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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 27.03.2025
Pronounced on: 24.04.2025

\+ W.P.(C) 4114/2008

CENTRAL WAREHOUSING CORPORATION…..Petitioner
Through: Mr. Vikas Singh, Sr. Adv. With Mr. K.K. Tyagi, Mr. Iftakhar Ahmed, Ms. Vasudha Singh, Ms. Garima Tyagi, Advs.

versus

GOVT. OF INDIA .....Respondents
Through: Mr. T.P. Singh, Sr. Central Govt. Counsel for R-1/UOI.
Ms. Asha Jain Madan, Adv. For R-2 to R-225.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT

% 24.04.2025

AJAY DIGPAUL, J.

1. The present writ petition challenges notification dated 17 November 2006 issued by the Ministry of Labour and Employment, Government of India, whereby employment of contract labour in the petitioner's[1] establishment was prohibited.

2. The impugned notification issued under Section 10 (1) of the Contract Labour (Regulation and Abolition) Act, 1970[2], prohibited the employment of contract labour in the works of handling import and

[1] Central Warehousing Corporation, "CWC" hereinafter
[2] "the Act" hereinafter

export container/ cargo, their loading and unloading from road vehicles, along with their stuffing and de-stuffing in/from containers, in the CWC's Inland Clearance Depot[3] at Ghazipur, Patparganj, with immediate effect.

3. CWC's challenge alleges non-application of mind, as required by, and in accordance with, Section 10 (2) of the Act, while issuing the impugned notification under Section 10 (1) of the Act.

4. CWC is a statutory corporation, established under the Warehousing Corporation Act, 1962. The relevant facility to the present dispute is an ICD established in 1985 by CWC at Patparganj, for which it had been granted a license by Customs Authorities under the Customs Act, 1992.

5. The ICD at Patparganj forms a dry port. Here, all formalities related to export/import[4] of containers are said to be completed before transit to their respective destinations. It is CWC's case that EXIM related handling and transport activities are largely mechanised and include activities such as stuffing/de-stuffing of containers, which happen in factories of parties intending to export/import relevant containers, and that these parties are free to have their own labour and equipment.

[3] "the ICD" hereinafter
[4] EXIM

6. Clauses 29 and 30 of the General Terms and Conditions of Storage, CWC, are relevant in ascertaining CWC's relationship with their contractor(s) for activities involving handling and transport of containers. It stands reproduced as under:

> "Handling and Transport:
>
> 29. Normally the depositors are required to make their own arrangements for handling of their stocks. The depositors will bear all the charges on handling of stocks till the same are stacked in Warehouse.
>
> 30. A depositor may entrust the work of Handling and Transport of his goods to the Central Warehousing Corporation with prior arrangement at the Warehouses where he has made the reservation of space. The Central Warehousing Corporation will provide such facilities to the depositors through H & T contractors appointed of delivery."

7. Therefore, the handling and transport[5] work at the ICD has contracted out by the CWC. The contractor currently allotted H & T work at the ICD since 6 January 2021 is one M/s Rahul Roadways, Respondent 227 in the present petition. They were preceded by M/s Suman Forwarding agency, Respondent 226 in the present petition, who handled H & T operations at the ICD between 3 January 2013 and 5 January 2021.

8. In January 2000, one Inder Paswan along with 96 other contractual labourers filed WP (C) 48/2000 before this Court praying for the regularisation of their services by CWC and issuance of a notification for abolition of contract labour at ICD Patparganj. *Vide*

[5] H & T

judgment dated 17 October 2000, the petition as disposed of with directions to not substitute the workmen's services with that of any other contract labour. The dispute, on parties consenting *ad idem*, was referred to the Central Advisory Contract Labour Board, constituted under Section 3 of the Act by the Central Government, for making appropriate recommendations, if any, on whether contract labour was to be abolished at CWC's ICD.

9. Around the same time, WP (C) 4407/2000 was filed by one Subhash Chaurasia and 58 other contractual labourers seeking a similar relief.

10. The CACLB constituted a committee under section 5 of the Act to examine the matter *vide* Resolution dated 9 July 2001. The Committee constituted submitted its report on 9 December 2002, recommending the prohibition of contractual labour at the ICD. The CWC made a representation to the Ministry of Labour against these recommendations on 9 June 2003, praying for their reconsideration.

11. The CACLB in its 53rd meeting held on 11-12 March 2003 accepted the Committee's report, and recommended to the Government of India the prohibition of contract labour at CWC Patparganj.

12. Numerous petitions were then filed by workmen seeking prohibition of contract labour at the ICD by Government notification

under Section 10 (1), as well as subsequent regularisation/absorption of these labourers into the CWC's workforce.

