

## The Workmen of Loyabad Colliery Vs State of Bihar and Others

**Court:** Jharkhand High Court

**Date of Decision:** Oct. 4, 2007

**Acts Referred:** Limitation Act, 1963 " Section 5

**Citation:** (2008) 1 JCR 549

**Hon'ble Judges:** M. Karpaga Vinayagam, C.J; Amareshwar Sahay, J

**Bench:** Division Bench

**Final Decision:** Dismissed

### Judgement

@JUDGMENTTAG-ORDER

Amareshwar Sahay, J.

This review petition has been filed by the petitioner for review of the order dated 18/06/2003 allowing the letters

patent appeal and setting aside the decision of the learned Single Judge passed in C.W.J.C. No. 1719 of 1995 (R) on 31/10/2002 whereby the

writ application was dismissed.

2. The facts in short are that the concerned workman namely, Dashrath Dusadh, who was an employee of Bharat Coking Coal Limited, was

charged for committing gross misconduct by taking active part in assault of Sri A.K. Tulli, Area Manager (Technical) and his wife on 1st

December 1981 near his Bungalow and, since thereafter, he absconded without any information or leave. A domestic enquiry was conducted

against the concerned workman and after an enquiry, the concerned workman was dismissed from service having found the charges against him to

be proved.

3. An industrial dispute was raised and was referred for adjudication before the Tribunal. The reference reads as follows:

Whether the action of the management of Loyabad Colliery of M/s Bharat Coking Coal Limited in dismissing Sri Daahrath Dusadh, Mechuiicul

Filter Holder, aides their letter No. 23/21 dated 12/06/1982 is justified? If not, what relief the concerned workman is entitled to?

4. The Industrial Tribunal by an award dated 22/08/1994 held that the action of the Management in dismissing the concerned workman was not

justified and, consequently, the Tribunal directed the Management to reinstate the concerned workman and to pay 40% of the back wages w.e.f.

08/09/ 1989.

5. The Management of Bharat Coking Coal Limited challenged the said award of the Tribunal by filing a writ petition before this Court being

C.W.J.C. No. 1719 of 1995 (R). The said writ petition was dismissed by the learned Single Judge on 31/10/2002. Against the said order of

dismissal of the writ petition by the learned Single Judge, the Management filed letters patent appeal being L.P.A. No. 27/2003 alongwith an

application u/s 5 of the Limitation Act for condoning the delay in filing the appeal, since the letters patent appeal was filed beyond the period of

limitation. The Division Bench hearing the matter by order dated 22/01/2003 directed to issue notice to the respondent No. 2 in limitation matter as

well as in appeal and also passed an interim order of stay of the said award. The appeal was again placed on 14/05/2003. On that day, the

Division Bench noticed the fact that in spite of service, of notice the respondent No. 1 has not appeared and then after hearing the counsel for the

appellant condoned the delay and adjourned the appeal for giving one more opportunity to Respondent No. 2 to appear and contest the appeal by

fixing the next date on 17/06/2003. The said appeal was taken up on 18/06/2003. The respondent did not appear even on that day and, therefore,

the Division Bench after hearing the counsel for the appellant allowed the appeal and set aside the decision of the learned Single Judge passed in

C.W.J.C. No. 1719/1995 (R).

6. Against the said order of the Division Bench, passed in the aforesaid letters patent appeal, the respondent Union (Rashtriya Koyla Mazdoor

Sangh) filed SLP before the Supreme Court after delay of 678 days. The Supreme Court by order dated 23/09/2005 dismissed the SLP with the

following orders:

There is delay of 678 days in filing the special leave petition. The explanation furnished by the petitioner is that petitioner-union was not given notice

of the proceeding in the High Court in LPA and, therefore, it could not appear and. contest the matter. It ultimately came to know of the order

passed in July 2005.

There is an observation in the order of the High Court that despite notice and two opportunities given, the union did not appear.

If what has stated before us by the petitioner is true, it should move the High Court and bring all facts to the notice of the High Court and seek

appropriate orders.

The SLP is dismissed.

