REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.__8114____OF 2019

(ARISING OUT OF SPECIAL LEAVE PETITION (C) NO. 5805 OF 2019)

ONGC LABOUR UNION APPELLANT(S)

VERSUS

ONGC DEHRADUN & ORS. RESPONDENT(S)

J U D G M E N T

Hrishikesh Roy, J.

1. Leave granted.

2. Heard Mr. Colin Gonsalves, Learned Senior Counsel representing the appellant. Also heard Mr J.P. Cama, learned Senior Counsel representing Respondent No.1/Writ Petitioner (ONGC). Ms. Alka Agrawal, the learned counsel is representing the Union of India.

3. This appeal is filed by the *ONGC Labour Union* who however were not impleaded in the Writ Petition No.1323 of 2013, filed by the ONGC in the High Court of Uttarakhand. The ONGC had challenged the notification dated 08.09.1994 (Annex P6) issued by the Government of India, under *Section 10(1)* of the *Contract Labour (Regulation and Abolition) Act, 1970* (hereinafter referred to

as *'the CLRA Act')* prohibiting employment of contract labour in different categories of work, in the ONGC. The High Court allowed the ONGC's Writ Petition and quashed the 08.09.1994 notification of the Central Government. Assailing the said verdict, the Labour Union contends before us that the impugned prohibitory notification was issued after complying with the provisions of *Section 10* of *the CLRA Act,* which requires the Central Government to take into consideration the state of employment of contract labour in any process, operation or other works of any establishment. Specifically, the appropriate Government is required to bear in mind the conditions of work and benefits provided for the contract labour in the establishment by taking into account other relevant factors i.e. whether the work is incidental to or necessary for the industry, if it is perennial in nature, whether it is ordinarily done through regular workmen in the establishment or whether it is sufficient to employ considerable number of whole-time workmen.

3A. The *Section 10* of *the CLRA Act* being relevant is extracted herein below:-

> "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.
> (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 of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation that is 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.
> Explanation. – If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final."

4. Under the impugned notification (08.09.1994) of the Central Government, employment of contract labour qua 13 categories of job was prohibited. According to the appellant, i.e. the *ONGC Labour Union,* the Government notification for the ONGC was based on the recommendations of the Sub-Committee constituted to go into the question of prohibition of employment of contract labour, in the arena of maintenance and utility installations i.e. firefighting electrician, plumbers, flower decoration, sullage plants etc., in the establishments of the ONGC.

5.1 The learned Senior Counsel Mr. Colin Gonsalves for the appellant argues that when the challenge to *the CLRA Act* notification was made, the ONGC should have arrayed the representative Labour Union whose members are likely to be impacted by the Court proceeding and since this was not done, the *ONGC Labour Union,* had no opportunity before the High Court of

Uttarakhand. The learned Senior Counsel refers to the Communication dated 31.05.1993 (Annexure-P/3) and the report of the Sub-Committee to point out that the Ministry of Petroleum & Natural Gas had undertaken the required study on the establishments of the ONGC, before issuing the impugned notification (08.09.1994) under *the CLRA Act* but in the absence of the Labour Union, the High Court was kept in the dark about the Sub-Committee's inspection, deliberations and recommendation to the Ministry. Thus only one sided projection was made before the High Court. This by itself according to the Counsel, would warrant interference with the impugned judgment rendered in absence of the affected workman.

5.2 The appellant's counsel has taken us through the communication dated 19.10.1994 issued by the Industrial Relations Department of the ONGC and also the follow up communication dated 18.06.1996 to point out that a conscious decision was taken by the ONGC itself to comply with the direction on prohibition of contract labour but the organizational decision was disregarded and instead, the ONGC approached the High Court in 2014 to challenge the long standing notification (08.09.1994), issued under *the CLRA Act*.

