
(2017) 04 OHC CK 0024

In the Orissa High Court

Case No : 82 of 1998

Bolani Ores Mines

APPELLANT

Vs

Govt.of India

RESPONDENT

Date of Decision : 25-04-2017

Acts Referred:

[Constitution of India](#), [Article 226](#) -
Power of High Courts to Issue certain writs

[Industrial Disputes Act, 1947](#), [Section 10](#) -
[Section 12\(5\)](#), [Section 18](#)

Citation : (2017) 04 OHC CK 0024

Hon'ble Judges : Vineet Saran, K.R. Mohapatra

Bench : DIVISION BENCH

Advocate : Jagannath Patnaik, B. Mohanty, T.K. Patnaik, A. Patnaik, S. Patnaik,
R.P. Ray, B.S. Ray, Y.S.N. Murty, P.N. Mishra

Judgement

1. This writ petition has been filed by the Management of Bolani Ores Mines, Raw Materials Division (SAIL), Barbil assailing the order dated 30.10.1996 (Annexure-5) passed by the Ministry of Labour, Government of India in making a reference to the Industrial Tribunal, Bhubaneswar for adjudication, which is quoted here under: "Whether the contractors' workers engaged through M/s Allied Transport & M/s. Ores India should be regularized by the management of Bolani Ores Mines, RMD/SAIL, Bolani in line with clause 3.5.1.2 of the NJCS agreement dated 18.5.1995? If not, what relief the workmen are entitled to?"

2. The genesis, in a nut shell, that gives rise to this writ petition is that the Management of Bolani Ores Mines is an establishment of the Steel Authority of India Limited (for short "SAIL") at Bolani in the District of Keonjhar, Odisha. It extracts Iron Ores from its captive mines and supplies the same to different industrial undertaking of SAIL through out India. The Raw Materials Division of Bolani Ores Mines (for short "the Management") engages different transporters for extraction and transportation of Ores from its captive mines. The Labour Contractors also supply contract labourers for carrying out different jobs of the

Management at different points of time. While the matter stood thus, opposite party no.2, namely, Barbil Workers Union through its General Secretary gave a strike notice under Section 22 (1)(b) of the Industrial Disputes Act, 1947 (for short, "the I.D. Act") raising a demand to regularize the contract labourers being engaged through contractors. Subsequently, the matter was taken up by the Assistant Labour Commissioner (Central), Rourkela opposite party No. 4, who vide letter dated 12.11.1995 had sent a notice to the Management-petitioner to attend the conciliation proceeding in the matter of prohibition/abolition of contract labour system and regularization of contract labourers under the Management-petitioner. Pursuant to the said notice, the representatives of both the petitioner and opposite party no.2-Barbil Workers Union appeared before the Assistant Labour Commissioner (Central), Rourkela-opposite party no.4. Conciliation being failed, the Assistant Labour Commissioner communicated the failure report to the Ministry of Labour, Government of India-opposite party no.1. The Government of India in Ministry of Labour, in turn, referred the matter to the Industrial Tribunal, Bhubaneswar, Odisha for adjudication of the aforesaid reference. Consequently, the Presiding Officer, Industrial Tribunal, Bhubaneswar initiated I.D. Case No. 42 of 1996 (C) on his file and sent notices to the parties concerned including the Management-petitioner to appear and file written statement along with relevant documents vide his notice dated 21.07.1997 (Annexure-6). The petitioner being aggrieved by the action of opposite party no.1 in referring the matter to the Industrial Tribunal for adjudication of the reference under Annexure-5 as well as consequential notice (Annexure-6) issued by the Industrial Tribunal to the petitioner to appear and file written statement for adjudication of the reference, has filed this writ petition.

3. Learned counsel for the petitioner vehemently argued that the reference made by the Government of India- opposite party no.1 is not maintainable and the same is an outcome of total non- application of mind. Neither any industrial dispute exists nor apprehended, which warrants the impugned reference for adjudication. The opposite party no.2- Union had raised a demand for regularization of contract labourers under the Management-petitioner, who were engaged through different contractors to carry out transportation contracts. He further submitted that the question of regularization of contract labour only arises, when the appropriate Government prohibits engagement of contract labour in an establishment by a notification in the official gazette under Section 10 (1) of the Contract Labour (Regulation and Abolition), Act, 1970 (for short, "CLRA Act"). There being no such notification published in the official gazette, the reference made by the Government of India is without jurisdiction and not maintainable. The Clause 3.5.1.2 of the NJCS agreement is relevant to take a decision about perennial nature of work in an establishment. The same has no application to the instant case as there is no notification under Section 10(1) of CLRA Act. On the contrary, the Ministry of Labour, Government of India in its letter dated 19.05.1995 (Annexure-4) had communicated the General Secretary of Indian National Mines Worker Federation, Dhanbad regarding decision with

