

(2016) 09 OHC CK 0037

ORISSA HIGH COURT

Case No: O.J.C. No. 8767 of 1996.

M/s. OCL India Ltd. and another -
Petitioners @HASH Union of
India - Opposite Party

APPELLANT

Vs

RESPONDENT

Date of Decision: Sept. 15, 2016

Acts Referred:

- Constitution of India, 1950 - Article 226
- Contract Labour (Regulation and Abolition) Act, 1970 - Section 10(1)

Citation: (2016) 151 FLR 714 : (2017) LabLR 195

Hon'ble Judges: Kumari Sanju Panda and Shri Sujit Narayan Prasad, JJ.

Bench: Division Bench

Advocate: M/s. P.P. Mohanty and B.C. Mohanty, Advocates, for the Petitioners; Mr. P.K. Padhi, Sr. Standing Counsel (Central), for the Opposite Party

Final Decision: Dismissed

Judgement

Shri Sujit Narayan Prasad, J. - In this writ petition the notification dated 4.7.1996 issued by the Central Government in exercise of power conferred by sub-section 1 of Section 10 of Contract Labour (Regulation and Abolition) Act, 1970 is under challenge.

2. The case of the petitioner is that it is a company manufacturer of cement in the State of Orissa and it was incorporated in the year 1949. The limestone is one of the basic raw materials required for the manufacture of cement, the petitioner company has been granted mining lease containing limestone in the village Lanjiberna, Kukuda, etc. in the district of Sundargarh. The petitioner company required to excavate and remove surface, oil, refuse, spoils, dead stone for the purpose of mining limestone. These jobs are of casual in nature and are done by contractors engaged by the company from time to time and such practise is in vogue right from

very inception.

By notification dated 15.12.1979 being notification No.S16025/58/77-LN published in the Gazette of India on 22.12.1979 the employment of contract labour in limestone, dolomite and manganese mines has been prohibited and the said notification having been questioned in writ petition being O.J.C. No.919 of 1980 has been quashed as the pre-condition for issuance of notification set out U/s.10 of the Contract Labour (Regulation and Abolition) Act, 1970 (in short CLRA Act, 1970) has not been complied.

The authorities have again issued notification on 17.3.1993 prohibiting employment of contract labours in limestone and dolomite mines and the same has been amended by virtue of notification No.SO 477(E) dated 4.7.1996 prohibiting employment of contract labour in limestone and dolomite mines for loading and unloading of limestone and dolomite into and from trucks, dumpers, conveyers and transportation within mines site.

The petitioner has challenged the notification dated 4.7.1996 on the ground that the appropriate Government with respect to the petitioner company is State Government and as such the notification dated 4.7.1996 since been issued by the Central Government is not applicable.

The other ground has been taken that the pre-conditions as provided U/s.10(1) of the Act, 1970 has not been complied with.

3. Counter affidavit has been filed whereby and where under the claim of the petitioner has been disputed by stating therein that the pre-conditions as has been laid down under Section 10(1) of the CRLA Act, 1970 has been complied with.

Learned counsel has submitted that the petitioner has got no cause of action as yet and if the impugned notification is not applicable, then there is no question of the company being aggrieved with the same as because no pleading has been made in the writ petition that any adverse action has been taken in the light of the impugned notification.

4. We have heard the learned counsels for the parties and gone through the pleadings made in the affidavits.

The petitioner has challenged the notification dated 4.7.1996 on the ground of jurisdiction of the Central Government being not an appropriate authority so far as it relates to the petitioner company.

The appropriate Government has been defined U/s.2(a) of the CLRA Act, 1970 which is as under:-

2(a) "appropriate Government" means-

(i) In relation to an establishment in respect of which the appropriate Government under the Industrial Disputes Act, 1947 (14 of 1947), is the central Government, the Central Government;

(ii) In relation to any other establishment, the Government of the State in which that other establishment is situated.

5. The criteria for determination and identification of control in case of Central Government company/undertaking or instrumental of the Government carried on an industry and also the criteria to determine whether the Central Government is the appropriate Government within the meaning of CLRA Act, the industry must be carried on by or under the authority of the Central Government. The Constitution Bench of Hon"ble Apex Court in the case of **Steel Authority of India Ltd. and others v. National Union Waterfront Workers and others, reported in (2001) 7 SCC 1** have decided the definition of the appropriate Government which is also taken note by Hon"ble Apex Court in the case of **Nashik Workers Union v. Hindustan Aeronautics Ltd., reported in (2016) 6 SCC 224**. The issue with respect to the appropriate Government which has been raised by the petitioner or the procedure as laid down U/s.10(1) of the CLRA Act, 1970 has not been followed, has been raised in this writ petition.

6. There is no dispute about the fact that notification issued U/s.10(1) of the Act, 1970 is to be issued by the appropriate Government and if the establishment is under the control of the Central Government or an undertaking of the Central Government, the notification has to be issued U/s.10(1) of the Act, 1970 by the Central Government, otherwise the notification U/s.10(1) of the Act, 1970 is to be issued by the State Government being the appropriate Government.

There is also no dispute about the fact that the pre conditions as has been laid down U/s.10(1) of the Act is to be complied with before issuance of notification by the appropriate Government.

7. In this case notification has been issued by the Central Government whereby and where under the prohibitory order has been passed regarding engagement of contract workers in the case of loading and unloading into and from trucks, dumpers, conveyers and transportation within the mines site, etc., notification has been issued by the Central Government in exercise of power conferred under sub-section 1 of Section 10 of the Act, 1970.

The case of the petitioner is that the establishment is not under the control or undertaking of the Central Government rather the appropriate Government of the petitioner ♦ establishment is the State Government, hence this notification dated 17.3.1993 is not applicable to the petitioner ♦ establishment.

8. In the entire pleading, it is nowhere been stated by the petitioner as to whether in pursuance to the notification dated 17.3.1993 any adverse action has been taken by

the appropriate authority. We have also made a specific query to the learned counsel representing the petitioner as to whether any adverse action has been taken in pursuance to the notification dated 4th July, 1996, it has been submitted that in view of the interim order passed by this court on 9.9.1996 no adverse action has been taken.

The notification dated 4th July 1996 has been issued by the Central Government and implied meaning of the same is that it will be applicable for such establishment which are under the direct control of Central Government or an undertaking of Central Government and nowhere it has been whispered that it is applicable to such establishment having been controlled by the State Government and also no adverse action has been taken in between the period from 4.7.1996 till 9.9.1996, the date of passing of interim order by this court.

9. In view thereof no cause of action is accrued to the petitioner and in anticipation he has filed this writ petition. Hence no order can be passed in such a situation for quashing notification dated 4th July, 1996 considering the fact that if this notification will be quashed, it will affect such industry also which are under the direct control of Central Government or undertaking of Central Government. Thus from the pleading and prayer made in the writ petition we find no cause of action accruing to the petitioner as yet.

10. Accordingly the writ petition is not worth to be considered, hence dismissed.