13. *Vide* order dated 18 April 2006, disposing of a large batch of writ petitions being WP (C)s 4334-4421/2006, this Court noted that the delay in the Government's decision on the recommendation of the CACLB to abolish contract labour deployment at the ICD was due to the Central Government's request for certain information and documents not being complied with in a timely manner by the CWC. This information was requested due to the presence of certain disputed facts within the CACLB's recommendations, regarding which the Government sought clarity before taking a decision. The CWC only submitted this information on 30 March 2006.

14. The aforementioned batch of petitions was disposed of with a direction to the UOI to consider the matter expeditiously and to take a final view on the matter within three months, in accordance with the provisions of the Act.

15. Thereafter, the impugned notification prohibiting the deployment of contractual labour at CWC's ICD for the handling of import/export container/cargo, their loading/unloading from road vehicles and their stuffing/de-stuffing in/from containers, was issued on 17 November 2006 by the Ministry of Labour and Employment.

16. WP (C) 2849/2007 was filed on 26 May 2008 by the CWC in challenge against the impugned notification. *Vide* order dated 24 April 2007, the petition was disposed of, in view of the Supreme Court's judgment in ***ONGC v Collector of Central Excise***[6]**,** with directions to approach the relevant high-powered committee, only upon whose granting of clearance the CWC would be at liberty to approach the Court.

17. The High-Powered Committee, while granting clearance to approach this Court *qua* an appropriate writ petition, observed that the CACLB is a quasi-judicial authority, and that there is no provision under law for an administrative appeal against its decisions.

18. An order of stay was passed in WP (C) 2849/2007, relying upon order dated 7 May 2007 in WP (C) 3041/2007 titled "***Container Corporation of India v GNCTD***" due to the Court observing that CWC was similarly placed as the petitioner in WP (C) 3041/2007.

19. The present writ petition dates back to the year 2008, its history is rich and includes multiple disputes before the Industrial Tribunal, intervention applications before this court, *inter alia*, the journey through which is not germane to the dispute before us.

20. Heard learned Counsel appearing for the parties.

[6] **(2004) 6 SCC 437**

21. The contentions raised by Mr. Vikas Singh, learned Senior Counsel appearing on behalf of the CWC, as well as those raised in pleadings, are listed briefly below:

a. The impugned notification was passed without application of mind and in disregard of the factors contained within Section 10 (2) of the Act.

b. The notification is in the teeth of paras 52 and 53 of the Supreme Court's Judgment in ***SAIL v National Union Waterfront Workers***[7].

c. The proposal of the economic officer in the ministry has been signed without any examination or consideration, more particularly para (f) of the CACLB's report regarding similar work being carried out in an establishment run by the CCI through regular workmen.

d. The core activity of CWC is to provide storage and preservation of food grains and that operating the ICD would be an ancillary activity.

e. The VRS utilised to reduce staff strength at the ICD was not considered by the CACLB.

f. The work carried out is not perennial in nature as volume fluctuates with Government policy.

g. The license conferred upon CWC by Customs authorities may be revoked at any time.

h. The contract entered into with H & T contractors is not for the supply of labour/workman, but is on a job-work

[7] **(2001) 7 SCC 1**

basis and involves the contractor keeping heavy machinery at hand, and that even payments are based on Rupees per Twenty-foot Equivalent Unit[8], Rupees per km, Rupees per quintal etc.

i. Almost all other ICD's/CFS operated by CWC or other public sector undertakings outsource H & T work. The H & T contracts of CCI and other PSUs are on record as Annexure P-1 Colly.

j. That the High-powered committee observed that the CWC operates in the same market as private persons and all handlers are not covered by the same rule.

k. The CACLB did not sufficiently deal with the dissenting note of the employer-member.

22. Reliance is placed by learned Senior Counsel for CWC on the judgments of the Supreme Court in ***SAIL, State of Karnataka v. Umadevi***[9], ***International Airport Authority of India v International Air Cargo Workers' Union***[10], and ***State of Haryana v Piara Singh***[11].

