

**(2014) 06 JH CK 0008**  
**In the Jharkhand High Court**  
**Case No : L.P.A. Nos. 368 and 371 of 2013**

Bharat Coking Coal Ltd.

APPELLANT

Vs

D. Mukherjee

RESPONDENT

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**Date of Decision :** 27-06-2014

**Acts Referred:**

Constitution of India, 1950 — Article 227  
Contract Labour (Regulation and Abolition) Act, 1970 — Section 23, 24  
Industrial Disputes Act, 1947 — Section 17B

**Citation :** (2015) 144 FLR 346

**Hon'ble Judges :** R. Banumathi, C.J.; S. Chandrashekhar, J

**Bench :** Division Bench

**Advocate :** Anop Kumar Mehta, Advocate for the Appellant; Sarju Prasad, Advocate for the Respondent

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## Judgement

R. Banumathi, C.J.—LPA No. 368/2013 arises out of the order dated 25.9.2013 passed in CWJC No. 1140/1994(R) confirming the award dated 14.8.1992 passed by the Central Government Industrial Tribunal in Reference Case No. 110/1990 directing departmentalization of the workmen as General Mazdoor in Category-I and pay them back wages as per NCWA. LPA No. 371/2013 arises out of the order dated 25.9.2013 passed in CWJC No. 3109/1998(R) confirming the order dated 7.9.1998 passed by the same Tribunal in Misc. Case No. 1/1998 identifying only 36 workmen as beneficiaries of the award dated 14.8.1992 rendered in Reference Case No. 110/1990.

2. The case of the respondent-workmen is as follows:-

One Jogeshwar Singh and other concerned workmen had been working as permanent underground workmen at Bhagaband Colliery of Kendwadih Section since long and they had been performing the jobs of underground stone-cutters regularly and continuously. On some occasions, they also performed other permanent nature of underground jobs such as making duggies for roof supporting and lime packing. The concerned workmen were permanent

employees of the Management; but they were stopped from duty in violation of the mandatory provisions of the industrial laws. A settlement was arrived by the Management in consultation with all the Central Trade Unions to absorb all the underground contractors' workmen engaged in prohibited category of jobs who had put in 190 days attendance as Miner/Loader. In pursuance of the aforesaid decision, which was communicated to all the General Managers by order dated 8/9.5.1986 issued by the Director (Personnel), the Union demanded that the concerned workmen should be regularized as Miner/Loader as per the Company's decision. According to the workmen, even though the concerned workmen had worked as underground workmen since long from 1983-86, still they were illegally stopped from duty. The Union had prayed that the Management be directed to regularize/departmentalise the concerned workmen in service as Miner/Loader with effect from the date of issuance of the Circular dated 8/9.5.1986 with all arrears of wages and backwages.

3. An industrial dispute was raised before The Assistant Labour Commissioner (Central) Dhanbad alleging that they were working in the underground in prohibited categories of work under the direct control and supervision of the Management. The conciliation was taken up but failed. The Ministry of Labour, Govt. of India by its order No. L-20012(6)/88-IR (Coal-I) dated 08-05-1990 referred the dispute to the Industrial Tribunal No. 1 Dhanbad as Reference Case No. 110 of 1990 with the following reference:-

"Whether Sri Jogeshwar Singh and 51 other workmen as per list enclosed have actually worked during 1983 to 1986 in the various job of which contact was given to Sri Jogeshwar Singh Contractor, Dhanbad. If so, whether the management of Bhagaband Colliery under the Putkee Balihari Area of M/s. Bharat Coking Coal Ltd. is justified in not regularizing/departmentalizing these workmen as miner/loader? If not, to what relief these workmen are entitled."

