

Management of Tata Iron and Steel Co. Ltd. and Another Vs Presiding Officer, Industrial Tribunal and Others

Court: Patna High Court

Date of Decision: Sept. 9, 2000

Acts Referred: Constitution of India, 1950 " Article 226
Contract Labour (Regulation and Abolition) Act, 1970 " Section 10
Industrial Disputes Act, 1947 " Section 10(1)

Citation: (2001) 1 LLJ 1315

Hon'ble Judges: S.J. Mukhopadhaya, J

Bench: Single Bench

Advocate: Govind Das, K.N. Keshav, N.C. Ganguly, N. Ghosh and T.K. Mishra, for the Appellant; Azfar Hassan and Abdul Hakim, for the Respondent

Final Decision: Dismissed

Judgement

S.J. Mukhopadhaya, J.

The petitioner of both the cases challenged common award dated October 20, 1998 passed in Reference Case

Nos. 24/81, 11/90 by learned Presiding Officer, Industrial Tribunal, Ranchi.

2. By the impugned Award the learned Presiding Officer while identifying the workmen, ordered for their absorption under principal employer.

One of the questions raised is whether in absence of notification u/s 10 of Contract Labour (Regulation and Abolition) Act, 1970 a contract can be

deemed to be abolished/terminated, in the facts and circumstances of the case or not.

3. The case has a chequered history of about 20 years, as evident from relevant facts mentioned hereunder:

The State of Bihar by notification No. 4/92-16072/80L&E 1523 dated July 9, 1981 opined that an industrial dispute exists between Management

of Tata Iron and Steel Co., Ltd., Jamshedpur (TISCO) and their workmen represented by Jamshedpur Contractors Workers Union and Industrial

Mazdoor Union, Jamshedpur (Union) and referred the following dispute for adjudication by Tribunal u/s 10(1)(d) of the I.D. Act, 1947:

Whether the contract workers engaged by the Management of Tata Iron and Steel Co. Ltd., Jamshedpur in the following permanent and regular

nature of work before February 11, 1981 are entitled for permanent employment:

1. Transportation of materials within the plant which is not dependent on outside supply.

2. All processes connected with the manufacturing process.
3. Removal and handing of waste products and muck.
4. Sweeping and cleaning of machines, conveyors, shops and offices.

At initial stage, the management of TISCO raised preliminary objection questioning the competence of the reference and jurisdiction of the Tribunal

to adjudicate the dispute referred in absence of notification u/s 10 of Contract Labour (Regulation and Abolition) Act, 1970. The case was heard

by Tribunal and answered in negative holding, dispute not an industrial for adjudication by the Tribunal and the reference beyond the jurisdiction.

The aforesaid decision was challenged by "Union" before this Court in CWJC No, 4065/1985, which was dismissed in limine. On SLP (Civil) No.

1495/1986 was preferred by Union before the Supreme Court, giving rise to Civil Appeal No. 4360/1990, which was disposed of by the

Supreme Court on August 22, 1990 with/the following direction:

We have heard learned counsel for the parties at some length and it has been brought to our notice, by Mr. Chidambaram that in regard to item 1,

2 and 4 of the heads of dispute as indicated in the reference, the contract labour system is no more vague and contract labour is now confined to

item No. 3 only. In view of the changed situation and taking into consideration the back ground of the dispute as also the fact that the litigation has

been pending for almost a decade now, we do not think it would be appropriate to take a technical view of the situation and endorse the decision

of the Tribunal, we are therefore, inclined to substitute the terms of the reference to the Tribunal by indicating that the reference shall now read thus:

Whether the contract workers engaged by the Management of the Tata Iron and Steel Company Ltd., Jamshedpur in the permanent and regular

nature of work before February 11, 1981 are entitled to permanent employment in regard to items 1, 2 and 4 under the Principal Employer.

In regard to item No. 3 it shall be for the State Government to take its own decision under the provisions of the Contract Labour (Regulation and

Abolition) Act, 1970 as to whether the contract labour employment should be terminated and since the State Government had already been

considering this matter for some time we direct the State Government to take its decision in terms of the assurance held out by its learned

Advocate General to the Patna High Court several years back within three months from now.

To regulate the matter in a more effective way before the Tribunal and keeping in view the submissions made by Mr. Venugopal we direct that the

Tribunal shall initially devote attention to identify the workmen who are desirous of being permanently absorbed under the Principal Employer and

after such identification is made, the matter should be proceeded with in accordance with law. All parties should be given full opportunity to raise

their contentions and substantiate the same with such evidence as they like to lead but the Tribunal shall ensure that the dispute is disposed of within

six months from today.