23. The contentions raised by Mr. T.P. Singh, learned Counsel appearing on behalf of the UOI, as well as those raised in pleadings, are summarised below:

a. The work mentioned in the impugned notification has been carried out by contract labour at the ICD since 1985,

[8] TEU
[9] **(2006) 4 SCC 1**
[10] **(2009) 13 SCC 374**
[11] **(1992) 4 SCC 118**

wherein contractors have changed but the workers engaged by them remain the same.

b. The work carried out is of a perennial nature and has been of a sufficient duration. Data received on payments to labourers from April 2001- November 2004 shows that an average of 250-300 workers has been employed for 20 or more days per month in a year.

c. The trend of gradual mechanisation of processes may have reduced manpower deployed in the year 2002 against the year 2001, but the fact remains that mechanical operation cannot run without the aid of manual labour, however few they may be.

d. The work in question is being carried out through regular workmen in a similar establishment of the CCI.

e. Reduction in business due to the upcoming inauguration of the Dadri terminal and the revocability of the CWC's Customs license are assumptions and cannot be taken into account.

f. The dissenting note of the employer-member was taken into account by the CACLB.

g. The competent authority not only examined the report of the committee constituted by the CACLB but also observed that the Act covers both composite and labour contracts.

h. The CACLB noted that workers were being paid significantly lesser than the lowest paid regular workers

and weren't given leave encashment, yearly increments on wages, medical facilities, bonus, etc.

i. There is no requirement by law for the report of the committee constituted by the CACLB to be made public or for the decision to be a speaking one.

24. Reliance is placed by learned Counsel for the UOI on the judgments of the Supreme Court in ***Baleshwar Rajbanshi v Board of Trustees for Port Trust of Calcutta***[12], ***Indian Oil Corpn Ltd v UOI***[13], ***Barat Fritz Werner Ltd v State of Karnataka***[14], ***Mahindra and Mahindra v State of Maharashtra***[15], ***Indian Oil Corporation Limited v UOI***[16], ***Sankar Mukherjee v UOI***[17], ***Ram Avtar Sharma v State of Haryana***[18], ***SAIL v UOI***[19], and ***State of madras v C.P. Sarathy***[20].

Analysis

25. Presently, we are limited to the evaluation of the impugned notification, to the extent that it conforms with the parameters laid down within Section 10 (2) of the Act, which warrant reproduction:

> "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

[12] **(2013) 4 SCC 258**
[13] **2013 SCC OnLine Del 2334**
[14] **(2001) 4 SCC 498**
[15] **1996 SCC OnLine Bom 22**
[16] **2023 SCC OnLine Del 4046**
[17] **1990 (Supp) SCC 668**
[18] **(1985) 3 SCC 189**
[19] **(2006) 12 SCC 233**
[20] **(1952) 2 SCC 606**

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 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 wholetime 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."

26. Right off the bat, given that the present petition **only** assails the impugned notification, we find that the CWC's reliance on ***Umadevi***, ***International Airport Authority of India***, and ***Piara Singh*** to be misplaced. These judgments discuss the regularisation of workmen, *inter alia*, but do not lay down law that may aid us in determining whether the impugned notification ought to be upheld or set aside.

27. The same can be said about the respondents' reliance on ***Ram Avtar Sharma*** and **C.P. Sarathy**, both of which deal with reference of

disputes to the industrial tribunal, *inter alia*, and would not aid us with determining the issue that lies before us in the present matter.

28. Now that we have trimmed the weight of the material before us to only that which may aid us in determining whether the impugned notification ought to be set aside, we shall proceed with our analysis on the points in contention.

29. This exercise is not one of an appeal, and does not take us into the merits of the matter as they lay before the Committee constituted by the CACLB under Section 5 of the Act, and the minutes of the CACLB in its 53rd meeting that deliberated upon the findings of the said Committee. The Supreme Court's observations with respect to the ambit of a Court's *Certiorari* jurisdiction under Article 226 of the Constitution in ***Syed Yakoob v K.S. Radhakrishnan***[21] merits reproduction:

> **"**7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is

[21] **AIR 1964 SC 477**

not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised.

8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; hut it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or

> Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened."

30. Section 10 (2) mandates the consideration of conditions of work and benefits provided to contract labourers in the establishment, along with factors (a) through (d) (*supra*), on the basis of which a notification may be passed under Section 10 (1).

31. Therefore, we shall proceed to weigh the submissions of parties against the findings contained within the CACLB's 53rd minutes of meeting[22] in the backdrop of the parameters contained within Section 10 (2) of the Act.

32. At the outset, we dismiss the CWC's argument of not being provided an opportunity to be heard. The MoM of the 53rd meeting of the CACLB specifically notes as under :

> "While the representative of the Management was present and heard, none appeared on behalf of the Union."

33. We shall begin with whether the conditions of work and benefits available to contract labours at the ICD were taken into

[22] "MoM" hereinafter

consideration by the Committee's report and the CACLB's recommendations.

