

(2005) 02 JH CK 0009
In the Jharkhand High Court
Case No : LPA No. 734 of 2003

Bharat Coking Coal Ltd.

APPELLANT

Vs

Their Workmen, being represented by the President K.D.P.
Yadav, National Coal Workers Congress, Khas Kusunda
Colliery Branch and Another

RESPONDENT

Date of Decision : 23-02-2005

Acts Referred:

Citation : (2005) 3 LLJ 158 : (2005) 1 BLJR 801 : (2005) 2 JCR 269

Hon'ble Judges : S.J. Mukhopadhaya, Acting C.J.; N.N. Tiwari, J

Bench : Division Bench

Advocate : Anil Kumar Sinha and Anoop Kumar Mehta, for the Appellant; Rajiv Ranjan, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, A.C.J.

1. This appeal has been preferred by the appellant against the judgment dated 12th September, 2003 passed by the learned Single Judge in W.P. (L) No. 3479 of 2001, whereby and where under, the learned Single Judge dismissed the writ petition preferred by the appellant, affirmed the award dated 19th March, 2001 passed by the Central Government Industrial Tribunal No. 1, Dhanbad in Reference No. 8/93.

2. The reference was made at the instance of Sponsoring Union, namely, National Coal Workers Congress. The Government of India, Ministry of Labour in exercise of power conferred upon it under Clause (b) of Sub-section (1) to Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the I.D. Act), referred the following disputes to the Tribunal for adjudication, vide Order No. 1. 200012/353/91-I.R. (Coal-I), dated, the 17th December, 1992 :

"Whether the demand of National Coal Workers Congress for employment on the roll of Khas Kusunda Colliery of BCCL of Smt Girja Kamin and 225 others (as per

details annexed with Annexure U-1) with full back wages is justified ? If so to what relief the workmen are entitled?"

3. According to the Sponsoring Union, Girja Kamin and 225 others whose names find place in Annexure to the reference, were working as Casual Wagon Loader at Khas Kusunda Colliery from the year 1976 to 1983, besides doing miscellaneous jobs. According to the Union, a list was prepared for regularization of the services of Girja Kamin and 225 others, but the Management did not regularize them on the Roll of Khas Kusunda Colliery. This gave rise to dispute raised by the Sponsoring Union.

The management denied the fact that the concerned persons had ever been engaged either on prohibited category of job or non-prohibitory category job, but it was admitted that by notification of Central Government, engagement of contract labour had been prohibited in the job of loading and unloading of coal by notification issued in February, 1975. The Management took plea that there was no relationship of employer and employee between the concerned persons and the Management of Khas Kusunda Colliery and, therefore, the concerned persons are not entitled to any relief.

Further case of the Management is that during the period 1973 to 1976, supply of Railway Wagon being erratic, as some time, there used to be no supply of any Wagon or some time as there were excess supply of Wagons, in such a case, the work of loading and unloading was being done by engaging extra labour who were separately enrolled as Casual Wagon Loader, but their names do not find place either in the roll of Permanent Wagon Loader or Casual Wagon Loader. Therefore, according to them, the concerned persons were not entitled to any relief.

On behalf of the workmen, five witnesses were examined and four exhibits, including Ext. W-1 series, were exhibited. On the other hand, the Management examined three witnesses and exhibited about six documents, including Exts. M-1 series; M-2 series and M-3 series.

On hearing the parties and on appreciation of evidence, the Presiding Officer, Central Government Industrial Tribunal No. 1, Dhanbad, held that the Sponsoring Union had been able to prove that the concerned persons had been working as Casual Wagon Loader from the year 1976 to 1983 and directed to regularize the services of concerned Workmen, within thirty days from the date of publication of the Award, failing which it was ordered that the concerned Workmen shall be entitled to wages as per N.C.W.A., from the date of publication of the Award. The Award was delivered on the basis of Supreme Court's decision in the case of Air India Statutory Corporation, etc. Vs. United Labour Union and others [overruled], .

4. Learned counsel for the appellant challenged the Award mainly on the following grounds :

(i) There being more than 17 years delay in asking for Reference, the Reference should not have been made and as such the Reference made after such delay, is bad.

It was submitted that the Workmen claimed to have worked till 1983, but raised dispute in the year 1991 and reference was made on 17th December, 1992.

