(SUPREME COURT)

O. CHINNAPPA REDDY, and V. KHALID, JJ.

Writ Petition (Civil) No. 7982 of 1983

January 18, 1985

between

B. H. E. L. WORKERS ASSOCIATION HARDWAR and others

and

UNION OF INDIA and others

WITH

Writ Petition No. 9874 of 1983

BHARAT HEAVY ELECTRICALS KARAMCHARI SANGH (REGD.) RANIPUR, HARDWAR

and

UNION OF INDIA and others

WITH

Writ Petition No. 9249 of 1982

THE EMPLOYEES OF LAL JHANDA NATIONAL FERTILIZER LTD.

and

STATE OF HARYANA and others

Contract Labour (Regulation and Abolition) Act, 1970, Sec. 10—"Contract labour" engaged by contractors in public sector undertaking—Right to same wages as workers employed by undertaking—Whether Court could give declaration for abolition of "contract labour system".

It is not possible for the Supreme Court in an application under Article 32 of the Constitution to embark into an enquiry whether the workmen concerned working in various capacities and engaged in multifarious activities do work identical with work done by the workmen directly employed by the BHEL and whether for that reason they should be treated not as contract labour but as direct employees of the BHEL? There are other forums created under other statutes deciding such and like questions. Perhaps realising and futility of asking us to compare the nature of the work done by those directly employed by the BHEL and those employed by contractors, the learned counsel chose to advance the extreme argument that the Court must declare a total ban on the employment of contract labour by public sector undertakings. It was submitted that in order to give effect to the intention of Parliament as well as the Directive Principles of State Policy, the Court should declare illegal the employment of contract labour by the State or by any public sector undertaking which for the purpose of Article 12 of the Constitution is the State. In other words, the counsel wants this court by its writ to abolish the employment of contract labour by the State and by all public sector undertakings. We are afraid that that would be nothing but the exercise of legislative activity with which function the court is not entrusted by the Constitution. There will also be a direction

to the Chief Labour Commissioner to enquire into the question whether the work done by the workmen employed by the contractors is the same type of work as that done by the workmen directly employed by the principal employer in the BHEL. (Paras 3 & 6)

Minimum Wages Act, 1948—Contract labour engaged in public sector undertaking—Getting lesser wages than workers of undertaking—Whether provisions of Minimum Wages Act violated.

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 wage rates, holidays, hours of work and other conditions of service obtaining in similar employments. (Para 5)

It is not for the Court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. This is a matter for the decision of the Government after considering the matters required to be considered under Section 10 of the Act. Similarly the question whether the work done by Contract labour is the same or similar work as that done by the workmen directly employed by the principal employer of any establishment is a matter to be decided by the Chief Labour Commissioner under the proviso to Rule 25 (ii) (v) (a). (Para) 6

JUDGMENT

O. CHINNAPPA REDDY and V. KHALID, JJ.—These three Writ Petitions under Art. 32 of the Constitution of India appear to us to be entirely misconceived. In Writ Petition No. 7982 of 1983 and Writ Petition No. 9874 1983, the respective petitioners are the BHEL Workers Association, Hardwar and others and Bharat Heavy Electricals Karamchari Sangh, Ranipur, Hardwar. They allege that out of the 16,000 and odd workers working within the premises of the BHEL factory at Hardwar, as many as a thousand workers are treated as 'contract labour' and placed under the control and at the mercy of contractors. Though they do the same work as the workers directly employed by the BHEL, they are not paid the same wages nor are their conditions of service the same. They allege that the management pays their salary to the contractors and in turn the contractors pay them their salary after deducting substantial commission. The wages received by them bear no comparison with the wages paid to those directly employed by the BHEL. They say that they work within the premises of the BHEL in different departments under the direct supervision and control of the Chargemen, Foremen and Engineers of the BHEL. Their working hours are as stipulated by the BHEL. They work on the machines of the BHEL and they are essentially part of the organisation involved in the production process of manufacture carried on by the BHEL. They are entitled to be declared as regular employees of the BHEL and further entitled to the same scales of pay as the workers of the BHEL. They allege that their rights under Articles 14 and 19 (i) (f) are infringed. It is claimed that whenever a demand is made by them, they are thrown out of employment. They want a declaration from this Court that the system of contract labour is illegal, that they are direct employees of the BHEL and that they are entitled to equal pay as the workmen of the BHEL.