5.3. In course of his submission Mr. Gonsalves refers to the similar challenge made by the ONGC in the Andhra Pradesh High Court and more particularly the counter affidavit filed by the Central

Government in the said proceeding. It was averred therein that a Sub-Committee was constituted by the Central Advisory Contract Labour Board to study the working of the Contract Labour system in certain jobs of maintenance and utility at the installations which were common to the establishments of ONGC and it is evident from the report of the Sub-Committee that ONGC is being organized on the basis of the functional business centres with commercial working relationship, on a common pattern. The affidavit shows that the Sub-Committee visited various installations of ONGC and held widespread discussion with the workers' representatives and also the management of the Eastern, Western and Southern Regional Business Centres where the ONGC had major presence in their operation. More specifically, the counsel submits that the Sub-Committee members visited the installations of ONGC in Madras, Jorhat, Dehradun, Baroda, Bombay and it was projected before the Andhra Pradesh High Court that the Sub-Committee conducted a thorough study in different organizational set-up in the ONGC and interacted with the stake holders before submitting their report. This was preceded by adequate opportunity to the ONGC management and the workers.

5.4 Highlighting the above, Mr. Gonsalves argues that although the recommendation of the Sub-Committee or the Board is advisory in nature, the Sub-Committee had made careful study of all aspects and made their recommendation. The Central

Government in their turn accepted only the unanimous recommendation of the Sub-Committee for 11 categories. For the remaining 15 job categories where there was no unanimity, barring the radio operators and drivers, all others were excluded from the prohibited categories. According to appellant's counsel, the fact that the organizational objective of the ONGC was guided by the uniform policy with regard to recruitment of man power on regular basis or through the contract labour system, the situation would not vary from establishment to establishment, to warrant quashing of the notification dated 08.09.1994, issued under *Section 10(1)* of *the CLRA Act*.

5.5 Dealing with the judgment in *Steel Authority of India Ltd. and Others vs. National Union Waterfront Workers and others reported in (2001) 7 SCC 1,* the counsel for the appellant argues that the said judgment pertaining to the earlier notification (09.12.1976) under *Section 10(1)* of the *CLRA Act,* could not have been the basis for the impugned judgment by the Uttarakhand High Court for the later notification of 08.09.1994 since the essential backdrop preceding the two notifications were dissimilar and different. In the case in hand, since the Writ Petitioner ONGC omitted to place on record the relevant materials pertaining to the recommendation of the Sub-committee (now produced in this Court), Mr. Gonsalves argues that the High Court committed error in reaching a

conclusion of non-application of mind by the Central Government, while issuing the impugned notification.

6.1. Per contra, Mr. J.P. Cama, the learned Senior Counsel representing the ONGC submits that when prohibition of employment of contract labour is proposed under the *CLRA Act*, the Central Government is required to study the status of employment of contract labour and the reference for the study must be establishment specific. According to the counsel, unless an establishment related exercise is undertaken, the Prohibition notification under *Section 10(1),* making it applicable to all ONGC establishments, across the country, could not have been validly issued by the Central Government.

6.2 Supporting the High Court's verdict, learned counsel for the respondent refers to certain passages in the *SAIL (supra)* judgment to contend that an omnibus notification without considering all factors in each establishment cannot be issued as this would be contrary to the statutory postulates of *Section 10* of *the CLRA Act*.

6.3 The Senior Counsel for the first respondent argues that the impugned notification (08.09.1994) prohibiting employment of contract labour was hastily issued because of the time frame stipulated by the Bombay High Court in the WP(C) No.2185/1991. According to Mr. Cama, establishment specific study was not conducted and hence the decision-making process was vitiated.

Moreover, other relevant factors including those mentioned in *sub-section (2)* of *Section 10* of *the CLRA Act* were not considered and the impugned notification itself did not mention in its body, the compliance with the requirement of *Section 10(2)* of the *CLRA Act.* The learned Senior Counsel projects that the Central Government's decision is vitiated by non-application of mind.

6.4. Mr. Cama next submits that for alleged failure to implement the notification dated 08.09.1994 (stayed by Andhra Pradesh High Court), the officers of the ONGC were subjected to criminal summons by the CJM, Dehradun and that is why, the Section 482 Cr.P.C. Petition had to be filed before the Uttarakhand High Court. Later, the W.P. No.1323/2013 (M/S) was also filed in the same High Court by the ONGC, to challenge the prohibitory notification issued under *Section 10(1)* of the *CLRA Act*.

7. On the other hand Ms. Alka Agrawal, the learned Counsel for the Central Government contended that the impugned notification was issued in accordance with the requirement of *Section 10* of *the CLRA Act.* Moreover, background study on employment of contract labour was conducted, relevant reports were received and the process was finalized only after consultation with the Central Advisory Contract Labour Board and other stakeholders.