(ii) The principle as laid down by the Supreme Court in the case of Air India Statutory Corporation, etc. Vs. United Labour Union and others [overruled], having overruled prospectively by the Constitution Bench decision of Supreme Court in Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., the Presiding Officer of Central Government Industrial Tribunal, Dhanbad should not have relied on the overruled decision in Air India Statutory Corporation, (supra) to answer the reference in favour of the Workmen. The Award being based on the principle laid down in Air India Statutory Corporation, (supra), which stands overruled since 2001, the impugned Award should not be upheld.

(iii) The learned Single Judge has failed to consider the aforesaid issue, as also failed to notice the Constitution Bench decision in Steel Authority of India Ltd., (supra).

5. Learned counsel for the respondents-Workmen relied on Supreme Court decision in Harmohinder Singh Vs. Kharga Canteen, Ambala Cantt., to suggest that there is no limitation prescribed for making reference. That was a case in which the Supreme Court noticed the provision of Section 4-K of the U.P. Industrial Disputes Act, (28 of 1947), which is almost in tune with Section 10 of the Industrial Disputes Act, 1947, and held :

"....The words "at any time" as used in the section are prima facie indicator to a period without boundary. But such an interpretation making the power unending would be pedantic. There is inherent evidence in this section itself to indicate that the time has some circumscription. The words "where the Government is of opinion that any industrial dispute exists or is apprehended ; have to be read in conjunction with the words "at any time." They are, in a way, complimentary to each other. The Government's power to refer an industrial dispute for adjudication has thus one limitation of time and that is, it can be done only so long as the dispute exists....."

6. Similar issue fell for consideration before the Supreme Court in the case of The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others, In the said case, after having noticed the provision of Section 10 of the Industrial Disputes Act (15 of 1947), the Supreme Court held :

"Law does not prescribe any time limit for the appropriate Government to exercise its power u/s 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters, which had since been settled. Power is to be exercised reasonably and in a rational manner...."

7. In the present case, as per the case of the Sponsoring Union, Girja Kamin and 225 other Workmen worked during the year 1976 to 1983 as casual Wagon Loader. Since 1984, they were not in the roll of the Contractor/or Management. They raised dispute after more than 7 years, in the year 1991. The Sponsoring Union or the workmen have not shown any ground as to why they had not raised the dispute for more than 7 years. At the time reference was made i.e. in the year 1991-92, no industrial dispute existed or stated to have been apprehended. In such a situation, "a dispute which is stale could not be the subject matter of reference u/s 10 of the Act", as held by the Supreme Court in the case of Nedungadi Bank Ltd v. K.P. Madhavankutty. (supra).

In the case of National Engineering Industries Ltd. Vs. State of Rajasthan and Others, the Supreme Court observed that the High Court has jurisdiction to entertain a writ petition when there is allegation that there is no industrial dispute existed or apprehended, which could be subject the matter of reference for adjudication to the Industrial Tribunal u/s 10 of the Act. If there is no industrial dispute, in existence, or apprehended at the time of reference, appropriate Government lacks power to make any reference.

8. In view of aforesaid finding of Supreme Court, I have no option, but to hold that there was no industrial dispute existed or was apprehended after long 17 (seventeen) years of retrenchment of the workmen. Thus, the appropriate Government had not jurisdiction to make the reference in question.

9. There is another important factor which is to be noticed in this case is that the Sponsoring Union had been able to prove that the concerned persons had been working as Casual Wagon Loaders from the year 1976 to 1983, but it had failed to establish that there was a relationship of employer and employees between them. Except such finding of fact that they were the Workmen of the Management of M/s. B.C.C.L's, Khas Kusunda Colliery who were doing the prohibited category of job in which engagement of Contractors had been prohibited in the month of February, 1975, no grounds have been shown to hold that the Workmen are entitled to the wages of piece rated workers and have right of regularisation of their services. Such finding is based on the Supreme Court decision in Air India Statutory Corporation, (supra), which stood overruled by the time the Award was given by the Presiding Officer, Central Government Industrial Tribunal No. 1, Dhanbad. On this ground also, the Award cannot be upheld.

10. For the reasons, as shown, and discussions, as made above, I have no other option, but to set aside the award and the judgment passed by the learned Single Judge. They are, accordingly, set aside. The appeal is allowed.

11. However, in the facts and circumstances, there shall be no order, as to costs.

N.N. Tiwari, J.

12. I agree.