2. An affidavit has been filed on behalf of the BHEL by Shri P.C. Rao, Deputy General Manager, who while denying the allegations made in the petition, has pointed out that if the petitioners had any genuine grievance they should have availed themselves of the rights secured to them under the Contract

Labour Regulation (Abolition) Act, Minimum Wages Act, Equal Remuneration Act, etc., for ventilating their grievances and seeking appropriate relief instead of rushing to this Court under Art. 32 of the Constitution. It is pointed out in the counter-affidavit that certain jobs though required to be done within the plant area can be more conveniently and efficiently done on a job contract basis by contractors. This is particularly so in regard to the incorporation of new technology for expansion of production programme called the LSTG programme with foreign collaboration. The jobs themselves are entrusted to the contractors and it is not true to say that the contractors merely supply labour. They are required to do the total job and payment is made on the basis of the quantum of the work involved and not on the basis of the number of workers employed by the contractor. It is further pointed out that contract labour on the basis of job contracts is usually employed in connection with construction, erection and commissioning activities which are purely of a temporary nature, transportation including loading and unloading from wagons, trucks, trailers, tractors, etc. as well as internal transport, jungle clearance, weed removal and other horticultural activities. Work in connection with cleaning and upkeep of approach roads and plant areas and work relating to modernisation and rationalisation, such as shifting of equipment, etc. is also done on a job contract basis. These activities require varying number of workers at different times and it is considered, as a matter of policy, that the works are better done by job contractors than by the BHEL itself which has to concern itself primarily with the manufacture of turbines, etc.

3. It is clear from the allegations and counter-allegations that it is not possible for this Court in an application under Article 32 of the Constitution to embark into an enquiry whether these thousand and odd workmen working in various capacities and engaged in multifarious activities do work identical with worth done by the workmen directly employed by the BHEL and whether for that reason they should be treated not as contract labour but as direct employees of the BHEL ? There are other *forums* created under other statutes designed for deciding such and like questions. Perhaps realising and futility of asking us to compare the nature of the work done by those directly employed by the BHEL and those employed by contractors the learned counsel chose to advance the extreme argument that the Court must declare a total ban on the employment of contract labour by public sector undertakings. It was argued that the employment of contract labour has been frowned upon by various committees appointed by the Government and Parliament itself thought that the employment of contract labour was undesirable and therefore, enacted the Contract Labour (Regulation and Abolition) Act, 1970. It was submitted that in order to give effect to the intention of Parliament as well as the Directive Principles of State Policy, the Court should declare illegal the employment of contract labour by the State or by any public sector undertaking which for the purposes of Article 12 of the Constitution is the State. In other words, the counsel wants this Court by its writ to abolish the employment of contract labour by the State and by all public sector undertakings. We are afraid that that would be nothing but the exercise of legislative activity with which function the Court is not entrusted by the Constitution.

4. It is true that for a long time, the magnificent nature of the system of contract labour and the destructive results which flow from it had been noticed by various committees appointed by the Government, including the Planning Commission and that as a result of the reports and the discussions etc. that took place, the Contract Labour (Regulation and Abolition) Act, 1970 was passed. According to the Statement of Objects and Reasons :—

"The 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.

2. 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 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".

5. 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." As the long title itself indicates the Act does not provide for the total abolition of contract labour, but only for its abolition in certain circumstances, and for the regulation of the employment of contract labour in certain establishments. Section 1 (4) applies 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 has employed on any day of the preceding 12 months 20 or more workmen. The Act does not apply to establishments in which work of an intermittent or casual nature alone is performed. Section 2 (e) defines an establishment as meaning : (i) any office or department of the Government or local authority ; or (ii) any place where any industry ; trade, business, manufacture or occupation is carried on.. Section 2 (g) defines "principal employer" as meaning :

"(i) 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 case 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 factory under the Factories Act, 1948, the person so named.

(iii) in a mine, the owner or agent of the 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."

