

E. Murray and Others Vs Commissioner of Labour, Government of A.P. and Others

Court: Andhra Pradesh High Court

Date of Decision: June 30, 2005

Acts Referred: Contract Labour (Regulation and Abolition) Act, 1970 " Section 1(4), 10(1), 4(1)

Citation: (2005) 5 ALD 256

Hon'ble Judges: C.V. Ramulu, J

Bench: Single Bench

Advocate: A.K Jayaprakash Rao, in WP No. 35485 of 1998 and P. Sridhar Rao, in WP No. 24901 of 1999, for the Appellant; B. Narayana Reddy, Government Pleader in WP No. 35485 of 1998, Government Pleader for Respondent No. 1 in WP No. 24901 of 1999, Deepak Bahattacharjee, for the Respondent Nos. 2 and 3 in WP No. 24901 of 1999 and K. Rami Reddy, Government Pleader for Respondent No. 4 in WP No. 24901 of 1999, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

C.V. Ramulu, J.

These two writ petitions are filed seeking a mandamus declaring the action of the first respondent in entrusting the services

of the petitioners (Watch and Ward) to the fifth respondent for engaging them as Assistant Security Officer/Security Guards and treating as

Contract Labourer, even though it was prohibited by the Government through G.O. Ms. No. 492 dated 16.10.1980 and G.O. Ms. No. 107

dated 31.10.1988 and further not paying the minimum wages as prescribed under the Minimum Wages Act to the petitioners as arbitrary and

illegal and consequentially to direct the respondents to regularize the services of the petitioners in Watch and Ward Department of the respondent

Nos. 2 to 4 and also direct respondent Nos. 2 to 5 to pay the minimum wages as fixed under the Minimum Wages Act.

2. It is the case of the petitioners that they are working as Assistant Security Officers/Security Guards under the control of respondent Nos. 2 to 4.

The nature of work attended to by them being Watch and Ward is perennial in nature. The second respondent has not obtained any licence under

the Contract Labour (Regulation and Abolition) Act, 1970 ("the Act" for brevity). Likewise, the fifth respondent also does not possess any valid

licence under the Act. Therefore, the entrustment of Watch and Ward duties on contract basis to the fifth respondent is illegal. The engaging of

Contract Labour in the Watch and Ward of the University has been abolished by the State Government by way of notifications u/s 10(1) of the

Act through G.O. Ms. No. 492 dated 16.10.1980 and G.O. Ms. No. 107 dated 31.10.1988. Therefore, the entrustment of the work on contract

basis to the fifth respondent is arbitrary and illegal. Further, the petitioners are paid less than the minimum wages applicable to the Watch and

Ward staff as fixed by the Collector under the Minimum Wages Act. The petitioners are entitled for a minimum wage of Rs. 68/- per day, whereas

the first petitioner is paid at Rs. 1,600/- per month and the other petitioners are paid at Rs. 700/- per month, which is far less than the minimum

wages fixed under the Minimum Wages Act. Therefore, the act of the respondents is arbitrary and illegal.

3. Counters are filed on behalf of respondent Nos. 2 to 4 and respondent No. 5 denying the allegations made by the petitioners.

4. The learned Counsel for the petitioners strenuously contended that the G.O. Ms. No. 492 dated 16.10.1980 and G.O. Ms. No. 107 dated

31.10.1988, which are notified u/s 10(1) of the Act relates to engaging of Watch and Ward personnel in the establishments. Therefore, the

University being an establishment and an industry is not supposed to entrust the regular Watch and Ward to any contract agency.

5. Per contra, the learned Counsel for the respondents contends that the very notifications purported to have issued under the said G.Os have no

application to the University and the Contract Labour System insofar as the Watch and Ward Department of the University is concerned is not

abolished and there is no specific notification issued in this regard by the Government of Andhra Pradesh u/s 10(1) of the Act.

6. I have given earnest consideration to the respective submissions made by the learned Counsel on the either sides and perused the material made

available on record. At the outset, I am of the opinion that the said notifications relied upon by the petitioners stating that the engagement of

Contract Labour in the Watch and Ward Department of the respondent-University is abolished under G.O. Ms. No. 492 dated 16.10.1980 and

G.O. Ms. No. 107 dated 31.10.1988 is not applicable.