regard to prohibition of Contract Labour System in Iron Ore Mines, which indicates that in pursuance of the recommendation of Central Advisory Contract Labour Board of Ministry of Steel, the appropriate Government has decided not to prohibit employment of contract labour in the Iron Ore Mines in the country. In that view of the matter, the reference made by opposite party no.1 in exercise of power under Section 10 read with 12(5) of the I.D. Act is an outcome of total nonapplication of mind and is not maintainable. Making a reference is not an empty formality. The appropriate Government has to apply its mind to find out as to whether there exists a prima facie case with regard to existence or apprehension of industrial dispute. Further, the reference does not contain the list of names of the workers sought to be regularized. As such, the reference is also vague and non-specific. Hence, he prayed for setting aside the order under Annexure-5 making a reference to the Industrial Tribunal, Bhubaneswar for adjudication as well as for a mandamus to direct the Industrial Tribunal not to proceed with I.D. Case No. 42 of 1996 (C).

4. Learned Central Government Counsel appearing for opposite party no.1 submits that the question of maintainability of the reference can only be challenged before learned Tribunal and not in a petition under Article 226 of the Constitution of India. The Managementpetitioner without filing any written statement has approached this Court assailing the same. As such, the writ petition is premature. Further, on receipt of the failure report from the Conciliation Officer-opposite party no.4, the Government of India in the Ministry of labour, after due application of mind exercised its jurisdiction by referring the matter to the Industrial Tribunal, Bhubaneswar for adjudication of the reference. The petitioner without participating in the said proceeding has approached this Court assailing the maintainability of the reference on the ground that the opposite party no.1 had no jurisdiction to make such reference. Hence, the writ petition merits no consideration and the petitioner-Management should be relegated to the Industrial Tribunal to raise the issue of maintainability along with others, which can be efficaciously adjudicated by the industrial adjudicator on assessment of the evidence to be adduced by the parties. Hence, he prays for dismissal of the writ petition.

5. We have heard learned counsel for the parties and perused the case record. None appears on behalf of Workers' Union- opposite party no.2 in spite of valid service of notice.

6. In order to delve into the question of maintainability of the reference, it is profitable to go through the provisions of Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970, which reads as follows: "10.Prohibition of employment of contract labour.

(1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.

(2) Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as-

(a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment;

(b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation that is carried on in that establishment;

(c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;

(d) whether it is sufficient to employ considerable number of whole-time workmen.

Explanation.-If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final."

7. On a plain reading of the aforesaid provision, it is crystal clear that a mechanism has been provided under the CLRA Act for prohibition of contract labour in an establishment in order to protect the interest of the contract labourers. For that purpose, the appropriate Government has to make a notification in the official gazette for prohibition of contract labour in that particular establishment. Only after such notification is made under Section 10(1) of the CLRA Act, the contract labourers can be clothed with a right to be regularized. In case they are not regularized, then only an industrial dispute may arise for their regularization. Several factors as enumerated in sub-Section (2) of Section 10 of CLRA Act, have to be considered by the Board before making a recommendation for prohibition/abolition of contract labour. In the instant case, there being no such notification, no industrial dispute within the meaning of Section 2(k) of the I.D. Act can be said to be either existing or apprehended, which would give rise to a situation to make a reference under the provisions of the I.D. Act. To add to it, the Government of India in the Ministry of Labour vide its letter dated 19.05.1995 (Annexure-4) has categorically communicated the General Secretary, Indian National Mines Worker Federation, Dhanbad that the Central Advisory Contract Labour Board has recommended the Ministry of Steel, Government of India not to prohibit employment of contract labour in Iron Ore Mines in the country. As such, the contract labour engaged through M/s Allied Transport and M/s Ores India have no statutory right to be regularized under the management-petitioner, in absence of a notification under Section 10(1) of the CLRA Act. The Hon"ble Apex Court in the case of Sheikh Jahangir Ali and others - v- Calcutta Port Trust and others, reported in 1999 (2) CLR 226 (SC) has categorically held as follows: "27. Considering the provisions of Section 10 of the

above Act and the various decisions cited on behalf of the parties, the ratio which emerges is that consequent upon abolition of contract labour in a particular establishment by publication of a notification under Section 10(1) of the said Act, the workmen concerned acquire a right to be absorbed in the regular establishment, and such right could be enforced in the writ jurisdiction of the Hon"ble Supreme Court and the High Courts.

28. In the present case, no such notification has been published as far as "vulcanisers" employed as contract labour under the Calcutta Port Trust are concerned and until such a notification is published, the petitioners in my view, cannot straightaway claim absorption in the regular establishment."