The definitions of 'establishment' and 'principal employer' clearly do not exclude but on the other hand expressly include the Government or any of its departments and the Act applied to them too. The Act is not confined to private employers only. Section 2 (c) defines a contractor, in relation to an establishment, as meaning '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 supplied contract labour for any work of the establishment and includes a sub contractor. Sections 3 and 4 provide for the Constitution of Central and State Advisory Boards. Section 7 provides for the registration of an establishment. Section 8 provides for the revocation of registration and Section 9 provides for the effect of non-registration. Section 10 which is important provides for and enables the prohibition of employment of contract labour in any processes, operations or other work employment in any establishment. Section 10 may be usefully extracted :

"(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 or 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."

Section 12 provides for the licensing of contractors. Sections 13, 14 and 15 provide for the grant of licences, revocation, suspension and amendment of licences and appeal. Sections 16 to 21 make detailed provision for the welfare and health of contract labour. Section 20 in particular provides that if any amenity required to be provided for the benefit of the 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. Section 21 makes the contractor responsible for payment of wages to each worker employed by him as contract labour but further prescribes that the principal employer shall nominate a representative duly authorised by him to be present at the time of disbursement of wages by the contractor. Sections 22 to 27 provide for penalties and procedure. Section 28 provides

for the 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 on any standing orders applicable to the establishment. It, however, serves to the contract labour any favourable benefits that the contract labour may be entitled to under the agreement, contract of service or standing orders. Section 35 invests the appropriate Government with power to make rules for carrying out the purposes of the Act. Rules made by the Central Government are required to be laid before each House of Parliament for a total period of 30 days. In exercise of the powers conferred by Section 35 of the Contract Labour (Regulation and Abolition) Act, 1970, the Central Government has made the Contract Labour (Regulation and Abolition) Central Rules, 1971. Chapter II of the rules relates to matters pertaining to the Central Advisory Contract Labour Board while Chapter III of the Rules deals with registration of establishments and licensing of contractors. Rule 25 prescribes the forms, terms and conditions of licence. Rule 25 (ii) (iv) prescribes that it shall be the condition of every licence 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,

> "(v) (a) 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 workmen of the contractor shall be the same as applicable to the workmen directly employed by the principal employer of the establishment on the same or similar kind of work :
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> 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 wage rates, holidays, hours of work and other conditions of service obtaining in similar employments. There is no dispute before us that the Payment of Wages Act applies as much to contract labour as to Labour directly employed by the principal employer of the establishment.

6. Thus we see that no inviduous distinction can be made against contract labour. Contract Labour is entitled to the same wages, holidays, hours of work and conditions of service as are applicable to workmen directly employed by the principal employer of the establishment on the same or similar kind of work. They are entitled to recover their wages and their conditions of service in the same manner as workers employed by the principal employer under the appropriate Industrial and Labour Laws. If there is any dispute with regard to the type of work, the dispute has to be decided by the Chief Labour Commissioner (Central). It is clear that Parliament has not abolished contract labour as such but has provided for its abolition by the Central Government in appropriate cases under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970. It is not

for the Court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. This is a matter for the decision of the Government after considering the matters required to be considered under Section 10 of the Act. Similarly the question whether the work done by Contract labour is the same or similar work as that done by the workmen directly employed by the principal employer of any establishment is a matter to be decided by the Chief Labour Commissioner under the proviso to Rule 25 (ii) (v) (a). In these circumstances, we have no option but to dismiss both the writ petitions but with a direction to the Central Government to consider whether the employment of contract labour should not be prohibited under Section 10 of the Act in any process, operation or other work of the BHEL, Hardwar. There will also be a direction to the Chief Labour Commissioner to enquire into the question whether the work done by the workmen employed by the contractors is the same type of work as that done by the workmen directly employed by the principle employer in the BHEL, Hardwar.

7. In Writ Petition No. 9249 of 1983, the petitioners are the employees of Lal Jhanda National Fertilizer Limited Mazdoor Union, Panipat. They pray for similar reliefs against the National Fertilizer Limited, Panipat as in the BHEL case. This writ petition is also dismissed subject to similar directions to the State of Haryana and the appropriate authority in the State of Haryana as those issued in the BHEL case.