7. In this regard, it may be necessary to notice the provisions of Section 10(1) of the Act, which reads as under:

10. Prohibition of employment of contract labour :--(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.

Further, the notification issued under G.O. Ms. No. 492 dated 16.10.1980 reads as under:

And whereas, after considering the said report, Government has come to the conclusion to abolish Contract Labour System in some of the

categories of work where less than twenty persons are employed in factory and therefore is considered necessary to extend the provisions of the

Contract Labour (Regulation and Abolition) Act, 1970 (Central Act No. 37 of 1970) to the said categories of work, the said having been

previously published as required under Sub-section (4) of Section 1 of the said Act;

Now, therefore, in exercise of the powers conferred by the proviso to Sub-section (4) of Section 1 of the Contract Labour (Regulation and

Abolition) Act, 1970 (Central Act No. 37 of 1970), the Government of Andhra Pradesh hereby applies the provisions of the said Act to the

following categories of establishment in which Contract Labour is employed generally in all the factories in the State of Andhra Pradesh.

- (1) Watch and Ward personnel, if not hired through specialized agencies.
- (2) Routine sweeping and scavenging personnel working inside the factory.
- (3) Boiler House Workers.
- (4) Workers employed in the maintenance of Planting Machinery.
- (5) Persons engaged in automobile garages and workshops inside the factory where the "work is continuous.

Further, the notification issued under G.O. Ms. No. 107 dated 31.10.1998 reads as under:

1. Whereas, the Government of Andhra Pradesh have constituted a State Advisory Contract Labour Board under Sub-section (1) of Section 4 of

the Contract Labour (Regulation and Abolition) Act, 1970 (Central Act No. 37 of 1970) to advise the State Government on matters arising out of

administration of the said Act.

2. And, whereas, after considering the said report, the Government have decided to apply the provisions of the said Act to the Contractors

employing even less than 20 workers also.

3. And, whereas the Government in pursuance of the recommendations of the Advisory Contract Labour Board has issued a notification under the

proviso to Sub-section (4) of Section 1 of the Contract Labour (Regulation and Abolition) Act, 1970, (Central Act No. 37 of 1970) applying the

provisions of the said Act in G.O. Ms. No. 152, L.E.N. and T.E. Department, dated the 21st April, 1987 and published in the Extraordinary (Part

I) Issue No. 465 of Andhra Pradesh Gazette, dated the 22nd June, 1987 giving two months for objections and suggestions.

4. And, whereas, certain objections and suggestions have been received from certain organizations and after careful examination, and consideration

the Government has come to the conclusion that these objections do not merit any consideration as the Contract Labour engaged through their

organizations is considerably a limited one.

5. Now, therefore, in exercise of the powers conferred by the proviso to Sub-section (4) of the Section 1 of the Contract Labour (Regulation and

Abolition) Act, 1970 (Central Act No. 37 of 1970). The Governor of Andhra Pradesh hereby applies the provisions of the said Act to the

following:

(1) to every Contractor who employs or who employed on any day of the preceding twelve months five or more workmen in any establishment to

which the provisions of the said Act applies; and

(2) if the same or similar work in any establishment is given to different Contractors, the aggregate of the workers employed by all the Contractors

in the same or similar work of the establishment shall be taken into account for the applicability of the provisions of the said Act.

8. A bare reading of the above two notifications issued by the Government of Andhra Pradesh u/s 10(1) of the Act does not indicate that they are

also applicable to the respondent-University. What all these two notifications speak is only the applicability of the abolition of the Contract Labour

System, in general, in the factories and not in the Universities. University is an industry but not a factory. Therefore, the contention of the learned

Counsel for the petitioners that the University being an industry, the above two notifications abolishing the Contract Labour System in Watch and

Ward Department in all the factories automatically applicable to the University cannot be countenanced. In fact there is no specific enquiry made as

to abolition of Contract Labour System in the respondent-University as required u/s 10(1) of the Act and no specific notification has been issued.

It is the imagination of the petitioners that those two notifications are also applicable to the Universities since University is an establishment and also

an industry. Therefore, the contention of the petitioners that this Court must declare that the entrustment of the services of the petitioners to a

Contract Labour Agency, in view of the existence of the notifications is arbitrary and illegal and also cannot be countenanced. It is for the

petitioners to work out their remedies as available under the law. The confidence of this Court is not inspired for declaring the action of the

respondents in entrusting the Watch and Ward department for Contract Labour System in the light of the above mentioned notifications as bad.

The writ petitions are devoid of merits and are liable to be dismissed.

9. The two writ petitions are dismissed. However, it is contended by the learned Counsel for the petitioners that in view of the interim order passed

by this Court on 5.10.1999, the respondents have deposited the minimum wages as fixed by the Collector under the Minimum Wages Act and the

same is lying with the Labour Court. The learned Counsel for the petitioners seeks for withdrawal of the same. Permission accorded. However,

this will not prevent the petitioners from approaching any other legal forum and working out their remedies as available under the law. No costs.