

# **Contract and Outsourced Labour Issues and Challenges**

**-Justice K Chandru**





" whatever the merits of the system in primitive times, it is now desirable, if the management is to discharge completely the complex responsibility laid upon it by law and by equity, that the manager should have full control over the selection, hours of work and payment of the workers ".

**Royal Commission of Labour**

## Justice O.Chinnappa Reddy

**“The practice of employing labour through contractors for doing work inside the premises of the primary employer, known to researchers of the International Labour Organisation and other such organisations as 'Labour only contracting' or 'inside contracting' system, has been termed as an archaic system and a relic of the early phase of capitalist production, which is now showing signs of revival in the more recent period”**

**“Of late there has been a noticeable tendency on the part of big companies including public sector companies to get the work done through contractors rather than through their own departments.”**

**“it is a matter of surprise that employment of contract labour is steadily on the increase in many organised sectors including the public sector, which one expects to function as a model employer.”**

**Catering Cleaners Of Southern Railway  
Vs  
Union Of India & Ors.,  
AIR 1987 SC 777**

**What was the law  
before the Special Act?**



**The Standard-Vacuum Refining Co. of India Ltd.  
Vs.  
Its Workmen & Others  
AIR 1960 SC 948**





## **Order of Reference to Tribunal (1)**

"The contract system for cleaning the premises and plant should be abolished and workers working in the refinery through the Ramji Gordhan and Company should be treated as workers of the Standard Vacuum Refining Company of India Limited, Bombay, and wage-scales, conditions of service, etc., that are applicable to the workers of the refinery be made applicable to them. Past service of these workers should be counted and they should be treated as continuously in the service of the Stanvac refinery from the date of their entertainment."

**Government of Bombay (May 13, 1958)**



- The tribunal held that the reference was competent. (2)
- On the merits : that the work which was being done through the contractor was necessary for the company and had to be done daily, though it was not a part of the manufacturing process.
- doing of this work through annual contracts resulted in the deprivation of security of service and other benefits, privileges, leave, etc., for the workmen of the contractor.

Therefore

- this was a proper case where a direction should be given to the company to abolish the contract system with respect to this work.

**The fact that the respondents who have raised this dispute are not employed on contract basis will not make the dispute any the less a real or substantial dispute between them and the company as to the manner in which the work of the company should be carried on. The dispute in this case is that the company should employ workmen directly and not through contractors in carrying on its work and this dispute is undoubtedly real and substantial even though the regular workmen who have raised it are not employed on contract labour.**

(4)

Where, however, the party to the dispute also composed of workmen espouse the cause of another person whose employment or non-employment, etc., may prejudicially affect their interest, the workmen have a substantial interest in the subject-matter of dispute. In both such cases the dispute is an industrial dispute. "

**(5)**

**It may be relevant to bear in mind that industrial adjudication generally does not encourage the employment of contract labour in modern times**



## SC Rules

---

(6)

whenever a dispute is raised by workmen in regard to the employment of contract labour by any employer it would be necessary for the tribunal to examine the merits of the dispute apart from the general consideration that contract labour should not be encouraged,

(7)

---

in a given case the decision should rest not merely on theoretical or abstract objections to contract labour

but also on the terms and conditions on which contract labour is employed

and the grievance made by the employees in respect thereof.

---

the contract in this case is a bona fide contract would not necessarily mean

that it should not be touched by the industrial tribunals.

If the contract had been mala fide and a cloak for suppressing the fact that the workmen were really the workmen of the company,

the tribunal would have been justified in ordering the company to take over the entire body of workmen & treat it as its own workmen.



LAW



# The Contract Labour (regulation And Abolition) Act, 1970



## History of the new law

- 31.7.1967 - Bill introduced in Lok Sabha
- 7.5.1968 - Bill referred to Joint Committee
- 29.1.1969 - Joint Committee Recommendations proposing amendments
- 5.9.1970 - The Contract Labour (Regulation and Abolition Act), 1970
- 10.2.1971 - The Act comes into force

## **Statement of Objects and Reasons for the Act (1)**

**The system of employment of contract labour lends itself to various abuses.**

**The question of its abolition has been under the consideration of Government for a long time.**

**In the Second Five Year Plan, the Planning Commission made certain recommendations, namely, undertaking of studies to ascertain the extent of the problem of contract labour, progressive abolition of the system and improvement of service conditions of contract labour where the abolition was not possible**

(2)

The matter was discussed at various meetings of Tripartite Committees at which the State Governments were also represented and the general consensus of opinion was that the system should be abolished wherever possible and practicable and that in cases where this system could not be abolished altogether, the working conditions of contract labour should be regulated so as to ensure payment of wages and provision of essential amenities.