7. Consequent to the order of the Supreme Court, the Union (Rashtriya Koyala Mazdoor Sangh) filed CM.P. No. 404/2005 before this Court.

However, the said CM.P. was allowed to be withdrawn with liberty to file a petition for review of the judgment/order dated 18/06/2003 passed in

L.P.A. No. 27/2003. Thereafter, the present review petition has been filed by the Union (Rashtriya Koyala Mazdoor Sangh), which was also

barred by limitation as it was filed after a delay of 1161 days. However, by order dated 26/09/2007 the delay in filing the civil review has been

condoned and the review application was taken up for admission.

8. It is contended on behalf of the review petitioner that it did not receive any notice issued at the direction of the High Court and pendency of the

letters patent appeal was never brought to the notice and knowledge of the review petitioner. The petitioner Union could have availed the

opportunity to contest the letters patent appeal on behalf of the workman had they got the notice or knowledge of the pendency of the letters

patent appeal.

9. It is further submitted that from the affidavit in support of service of notice filed on behalf of the management showing service of notice on the

union, it does not appear that the person, who received the notice, received the same under which capacity and even no copy of the memo of

appeal was attached to it. It is also contended that the notices, which are sent for service are generally signed by the Officers of the Registry of the

High Court but in the present case no notice was sent by the Registry of the High Court. It is also contended that though the High Court vide

order dated 14/05/2003 in letters patent appeal clearly directed to provide another opportunity to the Union but no another notice was sent on the

point of admission or hearing of the letters patent appeal.

10. In view of the facts noticed above and pursuant to the order of the Supreme Court, now we have to decide as to whether the review

petitioner, who was respondent in the letters patent appeal, whether was given notice or sufficient opportunity by the High Court to contest the

appeal?

11. From the records it appears that the letters patent appeal No. 27/2003 filed by the Management Bharat Coking Coal Limited, was listed on

22/01/2003 and on that date, after hearing the counsel for the appellant, notice on limitation matter, as well as appeal notice was directed to be

issued to Respondent No. 2 and it was also directed that an affidavit of service of notice be also filed. The appeal thereafter was directed to be

listed in the Month of March 2003. The execution of the impugned award was also stayed by interim order.

12. As it further appears from the record of the aforesaid letters patent appeal, that a. supplementary affidavit was filed by the

Management/appellant, stating therein that pursuant to the order of the Court dated 22/01/2003 to serve the notice upon respondent No. 2, the

appellant company duly served the notice upon respondent No. 2 and in support of such statement a copy of the covering letter sent with the

notice addressed to the Secretary, Rashtriya Koyala Mazdoor Sangh, Dhanbad was annexed as Annexure-5, which bears the acknowledgment of

receipt of notice by the Union on 3 February 2003. The Seal of the Union and the initial of the person, who received the notice, is clearly visible.

The covering letter of the counsel for the appellant clearly indicates that alongwith the notice, copy of the memo of appeal as well as limitation

petition were also sent. Since the respondent No. 2 the Union, did not appear and then the letters patent appeal was again listed for admission on

14/05/2003 and on that day the Bench hearing the matter found that respondent no- 2 had not appeared in spite of service of notice and,

therefore, after hearing the counsel for the appellant passed an order condoning the delay in filing the appeal and adjourned the appeal to

17/06/2003 for giving one more opportunity to respondent, No. 2 the Union to appear and contest the appeal.

13. From the record it also appears that though no specific order was passed on 14/05/2003 directing issuance of fresh notice but the

Management/appellant again took steps for sending notice to the respondent/Union, this time by registered post with A/D and, thereafter, filed a

supplementary affidavit on 16/06/2003, stating therein that, the appellant again sent notice to respondent No. 2, which was received on

29/05/2003 and in support of such statement a photocopy of the acknowledgment due card was annexed, which also contained the signature of

one S. Fandey on the acknowledgment due card with date as 29/05/2003.

