
(2006) 09 JH CK 0029

Jharkhand High Court

Case No: None

Tata Iron and Steel
Company Ltd.

APPELLANT

Vs

State of Jharkhand and
Others

RESPONDENT

Date of Decision: Sept. 15, 2006

Acts Referred:

- Constitution of India, 1950 - Article 226
- Industrial Disputes Act, 1947 - Section 10, 25FF

Citation: (2006) 4 JCR 502

Hon'ble Judges: Amareshwar Sahay, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Amareshwar Sahay, J.

Since the points involved in both the writ petitions are the same and similar, with the consent of the parties both the writ petitions were taken up together and, as such are being disposed of by this common judgment.

2. That Iron and Steel Company Limited, a company having its registered office at Mumbai and works at Jamshed-put, (hereinafter called as TISCO for the sake of convenience) has filed this writ application for quashing of the notification, contained in Memo No. 1048, dated 10.7.2004, issued by the Government of Jharkhand, referring the dispute to the Labour Court, Jamshedpur for adjudication in exercise of the powers u/s 10(1) of the Industrial Dispute Act. The dispute referred is as under:

Whether not to take back Sri K. Chandrashekhar Rao and 73 other workmen (list enclosed) of M/s. TISCO Limited, Jamshedpur in service by their own TISCO Management after their transfer to M/s. Lafarge India Limited, is justified? If not, what

relief they are entitled to?

3. The main ground for challenge is that the reference by the Government of Jharkhand was without jurisdiction since w.e.f. 1.11.1999, the services of 74 concerned workmen stood transferred to M/s. Lafarge India Private Limited and, therefore, neither there was any relationship of employer or employees between TISCO and 74 concerned workmen nor any dispute existed or subsisted which could have been referred by the Government for adjudication and the Government without application of mind in mechanical manner referred the dispute to the Labour Court.

4. The petitioner company apart from other business, owned cement plants located at Jojobera in the District of Singhbhum (Jharkhand) and at Sonadih in the District of Raipur (Chhatisgarh). The said two cement plants were sold by the petitioner company to M/s. Lafarge India Private Limited in March 1999 including the liabilities and assets and a business transfer agreement was entered into on 9.3.1999. There is no dispute of the fact that several employees of the petitioner company were working in the cement wings of the petitioner at its cement plants at Jojobera in the District of Singhbhum and at Sonadih in the District of Raipur before those plants were sold to M/s. Lafarge India Private Limited. Some of the employees of the petitioner, who were working in the cement plants, were transferred back to their parent department and their places of posting and some of the employees of the petitioner were sent on transfer to the cement plants.

5. The concerned workmen submitted a statement of demand to the Management of the petitioner on 15.9.2003 as contained in Annexure-1 to this writ application stating inter alia that they were working with the petitioner on different posts in terms of their service condition. On 1.11.1999, without consulting the concerned employees and without taking their consent they were directed to work with M/s. Lafarge India Private Limited. An impression was given to them that they will work in different department in M/s. Lafarge India Private Limited for some days for smooth functioning of their establishment, which was a part of the petitioners organization and obeying the instructions and advise, the concerned employees of the petitioner were working in the said establishment and discharging their duties. It was further stated in their demand that some of the employees approached the petitioner to return back their services to their parent department, as they did not want to continue there but no action was taken in the matter. In the mean while they came to know that M/s. Lafarge India Private Limited, who was utilizing the service of the concerned employees, was not giving all the benefits which the said employees were enjoying in their parent department with the petitioner-company and further that M/s. Lafarge India Private Limited was trying to change their service condition and was also trying to discontinue the benefits, which those employees were enjoying in the petitioner-company and, thereby, they requested to take back the concerned employees in the petitioner-company with all benefits, which they were entitled to. The concerned employees there after, approached the Assistant Labour Commissioner, Jamshedpur, raising their grievances and requested to resolve the dispute. A notice was issued by the Assistant Labour Commissioner, Jamshedpur (An-nexure-2) to the petitioner TISCO to

participate in the conciliation proceeding, which was to be held on 9.12.2003. The petitioner vide its reply, contained in Annexure-3 to the writ application, to the Assistant Labour Commissioner, Jamshedpur, stated that on and from 1.11.1999. i.e. the date on which the cement plants were sold to M/s. Lafarge India Private Limited by the petitioner, the concerned workmen become the workmen of M/s. Lafarge India Private Limited and therefore, on and from the said date the concerned workmen were not the employees of the petitioner since their services were already transferred to M/s. Lafarge India Private Limited and the dispute raised by the concerned workmen was not in any way an industrial dispute and, therefore, holding of join discussions or conciliation with the management of the petitioner, was not required and, thereby, requested to drop the matter.