8. The 08.09.1994 notification under *Section 10* of *the CLRA Act* which abolished the contract labour system in ONGC

establishments across the country, was challenged for the first time in 2003 by the Rajahmundry assets of the ONGC which filed the Writ Petition No.4460 of 2003 and Writ Petition No.3397 of 2003, in the Andhra Pradesh High Court. Interim order was passed on 25.03.2003 by the High Court in that proceeding and those cases are perhaps still pending. Before the Uttarakhand High Court, the case came to be filed much later in 2013. Even before those challenges were made, internal circulars were issued within the ONGC, to comply with the 1994 notification, issued under *Section 10* of the *CLRA Act*.

9. The averred stand in the Central Government's counter affidavit filed in the Andhra Pradesh High Court shows that out of 26 categories of work in the ONGC, the Sub-Committee was unanimous in recommending abolition of Contract Labour in 11 categories of work. However, there was no consensus amongst the members for the remaining 15 categories. This difference of opinion was noted and the Central Government then decided to prohibit contract labour in 11 out of the 26 specified categories of work, on the basis of the input received from the Sub-Committee. The relevant portion of averments in the counter affidavit is extracted herein below for ready reference: -

> "..... .. Thus it will be seen that out of 26 items of work the Government abolished 11 items of work where the sub-committee recommendation was

> unanimous and out of the remaining 15 items of works where the sub-committee was not unanimous only the above two categories viz radio operators and drivers were included for prohibition. Hence it is not correct on the part of the petitioner to state that the Govt. did not properly apply its mind over the issue. In reply to the para-7 of the affidavit it is submitted that the report of the sub-committee was signed by three members -2 non-official and 1 ex-officio – where one member was from the employee side and the other from the employers. The report therefore did not lack the necessary balance. The report clearly indicated the areas of disagreement. It is therefore incorrect on the part of the petitioner to state that the report lacked necessary rigour. Moreover, the report is rather an input in the overall process of notifying a decision by the Government. Also the sub-committee have conducted its business as per quorum in accordance with Rule 16(ii) of the CL (R&A) Central Rules, 1971.
> .....
> ”

10. It was also averred in the said affidavit before the Andhra Pradesh High Court that the Sub-Committee was not mandatorily required to visit each and every establishment for their assessment especially when the operations are common in all projects in ONGC. The relevant portion of the averments in the counter affidavit filed by the Union of India reads as under:

> “…..The sub-committee in the course of its work obtained information about the installations of ONGC. Also the sub-committee held widespread discussion with the workers’ representatives and the management of Eastern, Western & Southern Regional Business Centres where ONGC had its operations in majority in the course of its examination of the Contract Labour System in certain jobs in ONGC. It visited Madras on 15.10.92 and heard the submissions of the workers’ union…….It also visited installations of ONGC at Ichhapur Drilling site, West Bengal, Gandhar, Ankaleshwar and interacted with the workmen. It also heard the submissions of the workers and the management at Baroda. It also visited the installations in the offshore, Bombay and elicited information both from workmen and management…….It is therefore wrong to suggest

> that the sub-committee conducted a nominal and superficial enquiry. It is also wrong to suggest that the Govt. of India mechanically issued the impugned notification without proper application of mind and without having regard to the various legal requirements as specified in Section 10(2) of the Contract Labour (Regulation and Abolition) Act, 1970.....".

11. The *Section 10(1)* notification prohibiting contract labour as can be seen, would directly impact the workmen in the ONGC but most surprisingly, in the writ petitions filed before the two High Courts, the ONGC management choose not to array any of the recognised labour Unions. Hence, the affected contract labourers in the ONGC were denied the opportunity to participate in the writ proceedings in the concerned High Courts.

12. The impugned judgment indicates that the High Court had no access to the previous exercise undertaken by the Central Government, leading to issuance of the impugned notification under *Section 10(1)* of *the CLRA Act*. It appears that the factum of constitution of the sub-committees prior to the issuance of the impugned notification and the studies made by the sub-committees and the nature of their recommendations, were not brought to the notice of the learned Judge. Besides the Court was made to believe that the Central Government had not consulted the Labour Advisory Board. Thus, wrong inference was drawn on incorrect premises and the High Court proceeded under the presumptive footing as if, there was non-application of mind by the Central Government.