34. The CACLB, in its report, observed that workers are being paid minimum wages as prescribed by the GNCTD, but that does not compare to the remuneration drawn by the lowest category of regular employees in the organisation that are at least twice as high. Furthermore, it is noted that no leave, enhancement of wages on a yearly basis, medical facilities, bonus etc. is available to workmen. However, it is acknowledged that welfare amenities to be provided under the Act have been adhered to and are available to the workmen. Para (b) of the MoM findings concerning the ICD merit reproduction:

> "(b) The workers are paid minimum wages as prescribed by the Government of NCT of Delhi which is approximately Rs.2700/- to Rs.3000/- per month and quite low in comparison to the wages paid to the lowest category of regular employees which comes to about Rs.5500/- to Rs.7500/-. No leave, enhancement of wages on an yearly basis, medical facilities, bonus etc. are available to the workmen engaged through contractors though welfare amenities to be provided under the Act have been adhered to."

35. We may now proceed to the factors contained within Sections 10 (2) (a) to (d) and determine whether they have been considered prior to the passing of the impugned notification.

(a) <u>Whether Incidental or Necessary, the Nature of Work Carried Out by Contractual Labourers at CWC's ICD, Patparganj</u>

36. Learned Senior Counsel for the CWC submits that the work performed by contractual labourers employed at the ICD does not constitute an integral part of the work carried out at the facility. Further, it is pleaded in the reply to the respondents' Section 151 application that the work performed by the contract labour at the establishment is not that of the objectives and functions of the CWC.

37. Furthermore, it is argued that according to the General Terms and Conditions of Storage, depositors are required to make their own arrangements for handling their stock, and *may* entrust its handling to the CWC.

38. *Per contra*, learned Counsel for the UOI submits that the loading and unloading of containers, stuffing and de-stuffing, and other tasks concerned with storage and handling of containers is an integral part of the work carried out at the Patparganj ICD. Relying upon the CACLB's findings, he states that though a trend of mechanisation is predominant, most machinery requires corresponding manpower to be operated.

39. Addressing the findings on this point of the CACLB's Committee, reported in its 53rd MoM, they observe at sub para (a) that the Committee found that the work of storage and handling of import and export containers/cargo, their stuffing and de-stuffing, has been carried out on the establishment since 1985 through contract labour,

and that though contractors have changed since, the labourers remain the same.

40. It is relevant to note that an exception has been carved out with respect to Section 10 (2) (a), where the Supreme Court, in ***Barat Fritz Werner***, observed that the work carried out need not necessarily be a core function for a valid notice prohibiting contract labour in the establishment to be issued. Paras 20 and 21 of the judgment merit reproduction:

> **"**20. The learned counsel for the petitioners sought to make a distinction arising under Section 10 of the Act in relation to "prohibition of contract labour" and "regulation of contract labour". They contended that the basis on which contract labour can be abolished under this section is that it should relate to the manufacturing industry, trade, business or occupation that is carried on in the establishment. In other words, in matters integral to the work in the establishment and not to a mere facility in respect of its workmen as defined in Section 2(*l*) of the Factories Act. Once again, the argument cannot be appreciated at all because it would be a matter of policy for the Government to prohibit or to regulate the contract labour in an establishment and does not necessarily depend upon whether they are engaged in the core activity or a peripheral activity like the facility of a canteen. Learned counsel for the petitioners adverted to certain decisions in ***Standard Vacuum Refining Co.***[23] wherein the abolition was in relation to the workmen engaged in the cleaning of the machinery; ***Shibu Metal Works***[24] wherein workers were being engaged for work which was of a permanent nature and it was a part of the manufacturing process of the goods manufactured in the Factory; ***Vegoils (P) Ltd.* v. *Workmen***[25], wherein it was in relation to the feeding of hoppers in the solvent extraction plant which is an activity closely and intimately connected with the main activity of the appellant such as crushing oilcakes and oilseeds for extraction of oil and other chemical production; ***Catering Cleaners of S.***

[24] **(1966) 12 FLR 226**
[25] **(1966) 1 LLJ 717**

Rly.[26] wherein it was observed that the work of cleaning, catering establishments and pantry cars is necessary and incidental to the industry or business of the Southern Railway and, therefore, the requirement of Section 10(2) was satisfied. The words "other work in any establishment" in Section 10 are to be construed as ejusdem generis and the expression "other work" in the collocation of words "process, operation or other work in any establishment" occurring in Section 10 has not the same meaning as the expression "in connection with the work of an establishment" with reference to a workman or a contractor.