The Tribunal by award dated 14-08-1992 answered the Reference directing the Management to regularize/departmentalise the concerned persons as General Mazdoor in Category I and to pay them wages as per NCWA-IV with effect from 8-5-1990. The appellant preferred S.L.P. (C) No. 3186 of 1994 before the Hon'ble Supreme Court but the same was withdrawn and a Writ was filed being CWJC No. 1140 of 1994 and the operation of the impugned order stayed. After hearing, the said writ was dismissed.

4. In the writ petition, CWJC No. 1140/1994(R), order dated 20.4.1998 was passed by the learned Single Judge referring the matter to the Industrial Tribunal to identify the workmen for the purposes of payment of last drawn wages under Section 17B of the Industrial Disputes Act to the affected workmen. Out of 52 workmen, 41 finally appeared and amongst them, only 36 workmen were identified as beneficiaries of the award dated 14.8.1992 rendered in Reference Case No. 110/1990. The identification of 36 workmen as beneficiaries of the award was the subject-matter of challenge in CWJC No. 3109/1998(R) by the Management.

5. The learned Single Judge dismissed both the writ petitions holding that after appreciation of evidence, the Tribunal arrived at a definite finding that the workmen were engaged for more than 190 days in a permanent nature of job, which was in the prohibited category. Learned Single Judge further held that in the light of the decision of the Management to absorb such underground contractors' workmen who had worked for more than 190 days in prohibited category of jobs, the Tribunal was fully justified in directing regularization/departmentalization of those workmen in the employment of the Management. Since 36 workmen were identified as beneficiaries of the award, the learned Single Judge held that the award dated 14.8.1992 passed in Reference Case No. 110/1990 has to be modified restricting the benefit of the award only to 36 workmen who were identified in the year 1998 by the Tribunal.

6. Being aggrieved by the dismissal of the writ application, the Management has preferred this Letters Patent Appeal. Mr. Anoop Kumar Mehta, learned counsel appearing for the Appellant-Management, inter alia, made the following submissions:-

? Learned Single Judge failed to take into consideration the fact that the workmen worked through a contractor in miscellaneous nature of job only during the years 1983 to 1986.

? Even though the contractor had no licence and the establishment was not registered under the CLRA Act, the concerned workmen were not entitled to be regularized under the Act and in case of any violation of CLRA Act the employer was only liable to be prosecuted under Section 23 and 24 of the Act for violating the provisions of the Act and there cannot be any direction for regularization.

? Learned Single Judge failed to take into consideration that the Management, vide Exhibits M3-M-3/16, had awarded 17 work orders for execution to the contractor, Jogeshwar Singh and the said contractor upon execution of the work had raised 17 bills being Exhibits M4-M4/16 and therefore, the contract could not have been said to be a sham/camouflage and the learned Single Judge did not apply the well settled principles for testing whether the workmen were engaged by the contractor or by the Management.

? The concerned persons never worked as Miner/Loader but were performing miscellaneous nature of job under the contractor intermittently for a short duration during 1983 to 1986 and no workman had completed 190 days in a calendar year.

? The learned Single Judge failed to take into consideration the fact that merely because a person has completed 240 days in a calendar year or 190 days as per the circular dated 8/9.5.1986, it would not result in regularization under the employer.

7. Refuting the aforesaid contention, learned counsel for the respondent-workmen submitted that there were settlement between the employer-

Management in the year 1986 and for which a circular dated 8/9th May, 1986 was issued, which provided that all underground contractors' workmen engaged in prohibited category of job who had put in 190 day of attendance as miner/loaders were to be absorbed in the employment of the Management. It is submitted that the settlement has a binding effect and, therefore, if it is proved that the workmen worked for 190 days or more in a calendar year, then as per this settlement entered between the Union and the Management, the workmen ought to have been regularized. It is further submitted that the case of the workmen is limited to very narrow compass that if the workmen worked for 190 days in the prohibited category of job/work, then the workmen ought to be regularized. Learned counsel further submitted that the Tribunal and the learned Single Judge consistently recorded the findings of fact that the workmen had worked for more than 190 days and after meticulous examination of evidence rightly arrived at the conclusion directing the Management to departmentalise the services of the workmen; hence the award and order of the learned Single Judge confirming the award warrant no interference.