(3)

**The proposed Bill aims at the abolition of contract labour in respect of such categories as may be notified by the appropriate Government in the light of certain criteria that have been laid down, and at regulating the service conditions of contract labour where abolition is not possible.**



(4)

The Bill provides for the setting up of Advisory Boards of a tripartite character, representing various interests, to advise the Central and State Governments in administering the legislation and registration of establishments and contractors. Under the Scheme of the Bill, the provision and maintenance of certain basic welfare amenities for contract labour, like drinking water and first-aid facilities, and in certain cases rest-rooms and canteens, have been made obligatory. Provisions have also been made to guard against defaults in the matter of wage payment.

# How the law seeks to achieve the object?

- Section 7(1)** - Registration
- Section 9** - Effect of non-registration
- Section 10** - Prohibition of Contract Labour
- Section 12** - Licensing of Contractors
- Section 21(4)** - Principal employer liable in case of default by contractors



# Constitutional Validity upheld

**Gammon India Ltd  
Vs.  
Union of India**

**AIR 1974 SC 960**





**The crucial point is that the interests of the workmen are remedied by the objects of the Act. Those interests are minimum labour welfare. There is no unreasonableness in the measure.**



## Labour Courts - no jurisdiction to deal with contract labour

Under sec 10 of the said Act tin jurisdiction to decide matters connected with prohibition of contract labour is now vested in the appropriate Government.

w.e.f 10.2.1971, it is only the appropriate Government that can prohibit contract labour by following the procedure and in accordance with the provisions of the Central Act.

The Industrial Tribunal, in the circumstances, will have no Jurisdiction

**Vegoils Private Limited**

**Vs.**

**The Workmen**

**AIR 1972 SC 1942**

we hold that though there is no express provision in the Act for absorption of the employees whose contract labour system stood abolished by publication of the notification under section 10 (1) of the Act,

in a proper case, the court as sentinel in the quiver is required to direct the appropriate authority to act in accordance with law and submit a report to the court and based thereon proper relief should be granted.

**Air India Statutory Corporation**

**Vs.**

**United Labour Union & Ors.**

**AIR 1997 SC 645**

The background of the slide features a silhouette of two workers in a steel mill. On the left, a worker is bent over, working with a large piece of metal. On the right, another worker stands on a platform, using a long-handled tool, possibly a hammer or a pry bar, on a surface. The scene is set against a bright, hazy sky, likely during sunrise or sunset, which creates a strong backlighting effect for the workers.

**Steel Authority Of India Ltd.  
Vs.  
National Union Water Front Workers**

**2001 (7) SCC 1**

After 28.1.1996,

(1)

**appropriate government**

**Under Sec. 2(a) of the Industrial Disputes Act; if (i) the concerned Central Government company/undertaking or any undertaking is included therein eo nomine, or**

**(ii) any industry is carried on (a) by or under the authority of the Central Government, or (b) by railway company; or (c) by specified controlled industry,**

**then the Central Government will be the appropriate Government otherwise in relation to any other establishment, the Government of the State in which that other establishment is situated, will be the appropriate Government.**

## **Section 10 – Prohibition of Contract Labour**

**(2)**

---

A notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour in any process, operation or other work in any establishment has to be issued by the appropriate Government :

- (1) after consulting with the Central Advisory Board or the State Advisory Board, as the case may be, and;**
- (2) having regard to :-**
  - (i) conditions of work and benefits provided for the contract labour in the establishment in question; and**
  - (ii) other relevant factors including those mentioned in Section 10(2)**

## **No automatic absorption by principal employer (3)**

Neither Section 10 of the CLRA Act nor any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by appropriate Government under Section 10(1), prohibiting employment of contract labour, in any process, operation or other work in any establishment.

Consequently the principal employer cannot be required to order absorption of the contract labour working in the concerned establishment;



(4)

## Air India Case over-ruled

“We over-rule the judgment of this court in Air India’s case \* prospectively.”

**\*Air India Statutory Corporation Vs. United Labour Union & Ors,  
AIR 1997 SC 645)**



## **Role of Labour Courts**

**(5)**

**On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder.**

(6)

## **Right to get absorbed**

If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labour in the concerned establishment subject to the conditions as may be specified by it for that purpose

(7)

## On abolition of Contract Labour what follows?

If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the concerned establishment has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen he **shall give preference** to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications

## **High Court has no power under Art.226**

**We have used the expression industrial adjudicator by design as determination of the questions afore-mentioned requires inquiry into disputed questions of facts which cannot conveniently be made by High Courts in exercise of jurisdiction under Article 226 of the Constitution.**

**Therefore, in such cases the appropriate authority to go into those issues will be industrial tribunal/court whose determination will be amenable to judicial review.**

## 1976 notification set aside

(9)

The impugned notification apart from being an omnibus notification does not reveal compliance of sub-section (2) of Section 10. This is ex facie contrary to the postulates of Section 10 of the Act. Besides it also exhibits non-application of mind by the Central Government. We are, therefore, unable to sustain the said impugned notification dated December 9, 1976 issued by the Central Government. Point No.3 remains to be considered. This is the moot point which generated marathon debate and is indeed an important one.