21. Section 10 of the Act provides for prohibition of employment of contract labour in any process, operation or other work in an establishment. The words "process, operation or other work" need not be interpreted to mean only the core activity and not peripheral activity as is sought to be suggested by learned counsel for the petitioners. In sub-section (2) of Section 10 of the Act certain guidelines have been provided for the Government before the issue of any notification to find out whether the "process, operation or other work" is incidental or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment. The expression used therein is wide in ambit to cover other activity arising in industry and not merely the actual manufacture. Otherwise to understand the expression "process, operation or other work" other than the meaning given in clause (*a*) of sub-section (2) of Section 10 would be to narrow down the meaning thereto. That does not seem to be the intention of the enactment at all. Therefore, we cannot agree with the submission made by the learned counsel for the petitioners in this regard either."

41. Given the above interpretation of Section 10 (2) (a), it appears that the argument of work carried out being incidental to, rather than a core function of the enterprise, holds no water. Furthermore, keeping in mind the language of the section – "*incidental to, or necessary for the industry,…*", the finding of the committee that contract labour has been carried on by the same workers despite changes in contractors since 1985 speaks to a certain necessary nature of the work being carried out.

[26] **(1987) 1 SCC 700**

(b) Whether the Work is of a Perennial nature

42. Learned Senior Counsel appearing for the CWC asserts that the work performed by contractual labour at the ICD is not perennial in nature. He buttresses his submission by adding that the license to operate the ICD may be revoked at any time by Customs authorities, like it has been done to ICDs and CFSs at Kalamboli, Navi Mumbai, along with those at Surat, Udaipur, Rajkot, and Raipur.

43. It is also pleaded that there also exists the likelihood of reduction in business once the Dadri Terminal operated by the CCI becomes operational, stating that the future is uncertain. Given the ICD at Dadri has become operational and over a decade have passed since; this is no longer of relevance to us.

44. The CWC's case is that the volume of work at ICD Patparganj fluctuates with Government policy governing exports and imports, and that the deployment of contractual labour permits the CWC to match demand by hiring corresponding volume of labour and maximise profitability, especially in seasons of low demand in case workmen stand regularised.

45. The CACLB's findings on this point are contested, stating that the emerging international trend in EXIM ventures is that of

palletized/heavy cargo, wherein the entire process of storage and handling is mechanised with no requirement for manual labourers.

46. The UOI refutes these submissions, asserting that the contractual labourers have remained unchanged since 1985, and data for the period from April 2001 to November 2004 show that an average of 250-300 workers have been engaged for 20 or more days in a month (240 days in financial years 2001-02, 2002-03, and 2003-04). Therefore, the work is argued to be undoubtedly perennial in nature.

47. Contesting the claim of a shift in trends and a reduction in the need for manual labour, reference is made by learned Counsel for the UOI to statistics for manpower deployed in the year 2001 and 2002, showing that though there was a decline in manpower, mechanical operation can't be run in the absence of manual labour, however few their required number may be.

48. In fact, data showing the details of contract labourers employed along with the volume of work on an annual basis from the year 2000 to the year 2021, annexed along with the CWC's reply dated 18 January 2021 to Respondent 2 to 225's Section 151 application, as well as the CWC's written submissions, warrant reproduction:

Sl. No.	**Year**	**No. of workers/ contract labour**	**Volume of business (No. of TEUs handled)**	**Name of H&T contractor**
1	2001	156	47496	M/s CTA

				Movers Pvt. Ltd (01.01.2001 to 01.03.2001)
2	2002	293	52565	M/s. OMMC Pvt. Ltd.
3	2003	322	48678	
4	2004	320	53582	(01.03.2001 to 20.12.2006)
5	2005	311	59395	
6	2006	327	51194	M/s Aqdas Maritime Pvt. Ltd. (21.12.2006 to 02.01.2013)
7	2007	327	46318	
8	2008	326	43184	
9	2009	321	41278	
10	2010	319	43422	
11	2011	319	41600	
12	2012	313	37949	
13	2013	313	41064	M/s. Suman Forwarding Agency Pvt. Ltd. (03.01.2013 to 05.01.2021)
14	2014	310	48611	
15	2015	307	41387	
16	2016	303	37101	
17	2017	301	37797	
18	2018	294	26072	
19	2019	295	24548	
20	2020	289	17183	
21	2021	107	--	M/s Rahul Roadways (06.01.2021 onwards for five years

49. It is apparent from the data contained in the table above, which is the latest information available for our perusal that has been provided by the CWC, that *prima facie*, that the work is perennial in nature. Contract labourers have been deployed every year for a period of 20 years since 2001.

50. One may observe that, except for the years 2001 and 2021, which appear to be outliers in the 20-year timeframe recorded, the volume of work performed by contractual labourers was perennial and

deviations in labourers deployed from one year to the next were not significant.

