
(2010) 04 JH CK 0159
In the Jharkhand High Court

Bokaro Steel Plant

APPELLANT

Vs

The Workmen represented by Bokaro Progressive Front and
The State of Jharkhand

RESPONDENT

Date of Decision : 23-04-2010

Acts Referred:

Citation : (2010) 04 JH CK 0159

Hon'ble Judges : D.G.R. Patnaik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.G.R. Patnaik, J.—Heard the learned Counsel for the parties.

2. Challenge, in this writ application, is to the Award dated- 30th March, 2003 (Annexure-4) of the Presiding Officer, Industrial Tribunal, Ranchi, passed in Reference Case No. 12 of 1994, whereby the Tribunal has answered the Reference in favour of the workmen and against the petitioner/Management.

3. The reference of the dispute for adjudication, as made before the Industrial Tribunal, was in the following terms:

Whether there establishes relationship of Employer and Employees between Bokaro Steel Plant and Sri R.H. Giri and 58 other labours mentioned in Schedule? If so, whether to prevent them from operational work of coke-oven battery which they were doing from 1.10.1992 is proper? If not, what relief they are entitled to?

4. The admitted facts of this case are as follows:

The concerned workmen were engaged by a private contractor, namely, M/s. T.T.G. for executing certain contract jobs within the plant of the petitioner-Management, which the contractor had undertaken to execute on contract basis. The contract, which the Management had entered into with the contractor, was for installation and erection of six number of high pressure water jet machines for goose neck cleaning. The contract was given to the contractor on turn key

basis including the purchase order of the machines and ancillaries. The machines, six in number, were installed on various dates between the period 1990-1991.

After completing the installation, the machines required to be operated, serviced and maintained. The services of the workmen engaged under the contractor for the purposes of installation of the machines, continued to be engaged for the purposes of operation, servicing and maintenance of the machines.

5. Later, these workmen raised a demand through their union for their immediate regularization under the petitioner-Management on the ground that they have been performing permanent nature of production job in the Coke Oven Battery for the benefit of the Management. Upon the Management refusing to concede their demand, the workman's Union gave a strike notice, raising inter alia, several demands, the first being "immediate regularization of the 59 workers performing permanent nature of production job in the Coke Oven Battery under the T.T.G. Company."

The matter was referred for conciliation to the appropriate authority. However, during the pendency of the conciliation proceedings, the services of the workmen were terminated. The contention of the workmen is that such termination was made by the Management, whereas the contention of the Management was that the workmen were in fact retrenched by the contractor after offering one month's notice salary to them.

6. The conciliation having failed, an Industrial dispute was raised on 30.09.1992, which eventually came to be referred for adjudication to the Tribunal.

7. Before the Tribunal, the stand taken by the Management was that for the purposes of installation of the machines, the Bokaro Steel Limited had entered into a contract with the contractor, M/s. T.T.G. The installation of six machines was made phase wise and the last machine was installed, on 16.03.1991. Since the operation of the machines had to be done, a fresh contract was entered into by the Management with the said contractor for operation and maintenance of the Machines for the period of one year, till 30.09.1992. The Management contested the claim of the workmen on the ground that these workmen were never appointed by the Management nor did the Management ever pay them their salary/wages and for all practical purposes, the workmen were the employees of the contractor and, therefore, their claim for regularization of their services under the Management is totally misconceived.

8. The workmen on the other hand, in support of their claim, had asserted before the Tribunal that though initially they were employed under the contractor but their services under the Contractor were limited only for the purposes of installing the machines. After the installation was completed, their services continued to be engaged by the "Plant" for the purpose of maintenance and operation of the Machines and they had worked for more than 240 days in a year, directly under the supervision and control of the Management and that such work

was being taken by the Management for its business and benefit. It was also pleaded on behalf of the workmen that during the period from the date after the installation of the machines was complete, it was the Management, which used to pay them their salary/wages and had also admitted the workmen to the Provident Fund Scheme under the Management and as since their services was directly engaged by the Management, they were entitled for their regularization in service under the Management.

9. After considering the evidences adduced by the Management and the workmen, the Tribunal recorded its finding that the relationship of employer between the Plant and the concerned workmen was established, at least immediately after the last installation of the Machines on 16.03.1991 and that the concerned workmen were performing permanent nature of job in the Coke Oven Battery in the Factory of the Management and that the concerned workmen were illegally prevented by the Management from performing the operational work of the high pressure water jet door cleaning and goose neck cleaning machines from 01.10.1992. The Tribunal has also recorded its finding that the termination of the concerned workmen during the pendency of the conciliation proceedings was illegal and vitiated in law. On the basis of the above findings, the Tribunal had directed in its Award that the concerned workmen are entitled to be reinstated with effect from 01.10.1992 with payment of 20 per cent back wages with effect from that date.

