will enquire into the question as to who were working as catering cleaners in the Madras Central Station, and also to determine the wages due to them from August, 1986 upto date giving credit to any amount that may have been paid to them. On such determination, the Railway Administration shall deposit the amount with the Deputy Labour Commissioner who shall pay over the same to the employees. The determination by the Deputy Labour Commissioner is directed to be completed before February 28, 1987 and the deposit by the Administration is directed to be made before March 15, 1987. This part of the order covers only the catering cleaners employed in the Central Station, Madras.

3. In answer to the writ petition the Railway Administration has adopted a somewhat unhelpful attitude. According to the Administration it has not been found to be possible to abolish the contract labour system because the nature of the cleaning work in the catering units of the Southern Railway was fluctuating and intermittent. The contract labour system is followed not only in the Southern Railway but also in the South Central Railway and the South Eastern Railway. They claim that any departmental units not working profitably could be handed over to a private licensee and this was the alternative that was adopted by the Southern Railway in the case of catering cleaners. Experience showed that it was difficult to extract work from catering cleaners if they were engaged on a regular basis by the railway and it was not possible to supervise their work effectively. According to them, all pros and cons were examined before entrusting the cleaning work to private contractors. The Southern Railway had a moral responsibility to the public to ensure satisfactory service and that was the reason why the work was entrusted to a private agency which was considered the most suitable method of doing the work.

4. We notice that the Railway Administration has not chosen to support its statements by any facts and figures but has contented itself by making vague and general statements. No attempt has been made to explain why what has been done in most of the other railways cannot be and should not be done in the Southern Railway too. It is not explained why cleaning work is considered to be intermittent and what difficulty exists in supervising the work. The Railway Administration wants to suggest that the units are working at a loss without expressly saying so. The suggestion is implicit in the statement that departmental units not working profitably could always be handed over to private licencees. We are afraid that everything that has been said by the Administration of the Southern Railway against abolishing the contract labour system and regularising the services of the catering cleaners has been contradicted by the Parliamentary Committee of Petitions under the Chairmanship of Shri K.P. Tewari who went into the question in some depth. The Committee was submitting its report on the complaint of Shri Samar Mukherji, a member of Parliament regarding the grievances of the railway catering workers working under contractors in the Southern Railway. The Committee first dealt with the grievances of the Bearers and Servers. In paragraph 2.19 of their report the Committee noticed that the railway catering department was earning a profit of about Rs. 50 lakhs per annum. In paragraph 2.21 the Committee dealt with the grievances of the catering cleaners. We think that it will be useful to extract here the whole of paragraph 2.21 of the report. It is as follows:

It has been submitted in the representation that as the job of the cleaners is of permanent nature, these cleaners should be absorbed by the Railways on regular basis. During their study visit, it was pointed out by the petitioners to the Committee that cleaners were not paid minimum wages statutorily fixed by State Governments by the contractors and there was no machinery set up by the Southern Railway to ensure that all labour laws regarding minimum wages, overtime allowances, payment of compensation etc. were implemented in (their case. In this connection, the Ministry of Railways (Railway Board) in their written note have stated that the work of cleaning is entrusted to contractors as per the recommendations of High Power Committee (Alagesan Committee) appointed by the Ministry of Railway in the year 1955 so that the establishment cost could be kept down. If this work is entrusted to the regular railway employees the establishment cost would go up and this would prove to be an uneconomical proposition. The Ministry have further stated that the cleaning contractors at Madras and Bangalore City have engaged 61 and 22 cleaners respectively who are paid fair living wage of Rs. 5.25 per head at Madras Central Railway Station and at Rs. 8.06 per cleaner per day at Bangalore City Railway Station as fixed by the State Government of Tamil Nadu and Karnataka. These payments are witnessed by the Rail- way's representative.

The Committee, however, are of the opinion that the job of cleaning in Railway Catering Units is of a permanent nature. Further if the work which is at present being done by a very small number of cleaners employed through the contractors by the Southern Railway is entrusted to the regular employees the establishment cost would increase only marginally and it will not in any way affect the profits being earned by the Catering Department. The Committee recommend that the Government should

review the present practice of employment of cleaners through contractors and consider their employment directly by the Railways. This would end the exploitation of cleaners which has also been alleged in the representation.