51. The CACLB's findings on the subject are that the work is of perennial nature, and that the same is evidenced by the continued hiring of the same workmen since 1985. Their analysis confirms the argument of the UOI that regardless of trends of mechanisation, a manpower element will always be required given the nature of work.

52. Furthermore, the CACLB's observation in para (a) that the labourers have remained the same since 1985, though contractors have changed since, appears substantiated by the averment in Respondent 226/ M/s Suman Forwarding, where it is averred that the contractual deployed by it for H & T work at the ICD have been working there prior to the commencement of its tenure as contractor.

53. Another observation from the data provided by the CWC in its written submissions worthy of mentioning is that, though the total number of staff employed by them has been steadily decreasing from around 8500 in the years 2000-2001 to 2880 in the years 2019-2020, the fluctuation in the number of contract labourers deployed seem much less significant. The data regarding total staff employed stands reproduced hereunder:

(b) Staff strength of Petitioner CWC from 2000 to 2020

Sl.	Year	No. of CWC Staff

No.		
1	2000-01	8579
2	2001-02	8455
3	2002-03	6984
4	2003-04	6813
5	2004-05	6690
6	2005-06	6413
7	2006-07	6192
8	2007-08	6059
9	2008-09	5935
10	2009-10	5765
11	2010-11	5667
12	2011-12	5492
13	2012-13	5222
14	2013-14	4777
15	2014-15	4557
16	2015-16	4078
17	2016-17	3639
18	2017-18	3570
19	2018-19	3042
20	2019-20	2880

54. This drastic decline in total staff employed by the CWC from the year 2000 until 2020 does not reflect in the fluctuations of contract labourers deployed, which were largely similar over 18 years out of the 20-year period for which data was produced.

(c) Whether work is done ordinarily through regular workmen in that establishment or an establishment similar thereto

55. The CWC, in its pleadings, have vehemently opposed the finding contained at para (f) in the CACLB's MoM. In support of this,

they have annexed tender documents concerning contracting out of H & T activities in establishments run by the CCI, Balmer Lowrie, and other entities.

56. The UOI echoes the unequivocal finding of the CACLB in its 53rd MoM that similar work is being carried out by regular employees at a similar establishment of the CCI.

(d) Whether the work is sufficient to employ a considerable number of whole time workmen

57. While the phrase 'perennial nature of work' may appear interchangeable with evaluation of the sufficiency of work or its volume, we have regarded the term "perennial" to refer to the availability of work throughout an extended time frame.

58. On the point of sufficiency of work, we shall now refer to the data present in the tables reproduced in paras 45 and 50 (*supra*), to determine whether workmen have been consistently employed in *significant* numbers.

59. Once more, excluding the years 2001 and 2021 from the 20-year time frame during which data has been recorded, the lowest number of contract labourers deployed in a single year did not drop below 289, while reaching their highest at 327 workmen employed for a year.

60. We believe that the deployment of around 300 contractual labourers each year over 18 years out of a 20-year timeframe speaks to a sufficiency of work. This number is no small one, and cannot be brushed aside as being insignificant.

Factors besides those enshrined in Section 10 (2)

61. The factors contained within Section 10 (2) are not exhaustive, as held by the Supreme Court in ***SAIL***, para 49 of which merits reproduction:

> "49. A careful reading of Section 10 makes it evident that sub-section (1) commences with a non obstante clause and overrides the other provisions of the CLRA Act in empowering the appropriate Government to prohibit by notification in the Official Gazette, after consultation with the Central Advisory Board/State Advisory Board, as the case may be, employment of contract labour in any process, operation or other work in any establishment. Before issuing notification under sub-section (1) in respect of an establishment the appropriate Government is enjoined to have regard to: (*i*) the conditions of work; (*ii*) the benefits provided for the contract labour; and (*iii*) other relevant factors like those specified in clauses (*a*) to (*d*) of sub-section (2). Under clause (*a*) the appropriate Government has to ascertain whether the process, operation or other work proposed to be prohibited is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment; clause (*b*) requires the appropriate Government to determine whether it is of a perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment; clause (*c*) contemplates a verification by the appropriate Government as to whether that type of work is done ordinarily through regular workmen in that establishment or an establishment similar thereto; and clause (*d*) requires verification as to whether the work in that establishment is sufficient to employ considerable number of

> wholetime workmen. The list is not exhaustive. The appropriate Government may also take into consideration other relevant factors of the nature enumerated in sub-section (2) of Section 10 before issuing notification under Section 10(1) of the CLRA Act.

62. Therefore, it would be appropriate to record other factors advanced by parties.

63. However, before we delve into these factors, it would be imperative for us to analyse the CWC's relentless reliance upon the judgment of the Supreme Court in ***SAIL***.