10. Assailing the findings as recorded in the impugned Award and the directions contained, therein, learned Counsel for the petitioner/Management submits the following grounds:

(i) The Tribunal has erred in failing to consider that the very reference of the dispute, as raised on behalf of the workmen, was improper and misconceived and not maintainable in view of the fact that the workmen had themselves admitted to be the workers engaged by the intermediary contractors, namely, M/s. T.T.G. and therefore, this clearly declares that even as per the admission of the workmen, there was no relationship of employer and employee between the Bokaro Steel Plant and the workmen at any point of time.

(ii) The Tribunal has erred in failing to appreciate the evidences adduced on behalf of the Management including the documents filed in support of the stand taken by the Management, that the services of the contractor was engaged, not only for the purposes of erection and installation of six number of high pressure water jet machines for goose neck cleaning but its services continued to be engaged for the purposes of operation and maintenance of the Machines for a period of one year and separate contracts accordingly were entered into between the Management and the contractor for stipulated periods till 1992. It was the contractor, who had engaged the services of the workmen not only for the purposes of erection and installing the machines but also for the purposes of operation and servicing of the high pressure door cleaning machines. These facts, having been admitted, even by the Management witnesses, examined on

behalf of the workmen before the Tribunal.

(iii) The Tribunal has erred in doubting the genuineness of the documents pertaining to the contract entered into by the Management with the Contractor for the purposes of operation, servicing and maintenance of the machines, without any basis.

(iv) The Tribunal has erred in failing to consider that even according to the admitted case of the workmen, they were never appointed by way of any appointment letter by the Bokaro Steel Plant and neither was any wages/salary paid to such workmen directly by the Plant.

(v) The Tribunal has erred in failing to consider that the very demand of the workmen was for "regularization" of their job under the Bokaro Steel Plant, on the ground that they were performing permanent nature of job in the Coke Oven Battery of the Plant. The Tribunal has erred in using the word "Regularization" and "Reinstatement", interchangeably although, each of the words connote different meanings. The findings of the Tribunal that during the pendency of the conciliation proceedings, the termination of the services of the workmen was illegal and vitiated in law, is misconceived since the law relating to such termination is not relevant for the contract labourers and in the context of the admitted facts and circumstances of the present case.

(vi) The direction for reinstatement of the workmen ought not to have been passed by the Tribunal in view of the admitted fact that the workmen were never appointed directly by the Management and neither were their services terminated by the Management. This is apparent from the fact that the demand of the workmen was first for their regularization and then for their reinstatement.

(vii) The observation of the Tribunal that the contract for operation and maintenance of the machines was a sham contract, is misconceived and has been made without recording any specific finding on such observation and without there being any pleadings of the workmen in this regard.

(viii) Referring to the judgment of the Supreme Court in the case of Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., , in this context, learned Counsel for the petitioner/ Management explains that as per the ratio decided by the Supreme Court in the Steel Authority's case (Supra), the contract can be declared a sham, only if the contract continues for a long time for permanent nature of job and the mode of employment is temporary by way of a camouflage even though the contract is not necessary for the job at all. Such, according to the learned Counsel, is not the facts in the present case, since admittedly, the new Technology Machines were installed under the Contractor and for operation, maintenance and servicing of the machines, the services of the contractor was required for a temporary period and for which separate contracts were entered into accordingly, by and between the Management-Contractor.

11. The Respondent-workmen have contested the claim of the petitioner-Management on the following grounds:

(i) This writ application is not maintainable as because the petitioner-Management has not been able to demonstrate any perversity or impropriety in the findings recorded by the Tribunal in its Award.

(ii) The directions contained in the Award for the reinstatement of the workmen cannot be faulted, since even as per the strike notice served upon the workmen by the Union, the demand for regularization was to be made after the reinstatement of the workmen, whose services were illegally terminated even during the pendency of the conciliation proceedings. The Management, therefore, cannot argue that there was no specific demand for reinstatement and therefore, the reference of the dispute for adjudication in absence of such demand, is bad.

(iii) The Tribunal has discussed each and every piece of evidence adduced by the parties and has drawn its inference, that the purported contract with the contractor for operation, servicing and maintenance of the machines was a sham contract, is based on the categorical admission made by the Management witness in his evidence that there was no further contract for any work in the Coke Oven Battery after 16.03.1991.

