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Calcutta High Court

Case No: C.R. No. 15617/ (W) of 1980

Eastern Coalfields Limited and Another		APPELLANT
	Vs	
Assistant Labour Commissioner (Central) and Others		RESPONDENT

Date of Decision: Jan. 4, 2001

Acts Referred:

- Contract Labour (Regulation and Abolition) Act, 1970 - Section 10, 7, 7(2)
- Contract Labour (Regulation and Abolition) Central Rules, 1971 - Rule 19(2), 20

Citation: 105 CWN 914 : (2001) 2 LLJ 1467

Hon'ble Judges: Bhaskar Bhattacharya, J

Bench: Single Bench

Advocate: Arunava Ghosh S. Sil, for the Appellant;

Final Decision: Dismissed

Judgement

Bhaskar Bhattacharya, J.
By this writ application, the petitioner, a Government Company has challenged an appellate order passed by the Appellate Authority in an appeal u/s 15 of the Contract Labour (Regulation and Abolition) Act, 1970 ("Act") thereby affirming an order dated February 5, 1979 passed by the Assistant Labour Commissioner (Central) and the Registering Officer under the Act, refusing to accept the amendment of the Certificate of Registration in exercise of his power under Sub-rule (2) of Rule 19 read with Rule 20 of the Contract Labour (Regulation and Abolition) Central Rules 1971 ("Rule").

2. The petitioner No. 1 carries on business of raising and selling coal from Collieries covered by the Coal Mines (Nationalisation) Act, 1973. By a notification dated February 1, 1975, the Central Government in exercise of powers u/s 10 of the Act prohibited the employment of contract labour in the work of inter alia coal loading and unloading in all

coal mines. A certificate of registration dated May 20, 1976 has been issued in favour of the petitioner No. 2 u/s 7(2) of the Act.

3. By a letter dated August 31, 1978 the petitioner No. 2 applied for amending the certificate of registration for the purpose of incorporating the names of the new contractors whom the petitioners intended to employ for the purpose of coal transport from the pit-top to the railway siding.

4. The respondent No. 1 refused to amend the certificate unless the petitioner No. 2 specified the nature of the work for which the petitioners wanted to engage contractors contending that such type of work also involved loading and unloading of coal which is prohibited by employing contract labour.

5. The petitioner No. 2 wrote several letters contending that the act of a driver in such process is not prohibited by the notification u/s 10 of the Act. But the respondent No. 1 by order dated February 5, 1979 rejected the application filed by the petitioner No. 2 for amendment.

6. Being dissatisfied, the petitioner No. 2 preferred an appeal before the appellate authority u/s 15 of the Act, but by the order impugned herein, the respondent No. 2 dismissed the appeal. The respondents have initiated criminal proceeding against the petitioner No. 2 for violation of the provisions of the Act.

7. Being dissatisfied, the petitioners have come forward with the instant writ application.

8. Mr. Ghosh, the learned counsel appearing on behalf of the petitioners have made two-fold submissions in support of this application.

9. First, Mr. Ghosh has impugued the notification u/s 10 of the Act itself on the ground that before issuing such notification, the formalities required under the Act were not complied with. According to Mr. Ghosh, Central Advisory Board was not constituted in accordance with Section 3 of the Act at the relevant point of time inasmuch as one Rasik Lal Vorah could not represent the employers at that time because of Coal Mines (Nationalisation) Act. Mr. Ghosh contends that the moment Coal Mines (Nationalisation) Act came into operation, employer''s interest vested in Central Government and as such Rasik Lal Vorah, the previous owner could not represent the employer any further. Thus, Mr. Ghosh continues, there was no effective consultation with Central Board before issue of the notification u/s 10 of the Act.

10. In my opinion, even if Rasik Lal ceased to be employer, no objection having been raised on behalf of the employer regarding the capability of Sri Vorah to be the employers'' representatives, the petitioners are not entitled to raise such question at this stage. Moreover, the petitioners accepted the notification, registration and even applied for amendment of registration. Thus at this stage, the petitioners cannot dispute the authority of Sri Vorah to be a member of Central Board. The aforesaid point raised by Mr.

Ghosh thus is unable to impress this Court.

11. Mr. Ghosh next contends that loading and unloading of coal when the coal is to be transported from the pit top to a railway siding is done by loading coal into trucks at the pit mouth by tippers and is carried by such trucks up to the railway sidings. Mr. Ghosh submits that these trucks are called "Dumpers" or "Tipping trucks" and are fitted with a mechanical device which tips the contents into the railway wagon by lifting one end of that truck. The mechanical device, Mr. Ghosh proceeds, is operated by the driver of the truck by pressing a switch and as such no contractor"s labour or no labour at all is used in loading or unloading coal. Moreover, Mr. Ghosh contends that the pit top where the coal is stored and the railway siding are not areas which come within the definition of the word "mine" and that the notification being limited to its operation in mines, does not apply for loading into railway wagons.

12. Whether the pit top is within the area of the mine or not is essentially a question of fact. The petitioners never contended before the authorities below that the pit top was situated outside mine area; on the other hand it will appear from their own letter dated November 2, 1978 which is annexed at page 35 of the writ application that the petitioner No. 2 specifically made the following assertion:

"In our case loading and unloading of coal is done mechanically while transporting coal from the colliery to Railway siding."

13. Thus, I find no substance in the contention of the petitioners that coal is not lifted from colliery by the aforesaid process or that the pit top is situated beyond mine area.

14. I further do not find any substance in the contention of Mr. Ghosh that in order to attract the rigour of the notification, loading or unloading of coal must be made manually. The process of loading and unloading mentioned by the petitioners requires operation by human agency, may be mechanically and thus the appellate authority rightly held that even for such kind of operation, the service of human agency is necessary for operation of levers or switch and such human agency not having been employed by the principal employer, the authority was justified in refusing to amend the Registration Certificate.

15. Both the points raised by Mr. Ghosh having failed, I find no merit in this application and the same is accordingly dismissed.

16. All interim orders granted earlier stand vacated. No costs.