

M/S. L AND T MC NEIL LTD. ETC. ETC.

v.

GOVERNMENT OF TAMIL NADU

JANUARY 30, 2001

[S. RAJENDRA BABU AND S.N. VARIAVA, JJ.]

Contract Labour (Regulation & Abolition) Act, 1970—Section 10—Notification prohibiting employment of contract labour engaged for sweeping and scavenging in establishments/factories employing 50 or more workmen—Consultation with Board under the Act and consideration of relevant materials before issuance of notification—Held, on facts, the State Government has not effectively consulted the Board nor did it considered relevant factors before issuing the notification.

Respondent-State Government issued a notification under Section 10 (1) of the Contract Labour (Regulation & Abolition) Act, 1970 prohibiting employment of contract labour engaged for sweeping and scavenging in establishments/factories employing 50 or more workmen. Petitioner-company filed a Writ Petition before High Court challenging the notification. The High Court dismissed the writ petition holding that the notification had been issued by the respondent after fully complying with the prescribed procedure under the Act after proper consultation with parties concerned and evaluation of relevant factors and materials.

In appeals before the Court, the petitioner contended that there had been no effective consultation with Tamil Nadu State Contract Labour Advisory Board, as required under the Act, by the respondent before issuing the notification; that the notification was issued in the absence of relevant materials on record.

Allowing the appeals, the Court

HELD : 1.1. Consultation does not mean concurrence. The views of Tamil Nadu State Contract Labour Advisory Board are ascertained for the purpose of assisting the State Government in reaching its conclusion on the matter one way or the other. After careful perusal of the necessary files and other materials leading to the notification, it is not very clear as to how the Government could have reached the conclusion one way or the other in the

A absence of any advice by the Board and in the absence of any other material. The decision of the Government in issuing the notification under Section 10(1) of the Act is thus vitiated because of non-consideration of relevant materials. The mere fact that several notifications have been issued in relation to contract labour or that system in sweeping and scavenging has been abolished in some other industries may not, by itself, be sufficient to hold that a common notifications applicable to all industries and establishments abolishing contract labour in sweeping and scavenging could have been issued by the Government without necessary material. The Government ought to take into consideration the relevant factors contained in Section 10(2)(a) to (d) of the Act and thereafter decide the matter. [704-B; 705-E-H]

C 1.2. The impugned notification is quashed. However, it is open to the Government to issue a fresh notification after due consideration of the matter in accordance with law. [706-A]

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3748 of 1999.

From the Judgment and Order dated 28.8.98 of the Madras High Court in W.A.No. 1078 of 1998.

With

E 3808/2000, 3809/2000, 1043/2000, 3727/2000 and 5307/2000.

Bharat Sangal, S. Muralidhar, and S. Vallinayangam for the Appellants.

F A. Mariarputham, and Ms. Aruna Mathur for M/s. Arputham Aruna & Co. for the Respondent.

The Judgment of the Court was delivered by

G **RAJENDRA BABU, J.** The Government of Tamil Nadu issued a notification under Section 10(1) of the Contract Labour (Regulation & Abolition) Act, 1970 [hereinafter referred to as "the Act"] prohibiting the employment of contract labour in the process of sweeping and scavenging in the establishments/factories which are employing 50 or more workmen. This prohibition is without reference to class of establishment which is involved of the conditions of work in a particular establishment. Under Section 10 of the Act the Government is obliged to consult the Tamil Nadu State Contract
H Labour Advisory Board [for short 'the Board'] before issuing a notification

in question. The appellants contended that there has been no effective consultation with the Board inasmuch as the only occasion when this aspect was considered was in the Sub-Committee meeting of the Board. The Minutes of the meeting made available to the Court disclosed that it recorded the views of the All India Manufacturers Organisation to the effect that the sweepers and scavengers work not for more than 2 to 3 hours daily and the view of the employees' representatives was that sweepers and scavengers are working for more than 120 days in a year. No decision as such was made but it was noted that the Government should take a decision in the matter. The said notification was challenged before the High Court in a writ petition. The High Courts, following its earlier decision in *Bharat Heavy Electricals Limited v. Government of Tamil Nadu and Ors.*, [1997] 3 LLN 495, dismissed the writ petition holding that the notification had been issued after fully complying with the prescribed procedure under Section 10 of the Act to prohibit employment of contract labour after proper consultation with all relevant parties and evaluation of all relevant factors and materials by the State Government. Following this aforesaid decision, the writ petition filed by the petitioner also stood dismissed. Hence these appeals.