“The changes brought about by the subsequent decisions of this Court, probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing, is evident.”

**U.P. State Brassware Corpn. Ltd.**

**Vs.**

**Uday Narain Pandey**

**(2006 (1) SCC 479)**

Socialism might have been a catchword from our history. It may be present in the preamble of our Constitution. However, due to the liberalisation policy adopted by the Central Government from the early nineties, this view that the Indian society is essentially wedded to socialism is definitely withering away.

**U.P. State Brassware Corpn. Ltd. Vs. Uday Narain Pandey  
2006 (1) SCC 479.**



# Case of the BHEL Sweepers on Contract





# Case of the BHEL Sweepers on Contract





## Central Govt. Notification

### Abolition of Contract Labour relating to sweeping

**S.O.779 (E) Dt.9.12.1976**

“The Central Government after consultation with the Central Advisory Contract Labour Board, hereby prohibits employment of contract labour on and from the 1<sup>st</sup> March 1977, **for sweeping, cleaning, dusting** and watching of buildings owned or occupied by establishment of respect of which the appropriate Government under the said Act is the Central Government”

## **Which is the appropriate govt. for BHEL?**

“it must be held that the State Government is the appropriate Government with regard to the disputes in question”

**Bharat Heavy Electrical Ltd. ...**

**Vs.**


**The Government Of Tamilnadu  
(1985) IILLJ 509 Mad**

## **Tamil Nadu Govt. Notification**

### **Abolition of Contract Labour relating to sweeping**

**G.O.Ms.No. 2082, Labour and Employment, 19.9.1988**

“The Governor of Tamil Nadu after consultation with the State Advisory Board on Contract Labour and after having regard to the conditions of work and benefits provided for the contract labour and other relevant factors in the establishments/factories referred to in clauses (a) to (d) of sub-section (2) of the said section, hereby prohibits the employment of contract labour in the process of sweeping and scavenging in the establishments/factories which are employing 50 or more workmen”

A decorative border of orange pencils with yellow and red bands, arranged in a rectangular frame around the text.

“they have to move the Central Government for appropriate notification so that the contract labourers employed in BHEL, Ranipet, could be benefited and the provisions of the Contract Labour (Regulation and Abolition) Act, 1970, social legislation could be enforced”

**BHEL Thuppuravu Thozhilalar Sangam  
Vs.  
Mgmt. Of BHEL & Ors.  
(2000) ILLJ 1533 Mad**

## **1976 notification set aside**

The impugned notification apart from being an omnibus notification does not reveal compliance of sub-section (2) of Section 10. This is ex facie contrary to the postulates of Section 10 of the Act. Besides it also exhibits non-application of mind by the Central Government. We are, therefore, unable to sustain the said impugned notification dated December 9, 1976 issued by the Central Government. Point No.3 remains to be considered. This is the moot point which generated marathon debate and is indeed an important one.

**After 28.1.1996,**

**appropriate government**

Under Sec. 2(a) of the Industrial Disputes Act; if (i) the concerned Central Government company/undertaking or any undertaking is included therein eo nomine, or

(ii) any industry is carried on (a) by or under the authority of the Central Government, or (b) by railway company; or (c) by specified controlled industry,

then the Central Government will be the appropriate Government

otherwise in relation to any other establishment, the Government of the State in which that other establishment is situated, will be the appropriate Government.



## **High Court upholds the State Govt.'s notification**

the notification had been issued after fully complying with the prescribed procedure under Section 10 of the Act to prohibit employment of contract labour after proper consultation with all relevant parties and evaluation of all relevant factors and materials by the State Government.

**Bharat Heavy Electricals Limited**

**Vs.**

**Govt. of Tamil Nadu & Ors.**

**(1997) 3 LLN 495**

**Supreme Court reverses the decision**


**Tamil Nadu Govt. notification abolishing  
Contract Labour in sweeping set aside**

**L&T MCnEIL Ltd.**

**Vs.**

**Govt. of Tamil Nadu**

**(2001) 3 SCC 170**

A decorative border with intricate black and white floral and scrollwork patterns, framing the central text. The border consists of four main sections: a top and bottom section with symmetrical scrollwork and a central vertical line, and two side sections with vertical scrollwork and leaf-like motifs.

**Industrial Dispute raised and referred for  
adjudication**

**G.O.Ms.No.810/2004 Labour & Employment  
Department dated 13.7.2004**

“I hold that the impugned order is not at all sustainable and therefore, the same is liable to be quashed and accordingly, it is quashed. The Writ Petition is allowed”

W.P.(MD) No.2672 of 2004 dt 10/12/2008

**BHEL**

**Vs.**

**State of Tamil Nadu & Ors.**

Where will the workers go now?







# SWACHH BHARAT

MISSION IN ACTION