(iv) The workmen had demanded production of certain documents from the Management to prove their case and upon the failure of the Management to produce the relevant documents, the Tribunal has rightly drawn an adverse inference against the Management.

(v) The Tribunal has rightly appreciated the evidence adduced both on behalf of the workmen and on behalf of the Management and has rightly relied upon the evidence of the workmen that the job performed by the workmen was of a permanent nature and that no Tender was floated for doing the job of operation of the machines after the final installation of the machines and that the operation and maintenance job was being done for the benefit of the Management.

(vi) The findings recorded by the Tribunal being based on the unchallenged evidence adduced on behalf of the workmen that the workmen were doing the job for more than 240 days in each calendar year.

(vii) The determination of employer-employee relationship and determination of camouflage as made by the Tribunal, are determination of facts and the Tribunal being the appropriate authority to decide upon such facts, this Court, in exercise of its writ jurisdiction, in absence of any patent error of law on the face of the record, cannot re-appreciate the evidence as a Court of Appeal.

12. From the rival submissions as also the pleadings of the parties, the following facts emerge:

(i) The petitioner-Management had engaged the services of the private contractor, namely, M/s. T.T.G. for erection and installation of six numbers of

water jet cleaning devices in the Coke Oven Battery in its plant. The specific contract was entered into for such installation of the machines. The contract was given on turn key basis including purchase orders for the purchase of six number of machines and the installations of the machines were done phase wise, the last machine being installed on 16.03.1991.

(ii) For executing the contract job, the contractor had engaged the services of the present set of workmen and the services of the workmen continued to be engaged even after the final installation of the last machine, for the purposes of operation and maintenance of the machines.

(iii) Admittedly, the workmen were never appointed by the Management of the Bokaro Steel Plant either by virtue of any appointment letter or issuance of a letter of engagement. The wages to such workmen used to be paid by the said contractor, though under the supervision of the petitioner-Management.

(iv) The dispute arose when the workmen demanded for their regularization of their job under the Bokaro Steel Plant on the ground that they were performing permanent nature of job of operation of the Coke Oven Battery of the Steel Plant.

(v) On the issue as to whether there exists a relationship of employer and employee between the Bokaro Steel Plant and the concerned workmen, the findings of the Tribunal appears to be based on the following grounds:

(a) Though, admittedly, the workmen were initially engaged by the Contractor but under the terms of contract, the work entrusted to the contractor was only for erection and installation of the machines and the period of such contract had ended after the installation of the last machine. The contract having terminated after completion of the job entrusted, there could be no occasion for the contractor to engage the services of the workmen any more under the Management. The fact that the services of the workmen was engaged for operation and maintenance of the machines, even after the expiry of the contract, having not been denied by the Management, in absence of any convincing evidence that the services of the workmen continued to be engaged through the contractor under any further contract, the inference which may be drawn is that the workmen were directly engaged by the Bokaro Steel Plant and therefore, their services were taken under the supervision and control of the Management and thereby a direct relationship of employer and employee was established between them.

(b) The non-production of certain documents by the Management, which the workmen had demanded for production to enable them to prove that a direct relationship of employer and employee do exist, gives reason for drawing adverse inference against the Management.

(c) The claim of the Management that under separate contracts executed on different dates, the contractor's services were hired for the purposes of operation and maintenance of the installed machines, appears to be a sham

contract considering the fact that the Management did not produce the original of the documents of contract, claimed by them. The above inference also finds support from the fact that even as admitted by the Management witness, no fresh Tender was invited by the Management for operation and maintenance of the Machines.

13. It is true that the dispute as to the existence of relationship of employer and employee is a disputed question of fact and likewise, whether a contract is a sham contract and a camouflage to evade compliance with various beneficial legislations, so as to deprive the workers of the benefits thereunder, is a dispute, which falls for adjudication within the Tribunal's jurisdiction and the findings recorded on such disputes by the Tribunal may not be interfered with, by the writ Courts. But this in itself, does not prevent a judicial review of such findings on disputed facts and the writ Court may interfere, if such findings are found to be perverse and contrary to the evidences adduced.

14. The petitioner has assailed the findings in the impugned Award on the ground of the same being perverse and not in consonance with the evidences on record, and also on the ground that the findings have been recorded without assigning reasons.

