
(2002) 01 CAL CK 0025
In the Calcutta High Court
Case No : Writ Petition No. 12578 (W) 1998

Eastern Coalfields Ltd.

APPELLANT

Vs

National Coal Workers Congress Union and Others

RESPONDENT

Date of Decision : 28-01-2002

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 10(1)

Citation : (2002) 95 FLR 1020 : (2002) 2 LLJ 1115

Hon'ble Judges : Pranab Kumar Chattopadhyay, J

Bench : Single Bench

Advocate : R.N. Majumdar, Susanta Pal, Partha Basu and N. Roy, for the Appellant; Kashi Kanta Moitra and Syed Shansul Arefin, for the Respondent

Judgement

Pranab Kumar Chattopadhyay, J.—The petitioner-company herein, has challenged the validity and/or legality of the award, dated February 20, 1998, passed by the Central Government Industrial Tribunal, Asansol. On a reference made to it by the Central Government by an Order No.L-22012/299/96-1 R (C-II), dated March 27, 1996 to adjudicate the following dispute:

"Whether the demand of the union for departmentalization of services of Sri Brijnandan Kumar Rani and 119 other workmen (as per list enclosed) of Sk. Salim contractor in P. K. Unit of Lachipur Colliery under Kajora Area of E.C.L, P.O. Kajorogram, District Burdwan (W.B.), is justified? If not, what relief the workmen are entitled to ?"

2. The operative portion of the award, dated February 20, 1998, reads as follows:

"8. These materials placed by the union are in effect challenged and show that the contractor named Salim was engaged in carrying certain underground level works like cutting stone drifts etc. The prohibition declared under Notification No. 2063, dated June 21, 1988, of the Central Government-is applicable to such works. The materials placed by the union are also sufficient to show that the concerned workmen had been employed by the contractor in carrying out such

works during the period from May, -1992 up to the end of 1993. The legal effect of employment of contract labour system has been laid down by the Hon"ble Supreme Court in the recent decision in Air India Statutory Corporation, etc. Vs. United Labour Union and others [overruled], . The decision says as follows:

"Abolition of contract labour system ensures right to the workmen for regularisation of them as employees in the establishment in which they were hitherto working as contract labour through the contractor. The contractor stands removed from the regulations under the Act and direct relationship of "employer and employees" is created between the principal employee and the workmen."

"In view of this legal position, the concerned workmen have the deemed status of employees of the management. Their physical and forcible removal from their employment by the Contractor is accordingly illegal and is of no legal consequence at all. The deemed status of employees of the management acquired by the concerned workmen still continues.

9. In the result it is declared that all the concerned workmen have the deemed status of being employees of the management and they are entitled to all the benefits flowing out of such status.

Award accordingly."

3. It would appear from the said award that the defence of the petitioner-company was struck out by the Tribunal under Order 11, Rule 21 of C.P.C., due to deliberate suppression of documents by the management as has been recorded by the learned Tribunal in its order, dated June 24, 1997. The relevant portion of the award in that context is reproduced herein below:

"Therefore, deliberate suppression of documents by the management warranted application of the provision under the Order 11, Rule 21 of the Civil Procedure Code. Accordingly, under order, dated June 24, 1997, the management was debarred from placing their case and related materials on application of the provisions provided in Order 11, Rule 21 of Cr. P.C. Because of the provisions u/s 11(3)(b) of the Industrial Disputes Act, 1947, the Tribunal is competent to pass appropriate orders in such matters."

4. In writ petition it has been specifically mentioned that the award in question came to the knowledge of the petitioner on May 18, 1998 when the petitioner received a letter from the respondent unit wherein a copy of the award which was published in the Gazette of India, dated April 18, 1998, was enclosed. The validity and/or legality of the aforesaid award was challenged by the petitioner-company mainly on the following grounds:

"(i) The award which was based on the decision of the Hon"ble Supreme Court reported in Air India Statutory Corporation v. United Labour Union (supra) (xerox copy of the decision enclosed) has become infructuous in view of the overruling of the said decision by the Constitution Bench of the Hon"ble Supreme Court in a decision reported in Steel Authority of India Ltd. and Others etc. etc. Vs. National

Union Water Front Workers and Others etc. etc., .

(ii) The Industrial Tribunal has no power to strike out defence by invoking Order 11, Rule 21 of C.P.C.

(iii) The award was based on no evidence as the witness who adduced evidence on behalf of the Union could not be cross-examined in view of striking out of the defence of the petitioner.

(iv) On the date of making the reference the contract labourers were not on the roll nor any time thereafter and as such, no regularisation can be made in respect of the persons who are not in employment."

5. It has been submitted by the learned counsel of the petitioner that the learned Tribunal directed regularisation or departmentalisation of workmen concerned on the basis of Air India Statutory Corporation case (supra), which has already been overruled by the decision of the Constitution Bench of the Supreme Court in Steel Authority of India (supra).

6. The learned counsel of the petitioner submitted that since the award in the present case has not yet been implemented and by reason of the interim order passed by this Court the said award remained inoperative, the decision of Steel Authority of India Ltd. (supra) would be applicable in the present case and the judgment in Air India case shall not hold good and not relied upon.

7. Sri Maitra, learned senior counsel appearing on behalf of the respondent workmen however, submitted that although the Constitution Bench in the case of Steel Authority of India Ltd. (supra) has overruled the decision of the Supreme Court in Air India Statutory Corporation case but the effect of the said decision should be prospective as otherwise according to the learned counsel of the respondent-workmen there will be incalculable hardships and the same would upset many a decisions delivered on the basis of Air India Statutory Corporation case (supra). