

Before D. S. Tewatia and M. R. Agnihotri, JJ.

FOOD CORPORATION OF INDIA,—Petitioner.

versus

THE PRESIDING OFFICER, CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL, AND ANOTHER,—Respondents

Civil Writ Petition No. 4384 of 1986.

April 8, 1987.

*Industrial Disputes Act (XIV of 1947)—Section 25-F—Contract Labour (Regulation and Abolition) Act (XXXVII of 1970)—Sections 7, 9, 12 to 20, 29—Dismissal of a worker by principal employer—Principal employer disowning liability as the worker employed through a labour contractor—Such worker—Whether worker of employer—Condition for determination.*

Held, that every worker who works for a principal employer to whom the provisions of Contract Labour (Regulation and Abolition) Act, 1970 are attracted, is to be treated as the worker of the principal employer unless two conditions are satisfied:—

- (i) that the establishment had secured a certificate of registration for the relevant period; and
- (ii) it had employed contract labour through a licensed contractor.

If either of the conditions is missing then the contract labour employed through the contractor shall be treated to be the "worker" of the employer.

(Para 11).

*Petition under Articles 226/227 of the Constitution of India praying that the writ petition be accepted, records of the case sent for; and*

- (a) a writ in the nature of certiorari issued quashing the impugned award annexure P/12;
- (b) any other suitable writ, order or direction issued which this Hon'ble Court deems fit and proper in the circumstances of the instant case;
- (c) service of notice of motion dispensed with since the impugned award has become enforceable and moreover the respondent-union has already filed a caveat in this Hon'ble Court;

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- (d) filing of original/certified copies of documents Annexures P/1 to P/13 dispensed with;
- (e) operation of the impugned award stayed till the writ petition is finally disposed of by this Hon'ble Court; and
- (f) costs awarded to the petitioner.

N. K. Sodhi, Senior Advocate, (R. N. Raina, Advocate with him),  
for the Petitioners.

G. C. Gupta, Advocate, for the Respondent.

#### JUDGMENT

D. S. Tewatia, J.

(1) The three writ petitions (C.W.P. 4384, 4857 and 4894 of 1986) filed by the Food Corporation of India (as the common petitioner in these petitions), impugning a common Award, dated 27th March, 1986, of the Central Government, Industrial Tribunal, Chandigarh (hereinafter referred to as 'the Tribunal') involve common question of law and of facts and, therefore, common judgment is proposed.

(2) The petitioner Food Corporation of India (for short 'the Corporation') was constituted by an Act of Parliament with the object *inter alia* of procurement, storage and distribution of food grains throughout the country. It functioned through its Head Office at Delhi and four Zonal Offices in the Eastern, Western, Southern and Northern sectors. The corporation had two separate offices, one in Punjab region and the other in Haryana region in the Northern Zone. The Corporation employed thousands of handling Mazdoors for carrying out its activities of loading and unloading, either directly or indirectly through contractors. Dispute arose between the Corporation and some of such workers employed to carry out its given activities at Amritsar Depot and Nawanshahar Depot in Punjab region and Ambala Depot in Haryana region. The workers for all these three Depots alleged that they were employees of the Corporation and their services were being terminated without complying with the provisions of section 25-F of the Industrial Disputes Act (for short 'the Act'). All these three disputes came eventually to be tried by the Tribunal at Chandigarh. The Corporation *inter alia* took the stand before the Tribunal that the workers

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in question were not their employees as they were hired by its contractors, who had effective control on their work and conduct for all intents and purposes; that the workers were not on its rolls and that for want of privity of contract between the Corporation on one hand and the workers on the other, the Corporation was not answerable in regard to the termination of the employment of the said workers by the contractor. In support of its case, the Corporation put up in the witness-box *inter alia* Assistant Manager Shri Krishan Lal (MW-1) and Deputy Manager, Shri A. K. Koley (MW-2).

(3) The Tribunal on the basis of the material adduced before it came to the conclusion that the Corporation was an 'industry' as defined by section 2(i) of the Act, that to it, provisions of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as 'the Contract Labour Act') were also applicable; that the Corporation was neither registered in terms of Section 7 of the Contract Labour Act nor it employed licensed contractor, hence the employees employed by alleged contractors were to be treated as the employees of the Corporation and the termination of their services by the alleged contractors were to be treated as having been effected by the Corporation itself and that since that was done in violation of provisions of section 25-F of the Act, and the termination of their services was, therefore clearly illegal.

(4) In view of the above findings, the Tribunal, therefore, directed the Corporation to reinstate the workers forthwith on their original posts and start paying their usual wages with immediate effect.

(5) The Corporation (petitioner) has challenged the said Award through these three separate writ petitions (C.W.P. No. 4384/1986, C.W.P. No. 4857/1986 and C.W.P. No. 4894/1986) arising from Reference I.D. No. 49/1984, Reference I.D. No. 157/1983 (Delhi), I.D. No. 12/1983 (Chandigarh) and Reference I.D. No. 112/1983 respectively.

(6) The learned counsel for the Corporation has confined himself to the impugning of the following two findings of the Tribunal:

- (i) that the Corporation did not get itself registered in terms of section 7 of the Labour Contract Act; and

- (ii) that some of the workers used to be paid their monthly wages by the Corporation without the intervening agency of the Contractor as per Exhibits W-3 and W-8, the authenticity whereof had been admitted on behalf of the Corporation.

Regarding the first finding, the stand taken in the writ petition is that in fact the registration certificate had been obtained by the Corporation and a copy thereof had been produced on the record of the Tribunal as Exhibit M-44 and a copy whereof is annexed to the writ petition as Annexure P-13.

Regarding the second finding, it is mentioned that the alleged documents pertained to the Punjab region of the Corporation and do not pertain to the Haryana region of the Corporation.

(7) It is not in dispute that provisions of Contract Labour Act are applicable to the Corporation, i.e. if the Corporation intends to employ contractor, then it has to get itself registered under section 7 of the Contract Labour Act, which provision is in the following term:—

*“S.7. Registration of certain establishments.—(1) Every principal employer of an establishment to which this Act applies shall within such period as the appropriate Government, may by notification in the Official Gazette, fix in this behalf with respect to establishments generally or with respect to any class of them, make an application to the registering officer in the prescribed manner for registration of the establishment:*

*Provided that the registering officer may entertain any such application for registration after expiry of the period fixed in this behalf, if the registering officer is satisfied that the applicant was prevented by sufficient cause from making the application in time.*

- (2) *If the application for registration is complete in all respects, the registering officer shall register the establishment and issue to the principal employer of the establishment a certificate of registration containing such particulars as may be prescribed.”*

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Section 9 of the Contract Labour Act spells out the effect of 'non-registration'. This provision is in the following term:—

"S.9. *Effect of non-registration.*—No principal employer of an establishment, to which this Act applies, shall—

(a) in the case of an establishment required to be registered under Section 7, but which has not been registered within the time fixed for the purpose under that section.

(b) in the case of an establishment the registration in respect of which has been revoked under Section 8,

employ contract labour in the establishment after the expiry of the period referred to in clause (a) or after the revocation of registration referred to in clause (b), as the case may be."

Perusal of the aforesaid provisions of section 9 would show that if a principal employer of any establishment, who is required to secure a registration certificate under section 7 of the Contract Labour Act fails to do so or its registration certificate is revoked under section 8 of the Contract Labour Act, then such principal employer shall not employ a contract labour in the establishment after the period indicated in clause (a) and clause (b).

(8) Section 12 of the Contract Labour Act provides that no contractor shall undertake or execute any work through contract labour except under and in accordance with a licence issued in that behalf by the licencing officer. The relevant provision of section 12 of the Contract Labour Act is in the following terms:—

"S.12. *Licensing of contractors.*—(1) With effect from such date as the appropriate Government may, by notification in the Official Gazette, appoint, no contractor to whom this Act applies, shall undertake or execute any work through contract labour except under and in accordance with a licence issued in that behalf by the licensing officer.

- (2) Subject to the provisions of this Act, a licence under sub-section (1) may contain such conditions including, in particular, conditions as to hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with the rules, if any, made under section 35 and shall be issued on payment of such fees and on the deposit of such sum, if any, as security for the due performance of the conditions as may be prescribed."