The terms of Reference as substituted by the Supreme Court was again taken up by Tribunal on remand and the parties were asked to identify the

workmen desirous of being permanently absorbed under the Principal Employer TISCO. At that stage, the management of TISCO raised

objection regarding preparation of list which was to be prepared in terms with the direction of the Supreme Court. On their behalf, it was pleaded

that the persons named as contractors workers between pages 7 to 22 were not covered by terms of reference made by Supreme Court. The

Tribunal on hearing the parties accepted part of the objection raised by TISCO Management and held the persons/workers named in pages 7 to

15, 17 to 19 and 22 do not come within the purview of identification being not connected with the works as mentioned at item Nos. 1, 2 and 4.

The Unions were allowed by Tribunal to file list of workmen of identification covered under item Nos. 1, 2 and 4 of the Reference and the parties

were asked to submit points (sic) for determination of modality for identification of workers. On behalf of Union, request was made to Tribunal to

ask the TISCO Management to produce register maintained by Security Officer for identification of workers. .However, the TISCO Management

did not agree to such suggestion on the ground that the documents are not retained/maintained beyond the period of three years. In the aforesaid

background, it was agreed by the parties to make identification of workmen on the basis of photo copies of gate passes/work passes as were filed

by Unions and the TISCO Management was given opportunity to verify them before examination of workmen. Altogether 713 workmen claimed

to be desirous of being permanently absorbed, when the Management again raised certain dispute. At that stage, the Jamshedpur Contractors

Workers Union again moved before the Supreme Court in SLP (Civil) No. 1099/1994, which was disposed of on March 24, 1995 with direction

to Tribunal to identify the workers in the following manner:

The workers may produce either the gate passes which were issued to them while they were working with the Management although through

Contractor, or get provident fund record, if any from the Regional Provident Commissioner concerned by summoning the said record from that

office. The Tribunal on the basis of either of the pieces of evidence may grant the workers claim. To begin with the Tribunal should examine those

workers who may produce the gate passes or whose gate passes are already produced before it. The Tribunal should thereafter summon the

Provident Fund Commissioner, if so requested by the workmen, to produce his record in respect of the provident fund contribution paid on their

behalf by the Contractor of the Management.

After the order of the Supreme Court, parties were given opportunity to examine and cross-examine the witnesses and to produce evidence both

oral and documentary. Many of the witnesses were examined and statements were marked as "Exhibits". Documentary and oral evidence were

also adduced by TISCO Management in the light of Supreme Court observation. Finally, about 660 workmen were identified and impugned

Award was passed on October 20, 1998 in their favour for absorption.

4. The CWJC No. 134/1999 (R) has been filed by Management of TISCO whereas other case CWJC No. 359/1999 (R) has been filed by

TATA Workers Unions, who were opposing the absorption. The case was initially heard on February 3, 1999 at Ranchi and was ordered to be

placed on February 10, 1999. Subsequently, on February 10, 1999 the case was admitted and a date of hearing (February 26, 1999) was fixed

as the Court refused to pass any interim order. Subsequently when the case was taken up on February 26, 1999, the same could not be heard

because of paucity of time with liberty to the respondents to press the application u/s 17B of ID Act, if the case was not taken up for hearing on

March 18, 1999. As suggested, the parties were also given liberty to file a petition for transfer of the case to Patna. The case was ultimately not

taken up for hearing but on the request of the parties, were transferred to Patna. At Patna, the petition u/s 17B of Industrial Disputes Act was

heard and disposed of on September 27, 1999 without passing any interim order for the reasons mentioned in the order and early date of hearing

(October 4, 1999) was fixed, when the cases were taken up on October 4, 1999, without any leave of the Court, a supplementary affidavit was

filed on behalf of TISCO Management, under the signature of one Asit Kumar Verma, Manager (Personnel), with a stand that when the case was

admitted at Ranchi, a verbal prayer was made calling for records of the case, arising out of Reference No. 24/81 of 1990 from the Tribunal, when

the Court observed that the matter will be looked into at the time of hearing of the case. The aforesaid supplementary affidavit was not accepted as

it was filed without any leave and statement made therein being incorrect. It may be mentioned that this Court had occasion to hear the case on

February 10, 1999 when the case was admitted but no such oral prayer was made. The petition u/s 17B of Industrial Disputes Act was placed for

interim order but no prayer made by parties to call for records will also be borne out of the order sheet.