Subsequently, the Assistant Labour Commissioner reported to the Government of Jharkhand regarding failure of the conciliation and then the Government of Jharkhand by issue of Annexure-9 dated 10.7.2004 referred the dispute for adjudication to the Labour Court, Jamshedpur in exercise of the powers u/s 10(1) of the Industrial Dispute Act, which has been challenged in the present writ application.

6. The main contention of the petitioner-company are as follows:

(i) That the services of the concerned workmen stood transferred to M/s. Lafarge India Private Limited on and from 1.11.1999 and they no longer continued to be in the employment of the petitioner-company and, as such, they could not have raised the grievance or any dispute against the petitioner company.

(ii) That no industrial dispute at all existed and the Conciliation Officer without considering the materials on record and without applying his mind in mechanical manner submitted failure report leading to the reference in question.

7. According to the concerned respondents the cement plant of the petitioner-company in which the concerned respondents were working on transfer was not independent undertaking or industrial establishment and the concerned workmen were not appointed in the said establishment exclusively for the cement plants. They were initially appointed by the petitioner and were posted in other department and then were posted in the cement plant on transfer for which their services cannot be dispensed with by the Business Transfer Agreement (BTA) entered into between the petitioner and M/s. Lafarge India Private Limited and they continued to be in the employment of the petitioner. The so called Business Transfer Agreement was suppressed from the concerned workmen as well as from the Government and from the Conciliation Officer. Further according to the concerned workmen the facts and documents raised by the petitioner are seriously disputed by them and, therefore, the disputed question of fact cannot be decided by this Court in its writ jurisdiction. If is for the Labour Court, who after considering the evidence on record brought by the parties can very well decide those questions of facts.

8. From the facts stated above and from the argument advanced on behalf of their respective counsel, the issues involved in the case are:

(1) As to whether any industrial dispute existed so as to give jurisdiction to the State Government to refer the dispute u/s 10(1) of the Industrial Dispute Act for adjudication or whether the said reference is maintainable;

(2) Whether in view of the fact that the services of the concerned workmen were transferred on 1.11.1999 to M/s. Lafarge India Private Limited u/s 25-FF of the Industrial Dispute Act, the concerned workmen ceased to be the employee of the petitioner and, therefore, whatever demand they have it has to be made before the transferee establishment; i.e. M/s. Lafarge India Private Limited;

(3) Whether consent of the employee concerned was required before the transfer of the cement wing of the petitioner to M/s. Lafarge India Private Limited u/s 25-FF of the Industrial Dispute Act.

9. So far as the first question regarding maintainability of the reference, existence of industrial dispute and jurisdiction of the State Government to refer the dispute u/s 10(1) of the Industrial Dispute Act is concerned, Mr. Rajiv Ranjan, learned Counsel appearing for the petitioner heavily relied on a decision of the Supreme Court in the case of [National Engineering Industries Ltd. Vs. State of Rajasthan and Others](#), , particularly paragraphs 24 and 26 of the said judgment and submitted that Section 10(1) of the Industrial Dispute Act confers power on the appropriate Government to refer an existing or apprehended industrial dispute to the Industrial Tribunal for adjudication and such dispute which is referable has to be an Industrial Dispute and only in case such industrial dispute exists, the appropriate Government can make reference u/s 10(1) to the Industrial Tribunal to adjudicate the said dispute. He further submitted that the High Court in its writ jurisdiction can entertain a writ petition and may quash the reference if it is shown that no industrial dispute or apprehended industrial dispute existed, so as to give jurisdiction to the Industrial Tribunal to adjudicate the same and this fact can very well be examined by the High Court in its writ jurisdiction under Article 226 of the Constitution of India.

