

SHRI YOVAN, INDIA CEMENTS EMPLOYEES
UNION AND ANR.

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v.

THE MANAGEMENT OF INDIA CEMENTS LTD. AND ORS.

OCTOBER 15, 1993

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[M.N. VENKATACHALIAH, CJ. AND S. MOHAN JJ.]

Industrial Disputes Act, 1947 s. 10(1)(C)—Whether the State Government of Tamil Nādu is the appropriate authority in relation to the cement industry so as to make the notification under section 10(1)(C) of the Act referring a dispute between the employees union and the Management of India Cement to the Labour Court—Held—Yes.

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The Respondent No. 1 and the Respondents Nos. 3 to 14, who are of the Contractors employed by the First Respondent, had terminated services of 300 and odd workers who claimed to have worked continuously for a period of over 10 years. These workers were neither paid the same wages nor allowed the same working conditions as were available to the workmen directly employed by the first Respondent.

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The Appellant-Union of the Workmen employed with the first respondent, raised demand to make contract labour permanent as mandated by law by removing the intermediary contractors which was rejected. Therefore, a dispute was raised and conciliation proceedings initiated but failed. On consideration of the failure report and the other relevant facts, the Govt. of Tamil Nadu issued a Notification on 23rd Sept. 1987. Under Section 10(1)(C) of the Act stating that the dispute between the Union and the Management of the India Cements Contractors relating to non-employment of 300 workers be referred for adjudication to the Labour Court, Madurai. Before the Labour Court the Respondent No. 1 raised a preliminary contention that the reference by the State Government is bad since the Appropriate Authority in relation to the Cement industry is the Central Government.

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The Labour Court upheld the contention of the First Respondent and found that the Cement industry being a controlled industry under the Act, the reference by the State Government was bad.

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A The appellant came in appeal by special Leave.

Allowing the appeal, this Court

B HELD : In view of the Notification dt. 8.12.1977 issued by the Union of India under Section 39 of the Act and the stand taken by the Union of India in their Counter Affidavit, both the Central and the State Governments are Appropriate Governments under the Act and both have concurrent jurisdiction in relation to Cement Industry, except in case of Mines and quarries forming part of the Cement Industry. That being so, the notification issued by the Government of Tamil Nadu dt. 23.1.1986 is a valid notification. [383FH; 386C]

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5454 of 1993.

D From the Judgment and Order dated 28.8.91 of the Principal Labour Court, Madurai in I.A. No. 189/91 in I.D. No. 56/87.

P.S. Khera for the Appellant.

Ms. A. Subhashini for the Respondents.

E The Judgment of the Court was delivered by

MOHAN, J. Leave granted. Delay condoned.

F The appellant is a union of workmen employed in the establishments of Respondent No.1 at Sankarnagar in the State of Tamil Nadu. Respondent No. 1 is a company with major financial input by various financial institutions in the country. Respondent Nos. 3 to 14 are contractors who were employed by the Respondent No. 1 to do various jobs. At the relevant time, these respondents employed 300 and odd workers. The services of these workers were terminated. They claimed to have worked continuously for a period of over 10 years. Inasmuch as they were neither paid the same wages nor were they allowed the same working conditions allowed by the principal employer, namely, Respondent No. 1 to its own workmen. The appellant union raised demands to make contract labour permanent as mandated by law by removing the intermediary contractors. The demands were not complied with. Therefore, a dispute was raised. Conciliation proceedings took place on various dates. Ultimately on 22.9.86 a failure

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report by Joint Commissioner of Labour, Madras, was submitted. On consideration of the report and the other relevant facts a notification was issued by the Government of Tamil Nadu on 23rd September, 1987 under Section 10(1)(c) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) that the dispute between the union and the management of India Cements contractors relating to non-employment of 300 workers be referred for adjudication to the Labour Court, Madurai. Pending adjudication of main dispute, the management (Respondent No. 1) preferred an Interlocutory Application of determination as a preliminary issue that the reference by the State of Tamil Nadu is bad since the appropriate authority in relation to the cement industry is the Central Government. The Principal Labour Court, Madurai, allowed the application by the impugned order dated 28.8.91 and terminated the proceedings. It is under these circumstances the Special Leave Petition came to be filed after a delay of 223 days. Notices were issued on 25.9.92 both on the SLP as well on the application for condonation of delay.

The argument on behalf of the appellant is the finding of the Labour Court that it is a controlled industry by the Central Government is incorrect. Equally, the finding that in view of the application of the Government of India dated 15.4.88 that cement industry is a controlled industry under the Act and, therefore, the reference by Central Government is bad and cannot be supported. The question of delegation of powers to the State Government does not arise. The powers exercised by the Central Government under the Act are equally exercisable by the State Government. Therefore, the impugned order is to be set aside.