14. The Management Bharat Coking Coal Limited has filed a counter affidavit in the review petition wherein it is specifically stated in para-6

thereof that the notice was received by one Chandradeo Sharma, the then dispatch clerk of" Rashtriya Koyala Mazdoor Sangh and he put the Seal

of the Union in the said notice and also put his signature. It has also been stated in para-7 of the said counter affidavit that the appeal notice was

sent through registered post with acknowledge due from the office of Mr. M.M. Banerjee, Advocate and the said notice was received by Sri

Sudharshan Pandey, Typist-cum-Clerk in the office of Rashtriya Koyala Mazdoor Sangh, Dhanbad and the acknowledgment due card contained

the signature of S. Pandey dated 29/05/2003. Consequently, it is stated that the notice on limitation as well as appeal notice was duly received by

respondent No. 2 the Union.

15. No rejoinder to the said counter affidavit, filed on behalf of the Management, has been filed on behalf of the review petitioner controverting the

fact stated in the counter affidavit.

16. From a careful perusal of the copy of the notice, sent by the counsel for the appellant and the copy of the acknowledgment due card duly

annexed with the supplementary affidavit, we find that the notice on limitation matter as well as the appeal notice was not only sent but was duly

received by respondent No. 2 the Union which is apparent from the endorsement: and the Seal of the Union and signature of the person who

received the notice and, therefore, the contention of the review petitioner that no notice or sufficient opportunity of hearing was given to him to

contest the appeal cannot be accepted and hence is rejected.

17. The next question to be considered is as to whether it was necessary for the Registry of the High Court itself to send notice or the Court could

have asked the party to serve the notice and file affidavit. To decide this question it is relevant to notice the provisions of Jharkhand High Court

Rules in this regard.

18. Chapter XXVIII of the High Court of Jharkhand Rule 2001 deals with the topic Service of notice upon the parties. Rules 308, 310 and 311

are relevant for the present case and, therefore, they are quoted herein below for ready reference:

308. Ordinarily all notices shall be served through Registered Post, Speed Post, Courier or such other means as the Court may, from time to time,

direct.

310. Whenever a notice is served upon anyone by a party, and not. through the Court, invariably the party serving the notice shall file an affidavit in

the Court, in support of the fact that the notice has been served upon the person for whom it was meant. Along with the affidavit for service, the

party serving the notice shall file document in proof of such service.

311. Affidavit of service should be filed either by the party himself or his pairavikar or through the authorized clerk of the Advocate of the party.

19. Rule 308 quoted above dourly says that ordinarily the notices are to be served through Registered post, speed post and courier but it can also

be served by other means as directed by the Court.

In the case in hand the Court directed service of notice by party/appellant.

20. Rule 310 speaks about the procedure in case where the notice is served upon anyone by a party and not through the Court. In such type of

cases the party serving the notices is required to file affidavit in support of the fact that the notices have been served upon the persons for whom it

was meant and alongwith such affidavit, the document in proof of such service is also required to be filed.

21. Now coming to the fact of the present case it appears that on the first date, i.e. 22/01/2003 notice was directed to be issued on the respondent

No. 2 by the appellant and not through the Court and, therefore, the Court directed the appellant to file affidavit in support of the service of notice

as envisaged under Rule 310 of the aforesaid High Court Rules. Accordingly the affidavit was filed by the appellant in support of service of notice

alongwith the documents showing service of notice on the respondent No. 2.

22. Similarly, on the next date, i.e. 14/05/2003, the delay in filing the appeal was condoned and the appeal was adjourned for giving one more

chance to the respondent No. 2 to appear and contest the appeal. The appellant again sent notice to the respondent No. 2 by registered post and,

thereafter, filed an affidavit in support of the service of notice alongwith supporting documents, which have already been discussed above.

23. In this view of the matter, we are not in a position to accept the submissions of the counsel for the review petitioner that it was only for the

Registry of the High Court to send notice to the respondent No. 2. Such submission is contrary to Rules 308 and 310 of the Jharkhand High Court

Rules and, hence, is rejected.

24. Consequent to the discussion and findings above, we do not find any merit in the review application. Accordingly, the same is dismissed.

M. Karpaga Vinayagam, C.J.

25. I agree.