5. The counsel advanced an argument on October 4/5 and October 11 to October 14, 1999. In the meantime, the additional supplementary

affidavits were filed on behalf of petitioner on October 11 and 13, 1999 in the Court, without any leave, so they were not accepted. The aforesaid

fact is being specifically mentioned to show that though at the time of/hearing of petition u/s 17B the counsel for the parties agreed for early hearing,

but at the time of hearing an impression was created that the TISCO Management wanted to drag the cases. At this stage, I may mention similar

action was taken on behalf of TISCO Management to drag the cases before Tribunal is evident from paras 10, 16, 17 and onwards of the Award.

20 days time was taken on behalf of TISCO Management to address the Tribunal, apart from a number of days taken to verify the document.

6. The senior counsel for the petitioners submitted that a number of persons, in the meantime became overage (more than 55 years and above) to

be taken in service. On rough calculation, it was found that by the time the Tribunal passed order and hearing of the present cases about 114

persons have become overage. If the matter lingers, the direction of the Supreme Court will render meaningless and for the said reasons, this Court

proceeded with the hearing and closed the proceeding. As pointed out, the main question was raised that the Tribunal had no jurisdiction to pass

order for absorption in absence of Notification u/s 10 of the Contract Labour (Regulation and Abolition) Act, 1970. The senior counsel for the

petitioners submitted that in the absence of such notification, absorption of workmen was not permissible. Reliance was also placed on Standing

Order of Management to show that no such provision was made for such absorption. In fact, Standing Order No. 7 of works standing orders of

the Management, prohibits such absorption or regularisation on permanent basis. The aforesaid question has been dealt by Tribunal in detail, will

be evident from following observation:

The Tribunal had come to the conclusion by the award that the dispute referred to the Tribunal was not an industrial dispute and as such could not

form the basis of an adjudication by the Tribunal. Thus the reference was beyond the jurisdiction as the workmen were not the employees of

TISCO or that such a claim was never made at any point of time. It was further held by the Tribunal that the discretion to abolish the contract

system u/s 10 of the Contract Labour (Regulation and Abolition) Act of 1970 was given to the Government and not to the Tribunal. When the

matter went to the Hon"ble Supreme Court Mr. Chidambaram the learned counsel on behalf of Management (TISCO) informed the Apex Court

that the contract labour system is no more vague in regard to item Nos. 1, 2 and 4 of the heads of dispute as indicated in the Reference and in that

view of the matter the Hon"ble Supreme Court instead of taking technical (sic) view and undertaking the decision of the Tribunal, substituted the

(sic) of reference to the Tribunal directing (sic) it to give its award in regard to substituted terms of references. Thus, the Court refused to endorse

the award of the Tribunal and to take a technical view. This fact leads us to the inescapable conclusion that by virtue of the order of the Hon"ble

Supreme Court in regard to items 1, 2 and 4 it will be deemed that contract labour has been abolished u/s 10 of the Act. It will amount to abolition

by notification issued by the State Government u/s 10 of the Contract Labour (Regulation and Abolition) Act, 1970. Under such circumstances the

Management cannot be allowed to argue that the Reference is bad or no abolition has been made u/s 10 of the Contract Labour (Regulation and

Abolition) Act, 1970 by notification by the State Government, rather it will be deemed that the Abolition has been made u/s 10 of the Act by the

State Government, otherwise the order of the Hon"ble Supreme Court cannot be complied with by this Tribunal. So I brush aside all the arguments

advanced on behalf of the Management on the above score, otherwise this Tribunal would have to repeat its earlier award and hold that the order

dated August 22, 1990 passed by the Apex Court is futile and the direction given by the Apex Court to the Tribunal will be exercise in futility as it

would not serve any useful and meaningful purpose. Such a view taken by this Tribunal will defeat the direction of the Hon"ble Supreme Court.

Now it is an admitted fact that 1600 contract workmen were absorbed or regularised by the Management in the year 1990 by a tripartite

settlement dated August 20, 1990 which is Ext. X on behalf of Jamshedpur Contractor's Workers Union. MW-2 Sri R.N. Mishra, Sr. Divisional

Manager of TISCO has admitted in para 5 of his deposition that more than 1600 contract workers belonging to Jharkhand Steel Theka Mazdoor

Sangh were absorbed in the permanent employment by the TISCO Management in the year 1990-91. So the oral evidence of MW 2 who is

responsible officer of the TISCO, is corroborated by the documentary evidence (sic) Dot X by the Management by a tripartite settlement. Under

such circumstances there appears no force in the contention advanced by the learned counsel on behalf of Management that in view of Standing