K.P. Tewari New Delhi Chairman Dated the 30th April, 1984 Committee of Petitions." Vaisaka 10, 1906 (Saka)

5. The Report, we see, states that the railway catering department was earning a profit, that the work of the catering cleaners was of a perennial nature, that the cost of entrusting the work to regular employees would increase the establishment cost only marginally and that the laws relating to minimum wages, over time allowance etc. and other labour laws were not being observed in regard to catering cleaners. The recommendation of the Committee was that in order to prevent the exploitation of cleaners, it was necessary that the Government should review the existing practice of employing them through contractors and consider their direct employment by the Railway Administration. Strengthened by the report of the Committee, the ; catering cleaners submitted several memoranda to the authorities concerned but to no avail.

6. The practice of employing labour through contractors for doing work inside the premises of the primary employer, known to researchers of the International Labour Organisation and other such organisations as 'Labour only contracting' or 'inside contracting' system has been termed as an archaic system and a relic of the early phase of, capitalist production, which is now showing signs of revival in the more recent period. Of late there has been a- noticeable tendency, on the part of big companies including public sector companies to get the work done through contractors rather than through their own departments. As pointed out by a group of researchers in the Economic and political weekly Review of Management, dated November 29, 1986, it is a matter of surprise that employment of contract labour is steady- v on the increase in many organised sectors including the public sector, which one expects to function as a model employer. More than a quarter of a century ago in the Standard Vacuum. Refining Company of India Ltd v. Its Workmen this Court had occasion to refer to some of the pernicious features of the contract labour system. It is an important decision, unfortunately not very much noticed in later cases. The importance of the case lies in the fact that it was held to be competent for an Industrial Tribunal functioning under the Industrial Disputes Act to abolish the contract labour system in an industrial undertaking which happened to be a private enterprise in that case. The facts are interesting. A dispute was raised by the workmen of the company with respect to contract labour, employed by the company the Standard Vacuum Refining Company of India Limited) for cleaning maintenance of the refinery (plant and premises), belonging to the company. The system was that the work was entrusted to a contractor who engaged the labour. The regular workmen of the Company made a demand for abolition of the contract system and for absorbing the workmen employed through the contractors into the regular service of the company. The complaint of the workmen was that the contract labour had no security of service though they were doing the work of the company and that they were being paid much less than the wages paid by the company to its unskilled regular workmen. They were also not entitled to other benefits and amenities such as provident fund, gratuity, bonus, privilege leave, medical facilities and subsidised Food and housing to which the regular workmen of the company were entitled. Their case was that though the work was of a permanent nature, the contract system had

been introduced to deny them the rights and benefits which the company gave to its regular employees. On behalf of the company, it was contended that the reference under Section 10 of the Industrial Disputes Act was incompetent as there was no dispute between the Company and its workmen, that, it was a matter for the Company to decide what was the best method of carrying out its business, whether by employing a Contractor or otherwise and that the Industrial Tribunal could not interfere with that function of the management. The dispute regarding wages and conditions of service was really one to be settled between the Contractor and his employees and had nothing to do with the Company. The Tribunal by its award gave a direction to the company to discontinue the practice of getting the work done : through contractors and to have it done through workmen engaged by itself. The company was directed to engage regular workmen for this work and to give preference to the workmen employed by the contractor. There was an appeal to the Supreme Court by special leave under Article 136 of the Constitution. The Supreme Court held that the Tribunal was justified in giving the direction for the abolition of the contract system, observing that it was relevant to bear in mind that industrial adjudication generally did not encourage the employment of contract labour in modern times. Quoting from the report of the Royal Commission on Labour, it was said that whatever merit there was in the system in primitive times, it was now desirable for the management to discharge completely the complex responsibility laid upon it. The Court also referred to similar opinions expressed by several Labour Enquiry Committees appointed in different States. Proceeding to consider the merit of the contract labour system in the case before them, Wanchoo J. speaking for the Court observed:

The contract in this case related to four matters. But the reference is confined to one only, viz., cleaning maintenance work at the refinery including premises and plant and we shall deal with that only. So far as this work is concerned, it is incidental to the manufacturing process and is necessary for it and of a perennial nature which must be done every day. Such work is generally done by workmen in the regular employ of the employer and there should be no difficulty in having regular workmen for this kind of work. The matter would be different if the work was of intermittent or temporary nature or was so little that it would not be possible to employ full-time workmen for the purpose. Under the circumstances the order of the tribunal appears to be just and there are no good reasons for interfering with it.

The Court held that the contract in the case was a bona fide contract but that it did not affect the issue. The award of the Tribunal was upheld.