8. We have carefully considered the submissions and perused the award, the order of the learned Single Judge and also the materials on record.

9. In this case, the Tribunal has passed the award finding that the workmen are the employees directly under the Management and that their engagement through the contractor, Jogeshwar Singh, was merely a camouflage to deny the employment benefit to the workmen. The question for consideration is whether in the light of the well settled principles laid down by Hon''ble Supreme Court, the said finding of the Tribunal is justified.

10. The Union in support of its demand had examined two witnesses - WW1 Lalan Saw and WW2 Jogeshwar Singh and marked Exhibits W1 series, W2 series and W3 series. WW1 Lalan Saw, one of the concerned workmen, had stated that all the concerned workmen had been working in Bhagaband Colliery of M/s. BCCL since 1983 and that they had been working in underground mines and all of them had been working in three shifts as per the direction and requirement of the Management. WW1 further stated that they had performed the works like stone cutting, boring in coal, making of duggies, making of drain and sumps and that nature of job performed by them was of permanent nature and that in the underground mine they had worked under the supervision of the Management.

11. WW2 Jogeshwar Singh another concerned workman had also stated that since 1983 they had been working in underground mines of Bhagaband Colliery and that the nature of job performed by them was stone cutting, coal cutting, making duggies, making of sumps and drains and that the nature of job performed by them was of regular nature.

12. On the other hand, the Management has examined three witnesses namely MW1, Ram Chandra Saw, MW2, S.K. Pathak and MW3, Arjun Kumar Ghosal and the Management adduced documentary evidence which has been marked as

Exhibits M-1 to M-4/16. MW1 produced some extracts of Attendance Register for the year 1981, 1982, 1983 and 1984 which have been marked as Exhibits M-1 to M-1/2. MW2 had produced three Cash Books and stated that when the bill amount was Rs. 500/- or less, payment was used to be made in cash from the Colliery and when the amount was more, the same used to be paid from the Area Office of the Colliery. MW3 stated that Jogeshwar Singh was not given contractual work on regular basis and that he was doing miscellaneous job in the Colliery intermittently.

13. To appreciate that the said Jogeshwar Singh was only a contractor, the Management has filed carbon copies of the work orders issued to the contractor, Jogeshwar Singh, from 25.11.1981 till 1.8.1985 (Exhibits M-3 to M-3/16) and the bills submitted by the contractor upon execution of the work orders (Exhibits M-4 to M-4/16). But in the Tribunal, WW2 Jogeshwar Singh stated that he was not a contractor as alleged by the Management and he had signed in the bills under compulsion otherwise the Management threatened to stop him from work.

14. The documents produced by the Management do not support the statement of Jogeshwar Singh that he was not the contractor. Exhibits M-3 to M-3/16 relate to 17 contracts/work orders awarded to the contractor, Jogeshwar Singh, and Exhibits M-4 to M-4/16 are the 17 bills raised by the contractor, Jogeshwar Singh. It is highly improbable that said Jogeshwar Singh could have raised the bills continuously for more than four years under compulsion of the Management. The Tribunal, in our considered view, erred in brushing aside the documentary evidence adduced by the Management, Exhibits M-3 to M-3/16 showing the work orders issued to the contractor Jogeshwar Singh and the bills submitted by him upon execution of work orders Exhibits M-4 to M-4/16.