Viewed it from another angle, the industrial adjudicator, in order to answer a reference to regularize the contract labour in an establishment, has to initially take a decision to abolish/prohibit the contract labour system in the said establishment. In view of the clear provisions of Section 10(1) of the CLRA Act, the appropriate Government is only competent to take such a decision by issuing a notification in the official gazette under the said provisions. The Labour Court or Industrial Tribunal cannot assume jurisdiction to adjudicate the same. The Hon"ble Supreme Court in *Vegoils (P) Ltd. Vs. The Workmen*, reported in 1972 SC 1942, held as follows:

".....Therefore it is reasonable to conclude that the jurisdiction to decide about the abolition of contract labour or to put it differently to prohibit the employment of contract labour is now to be done in accordance with Sec.10. Therefore it is proper that the question whether the contract labour regarding loading and unloading in the industry of the appellant is to be abolished or not is left to be dealt with by the appropriate Government under the Act, if it becomes necessary. On this ground, we are of the opinion that the direction of the Industrial Tribunal in this regard will have to be set aside....

46. The legality of the direction given by the Industrial Tribunal abolishing contract labour in respect of loading and unloading from May 1, 1971 can also be considered from another point of view. The Central Act, as mentioned earlier, had come into force on February 10, 1971. Under Section 10 of the said Act the jurisdiction to decide matters connected with prohibition of contract labour is now vested in the appropriate Government. Therefore, with effect from February 10, 1971, it is only the appropriate Government that can prohibit contract labour by following the procedure and in accordance with the provisions of the Central Act. The Industrial Tribunal in the circumstances will have no Jurisdiction though its award is dated November 29,1970 to give a direction in that respect which becomes enforceable after the date of the coming into force of the Central Act. In any event such a direction contained in the award cannot be enforced from a date when abolition of contract labour can only be done by the appropriate Government in accordance with the provisions of the Central Act. In this view also it must be held that the direction of the Industrial Tribunal abolishing contract labour with effect from May 1, 1971 regarding loading and unloading

cannot be sustained."

Similar view is taken in the case of Steel Authority of India Ltd -v- Union of India & Ors., reported in AIR 2006 SC 3229, which is as follows:

"20. We may reiterate that neither the Labour Court nor the writ court could determine the question as to whether the contract labour should be abolished or not, the same being within the exclusive domain of the Appropriate Government.

21. A decision in the behalf undoubtedly is required to be taken upon following the procedure laid down in sub-section (1) of Section 10 of the 1947 Act. A notification can be issued by an Appropriate Government prohibiting employment of contract labour if the factors enumerated in sub-section (2) of Section 10 of the 1970 Act are satisfied."

In that view of the matter, we have no hesitation to hold that in absence of any notification under Section 10(1) of the CLRA Act, the Industrial Tribunal lacks jurisdiction to adjudicate the impugned reference.

8. In order to contemplate an industrial dispute under Section 2(k) of the I.D. Act for regularization of contract labour, in addition to the requirements discussed above, there must be a master and servant relationship between the Management and the Contract Labour engaged under it, who seek regularization. It needs no elaborate discussion in view of the ratio decided in the case of Steel Authority of India Ltd. and others -v- National Union Water Front Workers and others, reported in AIR 2001 SC 3527, wherein the Hon"ble Supreme Court at paragraph-117 held as follows: "117. We have also perused all the Rules and Forms prescribed thereunder. It is clear that at various stages there is involvement of the principal employer. On exhaustive consideration of the provisions of the CLRA Act we have held above that neither they contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied upon the provisions of the Act on issuing notification under S.10(1) of the CLRA Act, a fortiori much less can such a relationship be found to exist from the Rules and the Forms made thereunder."

9. Making a reference under Section 10 read with 12(5) of the I.D. Act is not an empty formality. The appropriate Government has to apply its mind to the conciliation failure report and other attending as well as ancillary facts, circumstance as well as materials available, to come to a conclusion that there exists an industrial dispute between the management and its workmen or such a dispute is apprehended. In the instant case, it appears that the appropriate government has not at all applied its mind before making the impugned reference. As discussed earlier, a contract labour can claim for regularization only when a notification under Section 10(1) of the CLRA Act is published in the official gazette. In absence of such a right of contract labour to claim for regularization, it cannot be said that there existed and apprehended any industrial dispute within the meaning of Section 2(k) of the I.D. Act. In AIR 2006