7. The Supreme Court having pronounced on the 'primitive' and baneful nature of the system of contract labour, there was a cry raised against the system by the Planning Commission and various other committees appointed by the Government. The Indian Labour Conference discussed the award of the Tribunal in 1959 and following its recommendation but after considerable delay, the Contract Labour (Abolition and Regulation) Act was passed in The Statement of Objects and Reasons was as follows:

They system of employment of contract labour lends itself to various abuses. The question of its abolition has been under the consideration of Government for a long

time. In the second Five Year Plan, the Planning Commission made certain recommendations, namely, undertaking of studies to ascertain the extent of the problem of contract labour, progressive abolition of system and improvement of service, conditions of contract labour where the abolition was not possible. The matter was discussed at various meetings of Tripartite Committees at which the State Governments were also represented and general consensus of opinion was that the system should be abolished wherever possible or practicable and that in cases where this system could not be abolished altogether, the working conditions of contract labour should be regulated so as to ensure payment of wages and provision of essential amenities.

The proposed Bill aims at abolition of contract labour in respect of such categories as may be notified by appropriate Government in the light of certain criteria that have been laid down, and at regulating the service conditions of contract labour where abolition is not possible. The Bill provides for the setting up of Advisory Boards of a tripartite character, representing various interests, to advise Central and State Governments in administering the legislation and registration of establishments and contractOrs. Under the Scheme of the Bill, the provision and maintenance of certain basic welfare amenities for contract labour, like drinking water and first-aid facilities, and in certain cases rest-rooms and canteens, have been made obligatory. Provisions have also been made to guard against details in the matter of wage payment.

The long title of the Act describes it as "an Act to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith." Section 1(4) makes the Act applicable to all establishments in which 20 or more workmen are employed or were employed on any day of the preceding 12 months as contract labour and to every contractor who employs or who employed on any day of the preceding 12 months 20 or more workmen. Section 1(5) makes the Act inapplicable to establishments in which work only of an intermittent or casual nature is performed and further provides that the question whether work performed in an establishment is of an intermittent or casual nature if raised, shall be decided by the appropriate Govt. in consultation with the Central Board or State Board as the case may be and that such decision final.

Section 2(b),(c),(e)and (g) define "Contract Labour", "Contractor", "Establishment" and "Principal Employer" in the following terms:

(b) a workmen 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;

(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- 1 contractor;

(e) "establishment" means-

(i) any office or department of the Government or a local authority, or

(ii) any place where any industry, trade, business, manufacture or '. occupation is carried on;

(g) "principal employer" means-

(1) in relation to any office or department' of the Government or a local authority, the head of that office or department or such other officer as the Government or the local authority. as the ease may be may specify in this behalf,

(ii) in a factory, the owner or occupier of the factory and where a person has been named as the manager-of the factory under the Factories Act, 1948, the person so named,

(iii) in a mine, the owner or agent of mine and where a person has been named as the manager of the mine, the person so named,

(iv) in any other establishment, any person responsible for the supervision and control of the establishment.

Explanation: For the purpose of Sub-clause (iii) of this clause, the expressions "mine", "owner" and "agent" shall have the meanings respectively assigned to them in Clause, (j), Clause (1) and Clause (c) of Sub-section (1) of Section 2 of the Mines Act, 1952.

8. Section 3 and 4 provide for the Constitution of the Central and State advisory Boards. Section 7 provides for the registration of establishments. Section 8 provides for revocation of registration in certain cases and Section 9 prescribes the effect of non-registration. Section 10 provides for the prohibition of employment of contract labour in certain processes, operations or other work in establishments by the appropriate Government after consultation with the Central or State Board as the case may be. Section 10 is as follows:

10. (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 notification 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, trade, 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.

Section 12 provides for licensing of contractOrs. Section 13, 14 and 15 provide for the grant, revocation, suspension, and amendment of licenses and appeals. Sections 16 to 21 make detailed provision for the welfare & Health of contract labour. Section 16 deals with canteens, Section 17 with Rest rooms, Section 18 with facilities for drinking water, latrines, urinals and washing and Section 19 with first-aid facilities. Section '20 provides that if any amenity required to be provided under Sees. 16 to 19 for the benefit of contract labour employed in an establishment is not provided by the contractor within the prescribed time such amenity shall be provided by the Principal Employer within such time as may be prescribed. Section 21, while making the contractor responsible for payment of wages to each worker employed by him as contract labour, further provides that every principal Employer shall nominate a representative duly authorised by him to be present at the time of disbursement of wages by contractor to ensure and certify that wages are paid in the prescribed manner. It is further provided that if the Contractor fails to pay wages within the prescribed time or makes short payment, it shall be the liability of Principal Employer to make payment of wages in full. Section 22 to 27 provide for penalties and pro-cedure. Section 28 provides for appointment of inspecting staff. Section 30 makes the provisions of the Act effective notwithstanding anything inconsistent therewith contained in any other law or in the terms of any agreement or contract of service or any standing orders applicable to the establishment. Any favourable benefits that the Contract labour may be entitled to under the agreement, contract of service or standing orders are however saved. Section 31 provides for exemptions. Section 33 enables the Central Govt. to give directions to any State as to the carrying into execution in the State the provisions of the Act. Section 35 provides for the making of rules for carrying out the purposes of the Act. The Rules made by the Central Govt. are required to be placed before the Parliament.