Order No. 7 of Works Standing Orders of the Management the Contract labourers cannot be absorbed or regularised on permanent basis under

the Management. So it becomes evident that the Standing Order cannot stand in the way of absorption or regularisation of the contract labourers

under the Management. Moreover when more than 1600 contract labourers were absorbed or regularised by the Management, Tata Workers

Union did not raise objection, but they are raising serious objections against the absorption and regularisation of the contract labourers of

Jamshedpur Contractor's Workers Union and Industrial Mazdoor Union. So it appears that the approach of Tata Workers Union is not bona fide

and justified, rather, Tata Workers Union in collusion with the Management wants to obstruct the regularisation or absorption of contract labourers

as apprehended by the Hon^{ble} Supreme Court in case of Air India Statutory Corporation, etc. Vs. United Labour Union and others [overruled], .

At page 1149 of LLJ in the last portion of paragraph 61 it was observed by the Hon^{ble} Supreme Court as follows:

Since, the contract labour, gets into the service of the Tribunal (sic) employer, the Union of the existing employees may not espouse their cause

for reference u/s 10 of the Industrial Disputes Act.

Here the Tata Workers Union which is the recognised Union of the existing employees of TISCO is not only not espousing the cause of the

contract labourers but opposing their absorption or regularisation tooth and nail. Also in the instant case instead of espousing the cause of contract

workers the Tata Workers Union is opposing the case of contract workers. So what was anticipated by their Lordships of the Hon^{ble} Supreme

Court becomes true in this case. So the opposition made by the Tata Workers Union cannot be taken seriously in this case. Tata Workers Union

appears to have changed its stand from time to time. I want to emphasise even at the cost of repetition the Tata Workers Union did not raise any

objection when more than 1600 contract workers were absorbed or regularised by the Management by the tripartite settlement in the year 1990.

A deem fiction relating to abolition u/s 10 of the Act may not be a correct proposition of law as held by the learned Presiding Officer but the

ground shown as quoted above being sound, the submission made on behalf of TISCO Management cannot be accepted or otherwise it will

render the direction of the Supreme Court meaningless and futile. The TISCO Management was a party before the Supreme Court while reference

was substituted by the Apex Court. After such reference it is not open to the TISCO Management, to oppose identification of workmen for

absorption on the ground of non-issuance of notification u/s 10 of the Contract Labour (Regulation and Abolition) Act, 1970, the matter having set

at rest by the Supreme Court in Civil Appeal No. 4380/1990.

7. The other question raised on behalf of TISCO Management related to identification of workmen on the basis of a photo copy of gate pass/work

pass. The learned senior counsel for the petitioner TISCO Management relied on one or other photo copy attached to the writ petition to suggest

that they are faint and in many of them, there is no photograph affixed. This submission also cannot be accepted for the reasons mentioned

hereunder;

The Supreme Court in subsequent SLP (Civil) No. 1099/91 on March 24, 1995 allowed the workers to produce either the gate pass or to get the

provident record produced from the Regional Provident Fund Commissioner by summoning the record from his office. The Tribunal was asked to

identify the workmen on the basis of any of such piece of evidence for the purpose of determination of claim. Liberty was given to Tribunal to

examine the workers who may produce the gate pass/gate passes already produced. While some of the workmen produced the original

gatepass/work pass, many of them produced the photocopies of the same. The TISCO Management initially raised objection to the photo copies

of the gate passes as its admission as an evidence on behalf of the workmen. The Tribunal took into consideration the objection but while the case

was taken up on September 20, 1991, the counsel for the TISCO Management accepted to act on the photocopies of gate pass/work pass. In

fact, when many of the photo copies of gate passes were led as evidence and proved by workmen as witness the Management of TISCO also

cross-examined them. This will be evident from para 14 of the Award in question. Now, after decision rendered by the Tribunal it is not open for

the TISCO Management to again raise such objection before this Court. So far as document relating to provident fund is concerned some of them

were filed on behalf of 21 + 2 witnesses, who were examined by the parties. The provident fund documents were also filed by the workmen. None

of the parties having called for any record from the Regional Provident Fund Commissioner, the Tribunal was helpless to act on the same as

mentioned at last para of para 12 of the Award. Thus, I find no illegality of the identification made on the basis of some of the photo copies, of gate

pass/work pass in absence of other evidence and the TISCO Management cannot raise objection to the same having agreed to act on those

photocopies as far back as on September 28, 1991. I have also taken into consideration the fact that the TISCO Management did not choose to

cooperate in the matter of production of relevant evidences. They refused to produce the relevant register of workmen on the ground that they are

not maintained after three years. At this stage, I may mention that the counsel for the Union of Workers stated that most of workers have original

gate pass/work pass of which photo copies were produced and if so required they are ready to produce them before the TISCO Management at

the time of absorption.

