

(2006) 04 JH CK 0006

Jharkhand High Court

Case No: CWJC No. 46 of 1998 (R)

Employees in relation to the
Management of Bhagabandh
Colliery of Bharat Coking Coal
Limited

APPELLANT

Vs

The Central Government
Industrial Tribunal No. 1 and
Others

RESPONDENT

Date of Decision: April 12, 2006

Acts Referred:

- Contract Labour (Regulation and Abolition) Act, 1970 - Section 10
- Industrial Disputes Act, 1947 - Section 17B, 25F

Citation: (2006) 110 FLR 971 : (2006) 3 JCR 255

Hon'ble Judges: R.K. Merathia, J

Bench: Single Bench

Advocate: Prabhash Kumar, A.K. Mehta and A. Anand, for the Appellant; S. Srivastava and M.B. Lal, for the Respondent

Final Decision: Allowed

Judgement

R.K. Merathia, J.

Heard the parties.

2. Petitioner/management has prayed for quashing the order of reference contained in Letter No. L-20012(36)/90-IR (Coal-I) dated 9.11.1990

and also quashing the award dated 28.8.1997, passed by the Central Government Industrial Tribunal No. 1, Dhanbad, in Reference Case No. 4

of 1991. By the said award, the Tribunal has directed the Management to regularize the concerned workmen as Black-smith w.e.f. 1.1.1989 and

to pay them 30% of the full back wages from the said date.

3. By order dated 17.9.1990 the Central Government referred the following dispute for adjudication to the Tribunal:

Whether the demand of the workmen of Kendwadih Colliery of Messers Bharat Coking Coal Limited Post Office Kusunda, District, Dhanbad for

regularization of Black-smith mentioned in the Annexure as departmental workers is justified? If so, to what relief are the concerned workmen

entitled?

1. Chandan Manjhi, 2. Dukhan Mistry, 3. Saudagar Mistry, 4. Sarju Mistry, 5. Raj Kishore Paswan, 6. Gyan Chand Paswan, 7. Mala Paswan, 8.

Ram Chandra Garhari, 9. Deo Narain Mistry, 10. Ashok Paswan, 11. Bigan Mistry, 12. Surjdeo Paswan, 13. Chandrlka Mistry, 14. Jagranath

Mistry, 15. Rajendra Mistry, 16. Munilal Mistry, 17. Rajeshwari Mistry, 18. Ishwar Chandra Mistry, 19. Jago Mistry, 20. Laxrnan Mistry.

4. But on 9.11.1990, the aforesaid reference was superseded by the following reference, calling it an amendment/corrigendum:

Whether the action of the management of Bhagaband Colliery of M/s. Bharat Coking Coal Ltd. in not giving employment to contractors workers

Shri Siya Ram Biswakarma and seven to contractors workers Shri Siya Ram Biswakarma and seven others shows in Annexure is justified? If not,

to what relief are the concerned workmen entitled?

1. Siya Ram Vishwakarma, 2. Janeshwar Vishwakarma, 3. Paras Nath Prasad, 4. Ramdeo Rewani, 5. Prem Bhuiya, 6. Sarjan Bhuiya, 7. Kamta

Singh, 8. Indrajit Paswan, 9. Dhaneshwar Prasad.

5. The first question is whether the award based on the impugned second reference dated 9.11.1990 is illegal?

Surprisingly, the Tribunal did not venture to decide this question of validity of the second reference, raised by the Management.

6. Mr. Srivastava, submitted-that the reference dated 17.9.1990 was amended by a corrigendum dated 9.11.1990; that the Management did not

challenge the second reference as a preliminary issue and participated in the proceedings and thus the Management is debarred from raising such

issue in this writ petition.

7. Apparently, the two references quoted above, are completely different from each other. Earlier reference related to the demand of workmen of

Kendwadih Colliery"" for regularization of Black-smith, whereas the second reference was with regard to the action of the Management of ""Bhaga

Bandha Colliery"" in not giving employment to contractor's workers. This cannot be said to be corrigendum/amendment of the earlier notification.

By the second reference, the first one was can-celled/superceded, which is against the law laid down in the case of The State of Bihar Vs. D.N.

Ganguly and Others, .

Mr. Srivastava could not show any law that if a party has not challenged the reference at the preliminary stage, it is debarred from challenging the

same after award is passed.

Mr. Mehta , has rightly cited the judgment of D.P. Maheshwari Vs. Delhi Administration and Others, in which the Supreme Court deprecated raising of preliminary issues by the Management.

In my opinion, the Tribunal committed a serious error of law by proceeding on the basis of the second reference.

8. On merits also the award cannot be up held. The case of the Union inter alia was that during 1981-1985, the concerned workmen were doing

regular type of Black-smithy work under the Contractor, Mahadeo Sharma, but this arrangement was a camouflage of the Management in order to

deprive them of the benefits of regular employees and when they claimed regularization; they were stopped from work in the year 1985.

The case of the Management inter alia was that the said Contractor used to manufacture and supply Coal tubs. He paid the wages to the

concerned workmen and they were his employees. They were never engaged to work in any category prohibited under the provisions of Contract

Labour (Regulation & Abolition) Act, 1970 (in short C.L.R.A. Act). The Management used to procure various materials including Coal tubs from

the market and such suppliers were not the Contractor of the Management. For the sake of convenience, the Management supplied materials on

some occasions; and some times repairing/ maintenance work was done in the colliery. There is no work available for the workmen in question, on

regular basis due to surplus man power with the Management.

9. Four requisitions slips (Exts. W-1 to W-4) were produced by the Union to show that the materials were supplied by the Management. W-1 and W-2 were examined by the Union. They admitted that the concerned workmen were working under the Contractor as Black-smith. In support of its stand, MW-1, the Management witness, was examined.

10. The Tribunal after noting the submissions of the parties, jumped to the conclusions that the workmen have worked on permanent and perennial nature of job continuously from 1981 to 1985; and that there was violation of Section 25-F of the I.D. Act and, therefore, stoppage of work was void ab initio; and that the said Contractor/Supplier was a camouflage to deny the claim of regularization to the workmen,

11. Mr. Mehta rightly submitted that there is no basis for such findings. He relied on the judgment reported in *The Range Forest Officer Vs. S.T. Hadimani*, to show that onus was on the Union to prove the facts for establishing violation of Section 25-F of the I.D. Act.

12. From the evidence of the Union itself it was clear that the workmen were working under the Contractor. In the absence of any notification u/s 10 of the (C.L.A.R. Act), it could not be held by the Tribunal that the employer was not justified in getting the works in question done, though a Contractor or it was a camouflage. There is no finding attracting violation of Section 25-F of the I.D. Act. The case of *The Workmen of Bhurkunda Colliery of Central Coalfields Ltd. Vs. The Management of Bhurkunda Colliery of Central Coalfields Ltd.*, relied by Mr. Srivastava is of no help to him. In that case the dispute was regarding the alleged discrimination in employment/regularization of the Casual Workers of Repair and Maintenance Section of the Colliery, who were working under the Management.

13. Moreover, the Tribunal relied on the judgment of Supreme Court reported in 1997 Lab IC 365 in the case of *Air India Statutory Corporation v. United Labour Union and Ors.*, which has been overruled in the case of *Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc.*. The award was stayed in this case on 4.1.1999, subject to payments u/s 17-B of I.D. Act. The ratio of the judgment of the Steel Authority of India Ltd. and others, (supra) will be applicable in this case.

14. In the result, this writ petition is allowed. The impugned reference dated 9.11.1990 and the impugned award dated 28.8.1997 are set aside.

However, there will be no order as to costs.