Section 13 of the Contract Labour Act provides for grant of licences and section 14 of the Contract Labour Act provides for revocation, suspension and amendment of licences. Sections 16, 17, 18 and 19 of the Contract Labour Act envisage providing of facilities to the work force in the establishment employing contract labour. Section 20 of the Contract Labour Act makes principal employer finally responsible for providing facilities envisaged by section 16 to section 19, if the contractor fails to do so. Section 21 fixes the responsibility on the principal employer for paying the wages to the workers if contractor fails to do so. Of course, in both cases, the principal employer is entitled to require the contractor to reimburse him.

(9) Section 29 of the Contract Labour Act, which is in the following terms, *inter alia* provides that the principal employer shall maintain such register and records giving such particulars of contract labour employed, the nature of work performed by the contract labour, the rates of wages paid to the contract labour and such other particulars in such form as may be prescribed:—

"S.29. *Registers and other records to be maintained.*—(1)

Every principal employer and every contractor shall maintain such registers and records giving such particulars of contract labour employed, the nature of work performed by the contract labour, the rates of wages paid to the contract labour and such other particulars in such form as may be prescribed.

- (2) Every principal employer and every contractor shall keep exhibited in such manner as may be prescribed within the premises of the establishment where the contract labour is employed, notices in the prescribed form

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containing particulars about the hours of work, nature of duty and such other information as may be prescribed.”

(10) The Corporation had feigned total ignorance about the fact as to which person had been employed by the contractor. It has also feigned total ignorance of the fact as to whether contractors engaged by it had possessed the licence envisaged by section 12 of the Contract Labour Act. Such ignorance in our view is unacceptable in the light of the provisions of section 29 of the Contract Labour Act. The Corporation had by feigning ignorance tried to suppress from the Tribunal facts which must be unfavourable to it.

(11) Every worker, in our view, who works for a principal employer to whom the provisions of Contract Labour Act are attracted, is to be treated as the worker of the principal employer unless two conditions are satisfied:—

- (i) that the establishment had secured a certificate of registration for the relevant period ; and
- (ii) it had employed contract labour through a licensed contractor.

If either of the conditions is missing then the contract labour employed through the contractor shall be treated to be the “worker” of the employer.

(12) In the present case, the positive case pleaded by the Corporation before the Tribunal was that the workers were the employees of the contractor and were not its (Corporation's) employees. The Corporation could succeed in disowning any liability *qua* the workmen only if it proved the fact that the workers were engaged by the licensed contractor. The Corporation had not established that fact before the Tribunal.

(13) As to the question as to whether the Corporation had or had not obtained the registration certificate in terms of section 7 of the Contract Labour Act, it may be observed that the Certificate, Exhibit P-13, does not bear any date, so one is left guessing as to

when was it obtained and was relevant for which period of time. Affidavit, Exhibit P-9, of the Deputy Manager, Food Corporation of India, too does not mention that it possessed registration certificate for the relevant period.

(14) For the sake of argument, as already observed, even if the Corporation was possessed of a requisite certificate of registration, then too it cannot escape its liability *qua* the workers employed by a contractor unless it further established that the contractor employed by the principal employer possessed the requisite licence envisaged by section 12 of the Contract Labour Act. That the Corporation (petitioner) failed to establish, as already observed.

(15) For the reasons aforementioned, we find no merit in these petitions (C.W.P. No. 4384, C.W.P. No. 4857 and C.W.P. No. 4894 of 1986) and dismiss the same with no order as to costs.

S.C.K.

Before H. N. Seth, C.J. and M. S. Liberhan, J.

M/S LEADER VALVES (P) LTD.,—Petitioner.

*versus*

THE COMMISSIONER, INCOME-TAX, JULLUNDUR AND ANOTHER,—Respondents.

Civil Writ Petition No. 4378 of 1986.

April 13, 1987.

*Income-tax Act (XLIII of 1961)—Sections 240, 241, 256(1)—Assessment framed—Tax deposited on the basis of such assessment—Annulment of assessment—Refund of tax paid—pendency of reference in High Court—Withholding of refund—Grounds for such withholding.*

*Held*, that under Section 241 the Income-tax Officer is entitled to, with the prior approval of the Commissioner, withhold during the pendency of the reference made to the High Court under Section 256(1) of the Income-tax Act, 1961, the refund which became due to the petitioner, as a result of annulment of its assessment by