15. I have gone through the pleadings of the parties and also through the impugned Award.

As it appears even from the pleadings of the workmen, that admittedly, their services were engaged by the contractor. The demand for their regularization was made by them only on the ground that even after the conclusion of the job under the original contractor, their services continued to be engaged in the Coke Oven Battery of the Management for the purposes of operating and maintaining the installed machines after June, 1991.

From the impugned Award, it appears that the Tribunal has though taken note of the stand by the Management that the continuation of the services of these workmen was made through the contractor on the basis of further contracts executed from time to time for the purposes of operation and maintenance of the machines and has also taken note of the photo-copies of the various contracts entered by the Management with the Contractor for the purposes of operation and maintenance of the machines, yet, even after going through the contents of the documents, the Tribunal has refused to accept the same as genuine only on the ground that the originals of the documents were not produced by the Management. Yet, again by the obvious acceptance of the existence of such extended contracts for operation, servicing and maintenance of the Machines, entered into between the Management and the contractor, the Tribunal has declared such contracts as sham contracts. No specific reason appears to have been assigned by the Tribunal for declaring the contracts as sham contracts. It appears that the inference of the contracts being a sham, has been drawn by the Tribunal merely on the ground that the installation of the cleaning Machines was

complete with the last installation done on 16.03.1991, yet, the services of the workmen continued to be engaged for operation and maintenance of the machines, even after final installation, and such job being of permanent nature was done by the workmen for the benefit of the Plant. These, in my opinion, do hardly constitute a reasonable ground for declaring the contract as a sham and camouflage. No convincing reason appears to have been assigned by the Tribunal to hold that the contract, as claimed by the Management entered into with the Contractor for the purposes of operation and maintenance of the installed machines, is a sham contract.

The Tribunal's contention that the contracts cannot be accepted as genuine, because no prior Tender was invited by the Management for the operation and maintenance of the Machines, appears to be misconceived and the same cannot be accepted as a reason to declare the contract as sham. In the light of the admitted facts that the services of the workmen were engaged through the contractor, the mere continuation of such engagement for the purposes of operation and maintenance of the Machines for a limited period, would not ipso facto lead to a definite conclusion that the workmen were directly engaged by the Management.

In the face of the admitted position that the services of the workmen were initially employed and engaged by the Contractor, in order to arrive at a finding that a direct link is established between the contract labourers and the principal employer eliminating the contractor from the scene, the Tribunal has to record its finding as to at what point of time, was the direct link established. Such finding has to be given on the basis of the evidence adduced in the light of the fact that the Management had not only asserted that it had entered into separate contracts with the contractor for the purposes of operation and maintenance of the installed machines and the documents produced by the Establishment in support of such claim of which the Tribunal had occasion to go through the same.

It is also well-settled that merely because the services of the workmen were engaged for more than 240 days in a calendar year, in itself, would not give a right to the worker for regularization of his services under the Management.

In the case of Manager, R.B.I., Bangalore Vs. S. Mani and Others, , the Supreme Court has held that the engagement for 240 days in a calendar year, does not by itself give rise to a claim of permanence nor does it entitle the employee concerned to claim regularization and/or permanent status.

It may be noted that admittedly, there is no Notification, prohibiting engagement of contract labour in respect of the work of installation of the Machines and for their operation and maintenance in the Coke Oven Battery Plant of the Management-Factory.

The inferences, as recorded by the Tribunal, on the basis of Identity-cards, issued to the workmen, Training given to the workmen and their admission to the Provident Fund Scheme, stating that these circumstances indicate a direct

relationship of employer and employee between the Management and the concerned workmen, also appears to be misconceived, particularly in the light of the admitted facts that the Management did not issue any letter of appointment or engagement to the workman nor was the salary to such workers ever paid directly by the Management. The issuance of Identity-cards, as applicable to non-employees of the Bokaro Steel Plant is of no relevance on the issue of existence of relationship of employer and employee between the B.S.L. Management and the workmen.

I am convinced that the findings recorded by the Tribunal on the issue as to whether there exists a relationship of employer and employee between the B.S.L. Management and the workman, is not based on proper appreciation of the evidences on record and is in fact, against the weight of evidence on record and as such, the findings are perverse. Such perversity is also manifest from the fact that no specific reasons have been assigned by the Tribunal for declaring the contracts entered into by the Management and the private Contractor as sham contracts.

16. In the light of the facts and circumstances of this case and the discussions made above, I find merit in this writ application and accordingly, the same is allowed. The impugned Award dated-30th May, 2003, passed by the Presiding Officer, Industrial Tribunal, Ranchi in Reference Case No. 12 of 1994 including the directions contained therein, is hereby set aside.