Supreme Court of India
Bharat Petroleum Corpn Ltd vs Mumbai Shranik Sangha & Ors on 13 January, 1998
Author: M J Rao.
Bench: S.B. Majmudar, M. Jagannadha Rao

PETITIONER:
BHARAT PETROLEUM CORPN LTD.

Vs.

RESPONDENT:
MUMBAI SHRANIK SANGHA & ORS.

DATE OF JUDGMENT: 13/01/1998

BENCH:
S.B. MAJMUDAR, M. JAGANNADHA RAO

ACT:

HEADNOTE:

JUDGMENT:

J U D G E M E N T M. JAGANNADHA RAO. J.

The appellant. Bharat Petroleum Corporation Ltd. (hereinafter called he Corporation) was the first respondent before the High Court in Writ Petition No 436 of 1991 filed by Mumbai Shramik Sangha (a trade union) Bombay. The said trade-union is the first respondent in this appeal. M/s Kieenwel (India) Bombay and he Union of India are the second and third respondent in this appeal and were second and third respondents respectively before the High Court. The appeal is perferred by the Corporation against the orders of the High Court of Bombay dated 30.1.1997, 31.1.1997 and 21.2.1997. The abovementioned trade-union and held that the workmen who were employed by the Contractor M/s. Kleenwel (India) for cleaning sweeping etc. in the housing colony and sports complex of the Corporation were entitled to the benefits of Notification dated 9.12.1976 issued by the Government of India under Section 10(1) of the Contract Labour (Regulation & Abolition) Act, 1970 (Act 37/91970) (hereinafter called the `Act'), abolishing contract labour and hence the said contract labour should be absorbed. w.e.f. 1.2.1991 as permanent employees of he corporation and entitled to the emoluments and other benefits available to other workmen of the Corporation doing similar work.

The point therefore is whether the words "in any establishment" in section 10 of the Act which

section deals with abolition of contract labour can taken in contract labour employed not at the place where the industrial operations or other operations necessary or incidental thereto are carried on but also those employed at the staff quarters/sports complex of the Corporation.

Learned Solicitor General Sri T.R. Andhyarujina however strongly relied up the observation of the Constitution Bench of this Court in Gammon (India) Ltd. Vs. Union of India [1974 (3) SCR 665] to contend that in view of the language used in section 10 of the Act and in particular the words "in any establishment" in section 10 (1) and the words "in that establishment" in Section 10(2), the Government of India could not have issued any notification prohibiting contract labour who do the work of cleaning sweeping, etc. at the residential or sports complex of the staff of the Petroleum corporation.

Learned counsel for the respondents have relied upon Section 2(b) which defines `contract labour' and on section 2(1) which defines `workmen' where the words ' in connection with the work of an establishment are used. Similar words are used in Section 2(9)(1) of the Employees State Insurance Act and such words have been widely interpreted in N.E.L.P. co. Vs. E.S.I. Corporation [AIR 1967 SC 1364], Hyderabad Asbestos Cement Products Ltd. Vs. Employees insurance Court & Anr. [AIR 1978 SC 356]. Royal Talkies Vs. Employees State Insurance Corporation [1978 (9) SCC 204], Regional Director Vs. South India Flour Mills (P) Ltd. [AIR 1968 SC 1686]. The words "in connection with" are also used in section 2 (f) of the Employees Provident Fund Act. 1952 and have been widely interpreted in P.M. Patel & Sons Vs. Union of India [1986 (1) SCC 32]. Learned counsel for the respondents also relied upon the judgments of this Court interpreting the definition of `workman' in Section 2(s) of the Industrial Disputes Act. 1947 where even though the words "in connection with" have not been used, the said words were more or less implied . This was in Secretary, Madras Gymkhana Club Employees Union Vs. Management [1968 (1) SCR 742]. Bangalore Water Supply & Sewerage Board Vs. Rajappa [1978 (2) SCR 213 (257)]. Strong reliance was also placed by respondents on J.K.Cotton Spinning & Weaving Mills Co. Vs. Labour Tribunal [AIR 1964 SC 737] where mails working at the residential premises of the staff were treated as `workmen' entitled to move the Industrial Court and have the benefits covered by a notification, which was applicable to industrial employees'. In that case it was held that the words "in connection with" have to be implied n Section 2(s).

On the other hand, learned solicitor General contends that section 10(1) and (2) are based upon the limited power which earlier vested with the Industrial Courts as declared in Standard Vacuum case [1960 (3) SCR 466] and that power was as stared in Vegoils Private Ltd. Vs. The Workmen [1971 (2) SCC 724] and Sankar Mukherjee Vs. Union of India [1990 Suppl. SCC 608] vested exclusively i the Central Government and that the judgment in Gammon adopts what is said in standard Vaccum as the true basis for section 10(1) and 10(2) and hence, the power of the Central Government to abolish contract labour extends only to the contract labour at the place where the industrial operations are going on and to other operations incidental or necessary thereto again, at the place where industrial operations are going on. Standard Vaccum related to certain cleaning operations incidental and necessary to the main industrial operations. It is no doubt accepted that even in gammon this Court agreed that the workmen employed by a contractor at Allahabad where a building for a Delhi Bank was being constructed, were `workmen' doing work "in connection with" the work of the principal

employer and entitled to the welfare benefits like drinking water, canteen, latrines, rest rooms, first aid, equal pay as regular workers. etc. and gave an extended meaning to the definition of "contract labour" and "workmen" in Section 2(b) an d 2(i) of the Act. But at the same time, this Court in Gammon referred to Section 10(1) and (2) by way of contrast, and interpreting the same, restricted the power of prohibition in section 10 to the contract labour at the place of the industrial operations and to work incidental/necessary thereto again at the place where the industrial operations are going on and that hence. Section 10 cannot apply to prohibit contract labour at the residential quarters/sports complex which have no direct link with the industrial operations of the Petroleum Corporation.

We have given our anxious consideration to the rival contentions. It appears to us that matter is important and also that the observations of the Constitution Bench in Gammon (at p.669, of SER) in so far as section 10 was concerned were indeed not strictly necessary because Gammon was not a case dealing with prohibition of contract labour. Whether the restricted scope attributed to section 10 of the Act given in Gammon is correct or not must, in our opinion, be decided independently. We are therefore of the view that this question is to be decided by a Constitution Bench. We therefore, refer the following questions to be decided by a constitution Bench of this Court:

> No. 1. "Whether the observations of the constitution Bench in Gammon in so far as section 10 of the Act is concerned are correct and whether the Central Government under Sections 10 (1) & (2) of the Act can be notification prohibit contract labour doing the work of cleaning, sweeping, etc, at the residential premises of the staff or sports Complex owned by the Bharat petroleum Corporation or whether the Central Government under Section 10 of the Act has no jurisdiction to abolish such contract labour".
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> No.2. "Whether the Notification dated 9.12.1976 issued by the Government of india under Section 10(1) of the Contract Labour (Regulation & Abolition) Act, 1970 can be construed as validly abolishing can be construed as validly abolishing contract labour employed by contractor M/s Kleenwel (India) Ltd. for cleaning, sweeping etc. in the Staff Housing Colony and Sports Complex owned by the appellant-Corporation and situated at Chambur. Bombay."

The Registry is directed to place the matter before My Lord the Chief Justice of India for passing appropriate orders referring to the above questions of law to a Constitution Bench.