9. The Central Govt., in exercise of the powers conferred by Section 35 of the Act, has made the Contract Labour (Regulation and Abolition) Central Rules, 1971. Chapter II of the rules relates to matters pertaining to the Central Board, while Chapter III of the Rules deals with registration of establishments and licensing of contractOrs. Rule 25 prescribes the forms, terms & condition of license and in particular Rule 25(ii)(iv) prescribes that it shall be the condition of every licensee that the rates of wages shall not be less than the rates prescribed under the Minimum Wages Act, 1948. Rule 25(ii)(iv) prescribes that it shall be the condition of every license that the rates of wages shall not be less than the rates prescribed under the Minimum Wages Act, 1948 for such employment where applicable, and where the rates have been fixed by agreement, settlement or award, not less than the rates so fixed. Rule 25(ii)(v)(a) prescribes that it shall be the condition of every licence that, in cases where the workmen employed by the contractor perform the same or similar kind of work as the workmen directly employed by the principal employer of the establishment, the wage rates, holidays, hours of work and other conditions of service of the workman of the contractor shall be the same as applicable to the I workmen directly employed by the principal employer of the establishment on the same or similar kind of work:

Provided that in the case of any disagreement with regard to the type of work the same shall be decided by the Chief Labour Commissioner (Central) whose decision shall be final.

Similarly Rule 25(ii)(v)(b) provides that in other cases the wage rates, holidays, hours of work and conditions of service of the workmen of the contractor shall be such as may be specified in this behalf by the Chief Labour Commissioner (Central). While determining the wage rates, holidays, hours of work and other conditions of service under Rule 25(ii)(v)(b) the Chief Labour Commissioner is required to have regard to the wages rates, holidays, hours of work and other conditions of service obtaining in similar employments.

10. On the facts presented to us and on the report of the Parliamentary Committee of Petitions it appears to be clear that the work of ' . cleaning catering establishments and pantry cars is necessary and incidental to the industry or business of the Southern Railway and so requirement (a) of Section 10 (2) is satisfied, that it is of a perennial nature and so requirement (b) is satisfied, that the work is done through regular workmen in most Railways in the country and so requirement (c) is satisfied and that the work requires the employment of sufficient number of whole time workmen and so requirement (d) is also satisfied. Thus all the relevant factors mentioned in Section 10(2) appear to be satisfactorily accounted for. In addition to we have the factor of profitability of the catering establishments. On these facts the petitioners straight away invite us to issue a mandamus directing the Central Government to abolish the contract labour system under which cleaners in catering establishments and pantry cars arc at present employed in the Southern Railway. But, we refrain from doing so because under Section 10, Parliament has vested in the appropriate Government the power to prohibit the employment of contract labour in any process, operation or other work in any establishment. The appropriate Government is required to consult the Central Board or the State Board as the case may be before arriving at its decision. The decision, of course, will be subject to judicial review. But we do not think that we will be justified in issuing the mandamus prayed for

unless and until the Government fails or refuses to exercise the power vested in it under Section 10. In the circumstances the appropriate order to make in the present case is to direct the Central Government to take appropriate action under Section 10 of the Contract Labour (Abolition and Regulation) Act in the matter of prohibiting the employment of contract labour in the work of cleaning catering establishments and pantry cars in the Southern Railway. This must be done within six months from today. Without waiting for the decision of the Central Government the administration of the Southern Railway will be free, of its own motion to abolish the Contract labour system and to regularise the services of those employed in the work of cleaning establishments and pantry cars in the Southern Railway. In any case, the administration of the Southern Railway will refrain, until the decision of the Central Government under Section 10, from employing Contract labour. The work of cleaning catering establishments and pantry cars will be done departmentally employing those workmen who were previously employed by the Contractor on the same wages and conditions of work as are applicable to these engaged in similar work by the Western Railway. If there is any dispute whether an individual workman was not employed by the Contractor such dispute shall be decided by the Deputy Labour Commissioner, Madras. Any further directions may be sought, if necessary, from the Madras High Court. If the Central Government does not finally decide the question within six months from today, the Southern Railway administration will within three months thereafter absorb the workmen into service and regularise their services.