8. Learned senior counsel gave much stress on the sentence "in accordance with law" as used by the Supreme Court while substituted reference

was made. Reliance was placed on PREM'S DICTIONARY" and the meaning of "law", as shown in BLACK'S LAW DICTIONARY. The

phrase "in accordance with law" refers to the decision as a whole and is not to be acquitted to errors of law or of fact simpliciter. It refers to the

overall decision, which must be according to law which it would not be if there is a miscarriage of justice due to mistake (see PREM'S JUDICIAL

DICTIONARY). While it means by legal process, it includes the duties laid down by provisions of law. The definition of "law" is not necessary to

be discussed in the present case, which includes the law laid down by the Supreme Court.

9. The counsel for the TISCO Management submitted that 363 workers admitted that they were not employed by the job covered under item

No. 1. The tabular statement enclosure as Annexure 14 shows that they were engaged in loading and unloading of materials supplied from outside.

The main thrust was to show that they were engaged for removal and handing of waste products and mucks, a subject matter of item No. 3, which

was excluded by the Supreme Court from the purview of reference. Item No. 2 of the reference relates to manufacturing process, which includes

all the process connected with the manufacturing processes. If breaking of mould is essential to set up fresh mould for manufacture, it will be part

of the manufacturing process and will be covered under item No. 2. On the other hand, if job of breaking of mould is being done to remove the

waste, it will fall within the purview of item No. 3. Thereby to determine the issue, it is not only essential to see the nature of job but also the place

of job and the work to which it is related. For example, sweeping and cleaning of machine though falls under item No. 4 such sweeping and

cleaning or removal of waste of muck comes within the item No. 3. In the aforesaid circumstances, simply on the basis of nature of work one

cannot come to a definite finding as to whether the workmen in particular comes within the purview of item Nos. 2, 3 and 4.

10. Learned Presiding Officer has taken much strain to decide the issue taking into consideration all the relevant facts and evidences. This will be

evident from the observation of the Court below as quoted hereunder:

It was urged on behalf of Management as well as Tata Workers Union that slug is a waste product and the workmen connected with the removal

of the slug were covered by item No. 3 which is not substituted terms of reference. But it was submitted on behalf of both unions that slug is not a

waste produce and the workers connected with the slugs were not covered by item No. 3. It was submitted on behalf of the Industrial Mazdoor

Union on the basis of an authentic book of chemistry that slug is not a waste product. So it is difficult to rely on the submission made on behalf of

the Management and Tata Workers Union that slug is a waste produce and the contract workers related with the removal and other process

connected with the slugs were covered by item No. 3. However, I have carefully examined the evidence of the workmen mentioned in the list

annexed with the award and found that the workmen mentioned in the list are covered by item Nos. 1, 2 and 4.

11. In the aforesaid circumstances, in absence of contrary evidence brought on record by the TISCO Management, the finding of fact given by

the Court below cannot be discarded, that too under Article 226 of the Constitution of India. The plea of TISCO Management that the Steel

Industry is facing serious recession and cash crunch and all efforts have been made to minimise the cost by reducing manpower, cannot be

accepted as during the pendency of the present litigation the TISCO Management permanently absorbed 1600 contractors workers as principal

employer. The impugned Award cannot be held to be illegal merely on the ground that some of the workers have become overage (about 60

years) as on date. In fact it is the TISCO Management, which has not been given effect to the award which resulted overage of one or other

workmen. Thereby, the TISCO Management cannot derive any benefit of their own laches. The counsel for the parties relied on one or other

decision of the Supreme Court as Air India Statutory Corporation, etc. Vs. United Labour Union and others [overruled], etc., but they are related

with absorption of workmen, in the light of notification u/s 10 of the Act. However, such decisions are of no use in the facts and circumstances of

the present case as substituted reference for absorption having been made by the Supreme Court, even in absence of notification u/s 10 of the Act.

12. I find no illegality in the impugned Award in question, which is based on evidence, properly appreciated. No specific question of law being

involved, interference under Article 226 of the Constitution is uncalled for.

13. Both the writ petitions are accordingly dismissed. However, in the facts and circumstances there shall be no order as to costs.