The Division Bench of the High Court in the course of its order noticed that apart from Sub-Committee report, to which reference has been made, the Minutes of the 17th Meeting of the Board also disclosed that the Board has elaborately considered the matter with reference to the question of issuing a draft notification abolishing contract labour system in sweeping and scavenging among other nature of work and though it appeared that a further consideration by the Government was suggested during the course of deliberations, the Board did not appear to have thought any need for further consideration. On that basis the Division Bench took the view that since the matter had been left for consideration of the Government by the Board, with its report and Government had also considered the need and necessity in the light of the requirements of the law as enumerated under Section 10(2) of the Act to issue the notification in question, there is no justification to interfere with the notification in question. Whereas at the time when the learned single Judge considered the matter the report of the Sub-Committee was not available at all.

Before us in these appeals against the order of the High Court what is principally contended is that (i) there is no effective consultation with the Board by the Government before issuing the notifications in question, and (ii) the Government did not have any relevant material otherwise and, therefore,

- A in the absence of relevant material the Government could not have issued any notification and thus calls for interference at our hands.

Consultation does not mean concurrence and the views of the Board are ascertained for the purpose of assisting the Government in reaching its conclusion on the matter one way or the other. The Government reached the conclusion on the basis of nothing made on various aspects and the aspects taken note of by the Government are as follows:

- | | | |
|---|--|-------------------------------------|
| C | <p>(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.</p> | Yes |
| D | <p>(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.</p> | Yes |
| E | <p>(c) Whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereon.</p> | Can be done through regular Workmen |
| | <p>(d) Whether it is sufficient to employ considerable number of whole-time workmen.</p> | Yes" |

- What is set out in this format is what is contained in Section 10 of the Act and is a mere repetition of the expression used therein. The question posed indicate the provisions contained in the Section, while answers given thereto are by monosyllables and it is not clear from the record available as to whether the same were based on any material. In the 16th Meeting of the Board, it is noted that "the members were also informed that as far as sweepers and scavengers were concerned the matter would be examined and necessary proposals sent to Government." In the 17th Meeting of the Board, it was noted that various Sub-Committees have been formed in different industries such as (a) Cement, (b) Paper, (c) Textiles, (d) Chemicals and (e) Electricity Board and thereafter the draft notification abolishing contract labour system in sweeping and scavenging was taken up for consideration.
- H While the view expressed on behalf of the Management is that the sweepers

and scavengers are not having 8 hours of work but they work not more than 2 or 3 hours a day and since employing permanent workmen is not economically viable, they are employing contract labour in this type of work and, therefore, the Government needed to examine whether the requirements of Section 10(2)(a) to (d) of the Act have been fulfilled before finalising the notifications. While the representatives of the All India Trade Union Congress (AITUC) took the stand that if the work is done for more then 120 days it has to be considered as being of intermittent nature and also stated that because of the contractual nature of the work they cannot fully get benefits of employment. The Chief Engineer of the Tamil Nadu Electricity Board pointed out that regular workmen are not willing to do this type of work and requested the Government not to proceed with the notification. The representative of AITUC stated that no further examination is necessary by the Board and notification could be issued. His view was supported by another member representing Hind Mazdoor Sabha (HMS). The Chairman stated that the Government should take a decision in the matter:

Thus, it is clear that no definite view was expressed by the Board in this regard. The fact that the Board had been consulted in the matter is indisputable. So also the fact that no decision was taken by it. Therefore, we asked the learned counsel for the State of Tamil Nadu to make available the necessary files leading to the draft notification and final notification and other materials that were relied upon in issuing the notification in question. Even after careful perusal of these files, we found that there is no further or fresh material available in these files.

In the circumstances, it is not very clear as to how the Government could have reached the conclusion one way or the other in the absence of any advice by the Board and in the absence of any other material. The decision of the Government in issuing the notification under Section 10(1) of the Act is thus vitiated because of non-consideration of relevant materials. The mere fact that several notifications have been issued in relation to contract labour or that system in sweeping and scavenging has been abolished in some other industries may not, by itself, be sufficient to hold that a common notification applicable to all industries and establishment abolishing contract labour in sweeping and scavenging could have been issued by the Government without necessary material. The Government ought to take into consideration the relevant factors contained in Section 10(2)(a) to (d) of the Act and thereafter decide the matter. These aspects were, however, lost sight of by the High Court in the decisions rendered by it earlier.

A In the circumstances, we have no hesitation in quashing the notification issued by the Government of Tamil Nadu. However, it is made clear that it is open to the Government to issue a fresh notification after due consideration of the matter in accordance with law.

B The appeals stand allowed accordingly.

B.S.

Appeals allowed.