The stand of the appellant union is opposed by the management. The Union of India supports the appellant and filed a counter in which it is clearly averred that under Notification dated 8.12.77 issued under Section 39 of the Act, the powers exercisable by the Government of India in relation to cement industry shall also be exercised by State Governments, except in the cases of mines and quarries forming part of cement industry where the Central Government alone has jurisdiction. Thus, both the Central Government and the State Governments have concurrent jurisdiction under the Act in relation to cement industry.

In view of the above, the only short question arises for our deter-

A mination is as to which is the appropriate Government to make a reference in this case.

We need not dwell at length in view of the notification dated 8.12.77 of the Union of India and the stand taken in the counter affidavit, the relevant portion of which is extracted below :

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"The Government of India had issued notification No. SO 757 (E) dated 8.11.1977 wherein it is stated that under section 2(a) of the Industrial Disputes Act, 1947, the Central Government has specified (for the purpose of the said sub clause) the controlled industry engaged in the manufacture and production of cement, which has been declared controlled industry under section 2 of the Industrial (Development and Regulation) Act, 1951. By virtue of the aforesaid notification the Central Government becomes "appropriate Government" under the Industrial Disputes Act, 1947, in respect of cement industry. A true copy of the aforesaid notification dated 8.11.1977 is annexed herewith as Annexure R.I."

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"Subsequently, another notification was published in the Gazette of India Extraordinary dated 8.12.1977 wherein the Government of India exercise its power under section 39 of the Industrial Disputes Act, 1947, it was notified that the powers exercisable by Government of India under the Industrial Disputes Act 1947, in relation to cement industry shall also be exercisable by the State Governments, except in the case of mines and quarries forming part of the cement industry where the Central Government alone has jurisdiction. Thus both the Central Government and State Governments have concurrent the jurisdiction in relation to cement industry under the Industrial Disputes Act, 1947, except in the case of mines and quarries forming part of the cement industry. A true copy of said notification dated 8.12.1977 is annexed to this affidavit as Annexure R.II."

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"In the present special leave petition pertaining to regularisation of certain workmen working in the cement factory, engaged in the processes connected with transfer of cement, the Central Government as well as the State Governments are the appropriate Governments under the Industrial Disputes Act, 1947 in view of the issuance of notifications dated 8.12.1977 under section 39 of

the Industrial Disputes Act mentioned above."

The Notification dated 8.12.1977 reads as under :

"THE GAZETTE OF INDIA

Part II-Section 3 - Sub-section (ii) published by Authority.

No. 4520 NEW DELHI, THURSDAY, DECEMBER 8, 1977.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LABOUR

NOTIFIATION

New Delhi, the 8th December, 1977.

S.O. 826(E) - In exercise of the powers, conferred by section 39 of the Industrial Disputes Act, 1947 (14 of 1977) the Central Government hereby directs that all the powers exercisable by it under that Act and the rules made thereunder shall, in relation to the Cement Industry be exercised also by all the State Governments, subject to the condition that the Central Government shall continue to exercise all the powers under the said Act and Rules made thereunder :-

(i) relating to mines and quarries even where such mines and quarries form part of the Cement Industry; and

(ii) relating to the dispute between the employers who are members of the Cement Manufacturers Association Express Building Churchgate, Bombay and their workmen represented by Indian National Cement and Allied Workers Federation, Mazdour Karyalaya, Congress House Bombay, which has been referred for arbitration in pursuance of Section 10A of the said Act, read with notification No. S.O. 757-E dated 8th November, 1977 (No.S.11025/9/77/DI(A)), in terms of the arbitration agreement published by the notification of the Government of India in the Ministry of Labour Order No. L.29013/2/77-D.O.III(B) dated the 29th November, 1977,

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/No. S. 11023/9/77/D1(A)/
D.BANDYOPADHYAY,
Jt. Secy.

/True copy/attested/

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sd/-
Regional Labour
Commissioner
(Central) Madras".

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Therefore, it is clear that both the Central and the State Governments are appropriate governments under the Act. That being so, the notification issued by the Government of Tamil Nadu dated 23.1.87 is a valid notification. The stand taken by the respondent management is not tenable. Accordingly the impugned order of the Labour Court is hereby set aside. The Civil Appeal will stand allowed. The Labour Court is directed to proceed with the reference in accordance with law most expeditiously. There shall be no order as to costs.

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Appeals allowed.