15. The Management has produced Cash Books of Bhagaband Colliery for the years 1983 and 1984 to show the disbursement of the amount to various persons including the Contractor. MW2 has produced the Cash Book. He has stated that if the billed amount was Rs. 500/- or less, payment was used to be made from the cash of the Colliery and when the amount is more, the same was used to be paid from the Area Office of the Colliery. The Tribunal has observed that Cash Books show that the majority of the bills produced by the Management are for the amount more than Rs. 500/- and the Cash Books did not reflect the actual state of affairs with regard to payment made to the contractor through Cash Book. Whatever be the amount paid through Cash Book, the fact remains that the payment was made to Jogeshwar Singh as the contractor which is supported by the Cash Books. The Tribunal committed serious error in brushing aside the Cash Books produced by the Management to show that the payment was made to the Contractor through Cash Books.

16. The Tribunal held that "... the concerned workmen were engaged by the Management of Bhagaband Colliery through the contractor Jogeshwar Singh for doing miscellaneous job and also for doing prohibited category of job.....The concerned workmen had been working under the supervision of the Management

and their work implements were supplied by the Management." The Tribunal further observed that since the place of work belonged to the Management and the work done by the workmen being integral part of the establishment of the Management, the service rendered by them were for the Management and that the workmen sponsored by the Union were only the workmen of the Management and the contract was only a make believe arrangement to show as if the workmen were employed through the contractor. The Tribunal passed the award finding that the workmen are really the workmen of the Management and that the contractor, Jogeshwar Singh, was only a camouflage.

17. The industrial adjudicator can grant the relief sought if it finds that contract between principal employer and contractor is sham, nominal and merely a camouflage to deny employment benefits to the employees and in fact there is a direct employment by applying the tests like: who pays the salary: who has the power to remove/dismiss from service or initiate disciplinary action; who can tell the employee the way in which the work should be done and in short who has the control and the supervision over the employee.

18. In General Manager (OSD), Bengal Nagpur Cotton Mills, Rajnandgaon Vs. Bharat Lal and Another, , the Hon"ble Supreme Court referred to the two well recognized test to find out whether the contract labourers are the direct employees of the principal employer and in para 10, Hon"ble Supreme Court held as under:-

"10. It is now well settled that if the industrial adjudicator finds that the contract between the principal employer and the contractor to be a sham, nominal or merely a camouflage to deny employment benefits to the employee and that there was in fact a direct employment, it can grant relief to the employee by holding that the workman is the direct employee of the principal employer. Two of the well-recognised tests to find out whether the contract labourers are the direct employees of the principal employer are: (i) whether the principal employer pays the salary instead of the contractor; and (ii) whether the principal employer controls and supervises the work of the employee. In this case, the Industrial Court answered both questions in the affirmative and as a consequence held that the first respondent is a direct employee of the appellant."

19. In the present case, even though WW1 and WW2 had denied that they were the workmen of the contractor, Jogeshwar Singh, the workmen had not produced any cogent evidence to show that they worked under the direct control of the Management and the workmen also not produced any evidence to show that they received salary from the Management.

20. The Tribunal proceeded on the presumptive footing that the bills and work orders indicate that the contractor was engaged in making duggies in stone and jahama, driving gallery in stone and jhama, drivage in coal etc. Even though the Tribunal observed that the contractor had no licence and that the place of work belonged to the Management, in the absence of cogent evidence adduced by the

workmen, that does not lead to the conclusion that the concerned workmen are the workmen of the principal employer and the services of the workmen were under the supervision and control of the Management. In our considered view, the Tribunal erred in observing that merely because the place of work belonged to the Management, the workmen were under the control of the Management.

21. The Tribunal erred in not applying the twin tests to find out whether the contract labourers are the direct employees of the principal employer. As pointed out earlier, the contractor, Jogeshwar Singh, raised the bills and that he received the money and paid the salary to the workmen and no evidence was adduced to show that the workmen received salary from the Management or that they had worked under the appellant-Management. Merely because the place of work belongs to the Management and on some occasions, the workmen were engaged in the job of making duggies in stone and jahama, driving gallery in stone and jhama, drivage in coal, such incidental work will not make the work done by the workmen being integral part of the establishment of the Management. We are of the view that the Industrial Tribunal has committed serious error in arriving at the finding that the workmen were directly under the control of the Management. The workmen had not adduced any evidence to show that they had been paid salary directly by the Management and not by the contractor. Even with regard to the second point, the workmen did not establish that they were working under the direct supervision of the principal employer. The Industrial Tribunal misconstrued the meaning of control and supervision and erred in finding that the workmen were directly under the control of the Management.