64. We shall now analyse whether the relevant portion of the judgment in ***SAIL*** which discusses the impugned notification is applicable to the facts before us - i.e., whether there has been an instance if passing of an "omnibus notification" under Section 10 (1) of the Act thereby rendering such prohibition to have been done without sufficient application of mind

65. The CWC, in its written submissions, refer to paras 52 and 53 of the judgment in ***SAIL***, which merit reproduction:

> "52. Now, reading the definition of "establishment" in Section 10, the position that emerges is that before issuing notification under sub-section (1) an appropriate Government is required to: (*i*) consult the Central Board/State Board; (*ii*) consider the conditions of work and benefits provided for the contract labour; and (*iii*) take note of the factors such as mentioned in clauses (*a*) to (*d*) of sub-section (2) of Section 10, referred to above, with reference to any office or department of the Government or local authority or any place where any industry, trade, business, manufacture or

occupation is carried on. These being the requirement of Section 10 of the Act, we shall examine whether the impugned notification fulfils these essentials.

53. The impugned notification issued by the Central Government on 9-12-1976, reads as under:

> "S.O. No. 779(E).— In exercise of the power conferred by sub-section (1) of Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (37 of 1970) the Central Government after consultation with the Central Advisory Contract Labour Board, hereby prohibits employment of contract labour on and from the 1-3-1977, for sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments in respect of which the appropriate Government under the said Act is the Central Government:
> Provided that this notification shall not apply to the outside cleaning and other maintenance operations of multi-storeyed buildings where such cleaning or maintenance operations cannot be carried out except with specialised experience."

A glance through the said notification makes it manifest that with effect from 1-3-1977, it prohibits employment of contract labour for sweeping, cleaning, dusting and watching of buildings owned or occupied by establishment in respect of which the appropriate Government under the said Act is the Central Government. This clearly indicates that the Central Government had not adverted to any of the essentials, referred to above, except the requirement of consultation with the Central Advisory Board. Consideration of the factors mentioned above has to be in respect of each establishment, whether individually or collectively, in respect of which notification under sub-section (1) of Section 10 is proposed to be issued. The impugned notification apart from being an omnibus notification does not reveal compliance with 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 9-12-1976 issued by the Central Government."

66. This is, in fact, the only portion of the judgment to delve into the question of the validity of the impugned notification prohibiting the deployment of contract labour, passed under Section 10 (1) of the

Act. It is noted that in ***SAIL***, there lay no material on record before the court to convey the reasoning behind the issuance of such notification, other than the text of the notification itself.

67. Therefore, it was observed that the notification was an "omnibus" one, in the sense that it prohibited the employment of contractual labour for the works mentioned at all establishments under which the appropriate Government is the Central Government. It was also noted by the Court that the only formality that notification stated to have complied with is the consultation with the central board, and that consideration of factors under Section 10 (2) of the Act were not stated to have been made.

68. Therefore, *prima facie*, the notification appeared to prohibit the employment of contract labour at *numerous* establishments without supplying cogent reasoning and specific consideration of the factors enshrined within Section 10 (2) through data sourced from each of these establishments. It was on this note that the notification was held to be an omnibus one, and quashed for want of application of mind.

69. Returning to the other factors advanced by parties to advance their cases against/ in favour of the impugned notification.

70. The CWC argued that it utilised the Voluntary Retirement Scheme[27] to improve the efficiency and profitability of its

[27] VRS

organisation, gradually reducing its total number of employees at the ICD, and that regularisation would undo the economic effects of the VRS.

71. Unfortunately, this argument does not impress us. It would be relevant to comment upon the object and purpose of the Act to understand what factors would be decisive in considering an establishment for the abolishment of contract labour employment.

72. The Supreme Court in ***Sail*** observed the legislative intent behind the Act. On this note, para 79 merits reproduction:

> "79. It would be useful to notice the historical perspective of the contract labour system leading to the enactment of the CLRA Act for a proper appreciation of the issue under examination. The problems and the abuses resulting from engagement of contract labour had attracted the attention of the Government from time to time. In the pre-independence era, in 1929 a Royal Commission was appointed by the then British Government to study and report all the aspects of labour. Suffice it to mention that in 1931 the Royal Commission (also known as "the Whitley Commission") submitted its report mentioning about the existence of an intermediary named "jobber" and recommended certain measures to reduce the influence of the "jobber". Nothing substantial turned on that. In 1946, the Rege Committee noted that in India contractors would either supply labour or take on such portions of work as they could handle. The Committee pointed out,
>
> "whatever may be the grounds advanced by employers, it is to be feared that the disadvantages of the system are far more numerous and weightier than the advantages";
>
> though the Rege Committee recognized the need for contract labour yet urged for its abolition where it was possible and recommended regulating conditions of service where its continuance was unavoidable. In 1956, the Second Planning Commission (of which the then Prime Minister Pandit Jawahar Lal