10. In the case of [Avon Services Production Agencies \(P\) Ltd. Vs. Industrial Tribunal, Haryana and Others](#), , the Supreme Court has held as follows:

Section 10(1) confers a discretionary power and this discretionary power can be exercised on being satisfied that an industrial dispute, exists or is apprehended. There must, be some material before the Government on the basis of which it forms an opinion that an industrial dispute exists or is apprehended. The power conferred on the appropriate Government is an administrative power and the action of the Government in making the reference is an administrative act. The adequacy or sufficiency of the material on which the opinion was formed is beyond the pale of judicial scrutiny. If the action of the Government in making the reference is impugned by a party it would be open to such a

party to show that what was referred was not an industrial dispute and that the Tribunal had no jurisdiction to make the Award but if the dispute was an industrial dispute, its factual existence and the expediency of making a reference in the circumstances of a particular case are matters entirely for Government to decide upon, and it will not be competent for the Court to hold the reference bad and quash the proceedings for want of jurisdiction merely because there was, in its opinion, no material before Government on which it could have come to an affirmative conclusion on those matters.

11. The same view has been reiterated by the Supreme Court in the case of [The Secretary Indian Tea Association Vs. Ajit Kumar Barat and Others](#), and held that the order of reference made u/s 10 of the Industrial Dispute Act is an administrative order and it involves no Us and is made on subjective satisfaction of the Government, hence, unlike judicial or quasi-judicial order, it cannot be examined by the High Court closely to see if there was any material before the Government to support its conclusion as if it was a judicial or quasi-judicial order.

However, the Supreme Court also held in this case that if it appears from the reasons given that the appropriate Government took into account any consideration irrelevant or foreign material, the Court may in a given case consider the case for a writ of mandamus.

12. In the present case it is not the case of the petitioner that the Government took into account any consideration irrelevant or foreign material rather case of the petitioner is that without application of mind and material on record, the reference was made.

13. The decision of the Supreme Court in the case of National Engineering Ltd. (supra), relied on by the petitioner is not applicable in the facts and circumstances of the present case.

14. In such a situation the contention of the petitioner that before making reference the State Government did not consider all the materials placed by the Conciliation Officer and, therefore, the reference suffers from non-application of mind cannot be accepted in view of the decision of the Supreme Court in the case of M/s. Avon Services Production Agencies (P) Ltd. (supra) and in the case of Secretary Indian Tea Association (supra).

15. Since, the Labour Court is already in seisin of the matter and, therefore, it can very well adjudicate and answer the reference after considering all the points raised by the parties on the basis of the evidence led by the parties in the proceeding. No interference is called for by this Court at this stage in the reference proceeding before the Labour Court.

16. In view of the discussions and findings above, neither it is necessary nor it is desirable to go into the other points raised by the parties at this stage and the same is left open for the Labour Court to decide.

17. W.P. (1) No. 3683 of 2005, which arise out of the Reference Case No. 1 of 2005 is pending before the Industrial Tribunal, Ranchi, the facts and points raised in this writ petition are more or less same and similar and the learned Counsel appearing for the respective parties adopted the same argument as advanced in W.P. (1) No. 752 of 2005 and submitted that the decision in W.P. (1) No. 752 of 2005 shall govern the decision in W.P. (1) No. 3683/2005 also. Only difference in fact in W.P. (1) No. 3683/2005 is that in this case, the Industrial Tribunal, Ranchi by its order dated 6.8.2005 in the Reference Case No. 1/2005, pending before it by a well-reasoned order, rejected the prayer of the petitioner to decide the point of maintainability as a preliminary issue.

18. It goes without saying that the parties are at liberty to raise all the points before the Labour Court at the stage of hearing and the Labour Court would certainly consider the same and decide the reference in accordance with law without any unnecessary delay.

19. Accordingly, my observations, directions and findings in W.P. (1) No. 752/2005, shall also apply in W.P. (1) No. 3683/2005 and, consequently, both the writ petitions are dismissed by directing the Labour Court, Jamshedpur/Industrial Tribunal, Ranchi to decide the reference case as early as possible without any unnecessary delay on the basis of the material on record which may be legally brought on record by the respective parties to the reference. No costs.