22. The Tribunal further observed that the contractors' labourers were engaged in the job prohibited by the notification issued by the appropriate Government on 1.2.1975 under the provisions of CLRA Act and contractor Jogeshwar Singh had no licence, nor the establishment of the Management was registered for employment of the workmen through the contractor. It is fairly well settled that the consequence of violation of CLRA Act is only of penal consequence and not regularization Dena Nath and others Vs. National Fertilisers Ltd. and others, . The establishment was not registered and contractor Jogeshwar Singh had no licence. There might be violation of provisions of the CLRA Act, which might have attracted only penal consequences. But it cannot lead to passing order directing departmentalization of the workmen.

23. It was pleaded before the Tribunal that the contract entered between the Management and the workmen was only sham and camouflage. In fact, the reference itself presupposes that Jogeshwar Singh and 51 other workmen have actually worked during the years 1983-86 in various jobs, of which contract was given through Jogeshwar Singh, the contractor. The very basis of the industrial dispute raised by the workmen is that a decision was taken by the Management in consultation with all the Central Trade Unions to absorb all the underground contractors' workmen engaged in prohibited category of jobs who had put in 190 days attendance as Miner/Loader/underground workman. As per the company's

decision the Union demanded that the concerned workmen who were engaged as underground workmen should be regularized as Miners/Loaders.

24. In so far as the number of days which the workmen worked in a calendar year, the burden lies upon the workmen to adduce evidence to show that the workmen had worked for 240/190 days in any calendar year and that they worked as underground workmen. To support its case, the Union has examined two witnesses WW1 Lalan Saw and WW2 Jogeshwar Singh and marked Exhibits W1 series, W2 series and W3 series. WW1 Lalan Saw, one of the concerned workmen, has said that all the concerned workmen had been working in Bhagaband Colliery of M/s. BCCL since 1983 and that each of them had completed 240 days attendance in a calendar year. WW2 Jogeshwar Singh has also stated that they had been working in underground mines of Bhagaband Colliery since 1983 and that they had put in 240 days or more in every calendar year.

25. Per contra, the Management has produced the extract of Attendance Registers (Exhibits M-1 to M-1/2) for the years 1981, 1982, 1983 and 1984, which contained the names of the concerned workmen: As per the above Exhibits, none of the workmen had worked for 190 days in a calendar year. Ram Chandra Sao, General Clerk of the Colliery, who prepared M-1 to M-1/2 was examined as MW1. MW1 had admitted in cross-examination that attendance of the workmen working in underground mine is maintained in Form "C" Register and the Attendance Clerk maintains Form "C" Register at the Pit. The extract of the Attendance Registers Exhibits M-1 to M-1/2, was not taken into account by the Tribunal on the ground that the complete Form "C" register for the relevant period was not produced by the Management. MW3 Arjun Kumar Ghosal, Assistant Manager of Bhagaband Colliery since 1980, has stated that Jogeshwar Singh was not given contractual job on regular basis and he was doing miscellaneous jobs in the colliery intermittently. MWs 1 to 3 have stated that concerned workmen have not worked for 190 days. The Management has produced extract of attendance registers for the years 1981, 1982, 1983 and 1984, which contained the names of some of the concerned workmen. Referring to Exhibits M1-M1/2, in para (10) of the award, the Tribunal has observed that even though Exhibits contains the names of some of the concerned workmen but none of them has been shown to have worked for 190 days.