13. While the above discussions and the contentions raised by the respective Counsel might normally merit our consideration, the denial of opportunity to the appellant or to any other recognized labour Union in the High Court, persuade us to consider another option which would be consistent with the principles of natural justice. The prohibition notification undoubtedly impact the life and livelihood of the contract labourers, but unfortunately neither the *ONGC labour Union* (the appellant herein) or the other recognized Labour Unions in the ONGC were represented or heard in the High Court.

14. It is also necessary to point out that the learned Judge rendered the impugned judgment primarily on the basis of the SAIL verdict since none of the relevant materials for the 1994 notification were produced in the High Court. Crucially, when the impugned notification was issued, the Central Government did not have the benefit of the SAIL judgment rendered on 30.08.2001 which again related to the 1976 notification. Therefore the question is whether the learned Judge could have founded his decision on the errors/omissions, noted in SAIL (supra) judgment.

15. The primary focus of the challenge in the 30.08.2001 SAIL verdict was to the previous notification (S.O. No.776 (E) dated 09.12.1976) issued by the Central Government, prohibiting employment of contract labour in respect of four categories of works in establishments, *inter-alia,* of the ONGC. The said

notification was struck down with the finding that the pre-requisites for issuing the notification were not satisfied. It was also perceived to be an omnibus notification without reference to the relevant factors-qua each establishment. But according to us, it was necessary for the High Court to determine whether the observations made for the then impugned 09.12.1976 notification would also apply with all vigour, to the presently impugned notification (08.09.1994), issued under *Section 10(1)* of the *CLRA Act*. More particularly, the learned Judge should have determined whether the prohibitory notification was preceded by the required enquiry on contract labour by the Sub-Committee, the nature of the study by the Sub-Committee, whether the views of the stakeholders were noticed by the Committee members and the implications of those, on the decision of the Central Government. The impugned judgment shows that no material was placed before the High Court to indicate *".....what inquiry/material was carried out to meet the requirements provided under sub-section (2) of Section of the Act, 1970. There is no reference when the Sub-Committee was constituted and what were its recommendations"*. The Central Government also failed to project that any consultation was made with the Central Advisory Labour Board.

16. The afore quoted observation in the judgment under challenge would suggest that the High Court's Judgment was passed without being apprised of the relevant materials and

primarily on the basis of the SAIL (supra) judgment which however related to the 1976 notification. This in our opinion has resulted in prejudice for those who, given the opportunity, could have apprised the High Court with all facts and the detailed study/discussion by the Sub-Committees, preceding the 08.09.1994 notification.

17. In the above circumstances, since no opportunity was provided to the appellant Union in a case, which directly concerns the members of the *ONGC Labour Union* and other workman, we deem it appropriate to order restoration of the Writ Petition No.1323 of 2013 (M/S), in the file of the High Court of Uttarakhand for fresh consideration. The appellant i.e., the *ONGC Labour Union* – Gujarat is ordered to be impleaded in the restored proceedings. As suggested by the appellant's counsel, other recognized labour Unions within ONGC such as *the ONGC Contractual Worker Union*, Cachar Forward Base, Silchar, Assam – 788026, *the ONGC Contract Employee Union*, 15, Sewak Ashram Road, Dehradun, Uttarakhand – 248001, *the ONGC (WOU) Karamchari Sanghatana*, 11 High, NBP GR Heights, Hazira, Mumbai – 394270, *the Petroleum Employees Union*, Oil and Natural Gas Corporation Ltd., Godavari Bhavan, Rajahmundry – 533107 may also be vitally interested and such concerned Labour Unions must also be impleaded in the High Court. The respondent-ONGC, Dehradun shall implead all these labour Unions and serve notice upon them. The respective senior

counsel representing the parties have requested for early disposal of the remanded matter and have offered to argue before the High Court, without any loss of time. In view of this, the Uttarakhand High Court is requested to decide the matter expeditiously and preferably within four months of notice being served on the respondents in the restored Writ Petition.

18. The appeal is disposed of with the above order.

.....J.
[R. BANUMATHI]

.....J.
[A.S. BOPANNA]

.....J.
[HRISHIKESH ROY]

NEW DELHI
OCTOBER 17, 2019