SC 3229 (supra), the Hon"ble Apex Court held as follows: "35. There is another aspect of the matter which should also not be lost sight of. For the purpose of exercising jurisdiction under Section 10 of the 1970 Act, the appropriate Government is required to apply its mind. Its order may be an administrative one but the same would not be beyond the pale of judicial review. It must, therefore, apply its mind before making a reference on the basis of the materials placed before it by the workmen and/or management, as the case may be, While doing so, it may be inappropriate for the same authority on the basis of the materials that a notification under Section 10(1)(d) of the 1947 Act be issued, although it stands judicially determined that the workmen were employed by the contractor. The State exercises administrative power both in relation to abolition of contract labour in terms of Section 10 of the 1970 Act as also in relation to making a reference for industrial adjudication to a Labour Court or a Tribunal under Section 10(1)(d) of the 1947 Act. While issuing a notification under the 1970 Act, the State would have to proceed on the basis that the principal employer had appointed contractors and such appointments are valid in law, but while referring a dispute for industrial adjudication, validity of appointment of the contractor would itself be an issue as the State must prima facie satisfy itself that there exists a dispute as to whether the workmen are in fact not employed by the contractor but by the management. We are, therefore, with respect, unable to agree with the opinion of the High Court."

10. Learned counsel for the petitioner has contended that the reference is vague and non-specific as the reference does not contain the list of the names of the workers sought to be regularized. Hence, the reference is incapable of being adjudicated by the industrial adjudicator. In support of his case, learned counsel for the petitioner relied upon the decision of this Court in the case of Gopal Das Agrawal -v- Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court and others, reported in 2014 (141) FLR 253, wherein at paragraph-11, it has been held as follows: "11. On a holistic approach to the facts of the case, this Court is of the considered view that the reference made by the Central Government is vague due to lack of the list of workmen. Though the Central Government, after due application of mind, referred the dispute for adjudication without a verified list of workmen received from the Central Government along with the reference, the dispute was adjudicable, for which reasons, the reference is required to be returned. Further, in absence of details of 885 workmen, the reference cannot be answered by the learned Tribunal by adjudicating the same and it will be a futile exercise. If the reference will be adjudicated on merit pending identification, in effect, no specific case of any workman can be decided by the learned Tribunal. Till date, no genuine list of workmen having been made available to the learned Tribunal, this Court finds that the dispute referred to by the Central Government cannot be adjudicated. In view of the above, the impugned order dated 8.9.2006 cannot be sustained, which is accordingly quashed.

11. True it is that, the maintainability of a reference can be adjudicated by the

Industrial Tribunal by framing an issue to that effect. But, the parties have to wait till adjudication of reference, to get an answer on the question of maintainability, in view of the ratio decided in *D.P. Maheshwari -v- Delhi Administration and others*, reported in AIR 1984 SC 153, wherein it has been held as follows: "We think it is better that tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. Nor should High Courts in the exercise of their jurisdiction under Art. 226 of the Constitution stop proceedings before a Tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under Art. 226 of the Constitution nor the jurisdiction of this Court under Art. 136 may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill afford to wait by dragging the latter from Court to Court for adjudication of peripheral issues, avoiding decision on issues more vital to them. Art. 226 and Art. 136 are not meant to be used to break the resistance of workmen in this fashion. Tribunals and Courts who are requested to decide preliminary questions must therefore ask themselves whether such threshold partadjudication is really necessary and whether it will not lead to other woeful consequences. After all tribunals like Industrial Tribunals are constituted to decide expeditiously special kinds of disputes and their jurisdiction to so decide is not to be stifled by all manner of preliminary objections journeyings up and down. It is also worth while remembering that the nature of the jurisdiction under Art. 226 is supervisory and not appellate while that under Art. 136 is primarily supervisory but the Court may exercise all necessary appellate powers to do substantial justice. In the exercise of such jurisdiction neither the High Court nor this Court is required to be too astute to interfere with the exercise of jurisdiction by special tribunals at interlocutory stages and on preliminary issues."

But, in the instance case more particularly, in absence of a notification under Section 10(1) of the CLRA Act, the parties should not be relegated to the industrial adjudicator to participate in the proceeding for adjudication of a reference, which, in law, is not maintainable. In such a situation this Court has ample jurisdiction to exercise its extra ordinary power under Article 226 of Constitution to prevent abuse of process of Court.

Law is no more *res integra* that the question of jurisdiction as well as maintainability can be gone into in a writ jurisdiction under Article 226 of the Constitution, even if an alternative remedy is available, provided that there exists no disputed question of fact. As such, the writ application is maintainable.

12. In the facts and circumstances of the case and discussions made above, we have no hesitation to hold that the order under Annexure-5 passed by the Ministry of Labour, Government of India, is not sustainable in law. Accordingly, we quash the order under Annexure-5 and also consequential notice issued under Annexure-6 by the learned Industrial Tribunal. Since in the meantime

more than two decades have already elapsed and learned counsel for the parties are not in a position to appraise the latest position in the matter, we dispose of the writ application with a direction to the appropriate Government to look into the matter afresh and take a decision by taking into consideration the facts and circumstances of the case, as well as discussions made above.

13. The writ petition is, accordingly, allowed. No order as to costs. LCR be sent back immediately.