26. The Tribunal observed that had Form "C" Register or Cap Lamp Register been produced, the true position regarding attendance of the concerned workmen in underground mine could have been ascertained. Even though the Tribunal has observed that as per the Exhibits, none of the workmen has worked for 190 days, the Tribunal raised adverse inference against the Management finding that complete Form "C" Register or Cap Lamp Register for the relevant period had not been produced by the Management and the extracts of the Attendance Registers prepared by the Management, Exhibits M-1 to M-1/2, cannot be treated as exact attendance of the concerned workmen in Bhagaband Colliery for the relevant

period. The Tribunal stated that neither Form "C" Register, nor Cap Lamp Register was produced and since the Management has not produced those registers, the Tribunal raised the presumption that the workmen had completed 240/190 days in a calendar year.

27. Even though it is the case of the workmen that they had so worked, but this claim was emphatically denied by the appellant Management, it was then for the workmen to lead evidence to show that they had, in fact, worked for 240/190 days. Excepting the oral evidence of WW1 and photocopies of attendance slips of some of the workmen (Exhibits W1 series), no other evidence was adduced by the workmen to show that they had in fact worked for 240/190 days. No proof of receipt of salary or wages for 240/190 days or engagement for the period was produced by the workmen. In the absence of such evidence, the Industrial Tribunal was not right in placing onus on the Management.

28. In the case of The Range Forest Officer Vs. S.T. Hadimani, , Hon''ble Supreme Court held that the Tribunal was not right in placing the burden on the Management without first determining on the basis of cogent evidence that the workmen had worked for 240 days in the year preceding his termination and it is for the claimant workman to lead evidence to show that he had, in fact, worked for 240 days in a year preceding his termination. Similar observations were made by Hon''ble Supreme Court in the case of The Range Forest Officer Vs. S.T. Hadimani, and in the case of Rajasthan State Ganganagar S. Mills Ltd. Vs. State of Rajasthan and Another, .

29. As pointed out earlier, the Management has produced the extract of Attendance Register, Exhibits M1-M1/2 and if those documents were not found sufficient, the Tribunal ought to have called upon the Management to produce Form "C" Registers. It is pertinent to note that the workmen had not filed any application calling upon the Management to produce those documents. When the workmen had not filed such application, nor the Tribunal called upon the Management to produce Form "C" Registers or Cap Lamp Registers, the Tribunal erred in raising adverse inference against the Management.

30. In exercise of jurisdiction under Article 227, the High Court does not sit in appeal over the order of the Industrial Tribunals/Labour Courts. This jurisdiction is supervisory and ordinarily High Court should not interfere with the findings of facts arrived at by the Tribunal, it does not mean that findings of facts cannot be interfered with by the supervisory courts in exercise of jurisdiction under Article 227 of the Constitution. Where findings of the Tribunal is perverse and when the relevant facts have not been taken into consideration and when the Tribunal has raised erroneous presumption, the High Court will certainly interfere with the findings recorded by the Tribunal. The findings recorded by the Tribunal that the workmen had worked for 190 days in a calendar year is based on erroneous presumption. Likewise findings of fact recorded by the Tribunal that the workmen worked under direct supervision and control of the Management and that the contract was only a camouflage is based on mis-appreciation of evidence. The

learned Single Judge was not right in saying that the Tribunal has correctly appreciated the evidence. The perversity of the award of the Tribunal warrants interference by the High Court and the order passed by the learned Single Judge confirming the award is liable to be set aside. Since the award passed by the Tribunal is found to be perverse, the identification of the number of the beneficiaries of the award does not arise and the order passed by the learned Single Judge in CWJC No. 3109/1998(R) is liable to be set aside.

31. The order of the learned Single Judge dated 25.9.2013 passed in CWJC No. 1140/1994(R) and CWJC No. 3109/1998(R) and also the award dated 14.8.1992 passed by the Central Government Industrial Tribunal in Reference Case No. 110/1990 are set aside and Letters Patent Appeals are allowed.