Nehru was the Chairman) observed that in the case of contract labour the major problems relate to the regulations of working conditions and ensuring them continuous employment and for these purposes suggested that it was necessary to:

"(a) undertake studies to ascertain the extent and the nature of the problems involved in different industries;

(b) examine where contract labour could be progressively eliminated, this should be undertaken straight away;

(c) determine cases where responsibility for payment of wages, ensuring proper conditions of work etc. could be placed on the principal employer in addition to the contractor;

(d) secure gradual abolition of the contract system where the studies show this to be feasible, care being taken to ensure that the displaced labour is provided with alternative employment;

(e) secure for contract labour the conditions and protection enjoyed by other workers engaged by the principal employer; and

(f) set up a scheme of decasualisation, wherever feasible.""

73. Contract labour has been equated with bonded labour by the Supreme Court in ***Sankar Mukherjee v UOI***, reproduced below:

"6. It is surprising that more than forty years after the independence the practice of employing labour through contractors by big companies including public sector companies is still being accepted as a normal feature of labour employment. There is no security of service to the workmen and their wages are far below than that of the regular workmen of the company. This Court in ***Standard-Vacuum Refining Co. of India Ltd. v. Its workmen*** and ***Catering Cleaners of Southern Railway*** has disapproved the system of contract labour holding it to be 'archaic', 'primitive' and of 'baneful nature'. The system, which is nothing but an improved version of bonded labour, is sought to be abolished by the Act. The Act is an important piece of social legislation for the welfare of labourers and has to be liberally construed."

74. In line with the aforementioned observations, economic advantages to an enterprise are of significantly lower priority when compared to the conditions of work endured by the contract labourers there, along with the preservation of their rights.

75. Now we shall deal with the final contention of the CWC, that the report of the Committee constituted by the CACLB to assess the viability of the ICD for prohibition of contract labour was not a unanimous one, and that the dissenting note was not adequately dealt with.

76. The employer-member was noted to be of the opinion that the ICD is dependent on the revocable license issued by the Customs authorities, signifying uncertainty of the work carried out. The employer-member stated, in passing, that other similar depots run by both state as well as private operators outsource their labour component, and that this is the prevailing practice. Furthermore, he states that the contract is a works contract and not a labour contract.

77. Therefore, the employer-member was of the opinion that the ICD at Patparganj does not fulfil the requirements of Section 10 (2) (b) and 10 (2) (c) for the passing of a notification under Section 10 (1).

78. Following the noting of the dissent by the employer-member, the CACLB's MoM observes that the dissenting note was taken into

account, but could not be agreed with due to the issue of revocation of license being a hypothetical one and that the CCI carries out similar work by the deployment of regularised workmen.

79. We agree with the findings of the CACLB on the issue of revocability of the CWC's license as being a mere assumption and not being one of significant gravity to sway the findings of the board on whether work carried out could be considered perennial. Retrospectively, about two decades hence, we see that neither the terminal at Dadri, nor the claimed instability attributed to the revocable nature of their Custom's license, were threats to the perennial nature of work handled by contract labourers at the ICD.

Conclusion

80. We have weighed the findings of the CACLB's report against the factors contained within Section 10 (2).

81. It appears to us that there has been no error committed by the Government in the passing of the impugned notification and that the CACLB's 53rd MoM shows application of mind to the factors enshrined within Section 10 (2) (a) with specific consideration of data pertaining to the ICD at Patparganj.

82. Moreover, we notice that, after receipt of the CACLB's recommendations, the Government asked the CWC for further data and information to evaluate the findings of the CACLB and clarify

disputed facts at hand. It was only after the receipt and consideration of this information, that the Government issued the impugned notification – as acknowledged in order dated 18 April 2006 disposing of the large barge of writ petitions, noted by as at para 13 (*supra*).

83. The impugned notification 17 November 2006 issued by the Ministry of Labour and Employment, Government of India, under Section 10 (1) of the Act in respect to the prohibition of employment of contract labour at the CWC's ICD at Patparganj is upheld for the aforesaid reasons.

84. We clarify that all our observations pertain to the merits of the impugned notification only.

85. The writ petition is accordingly disposed of.

86. Pending applications, if any, do not survive for consideration.

87. No orders as to costs.

AJAY DIGPAUL, J.

C. HARI SHANKAR, J.

APRIL 24, 2025*/sk*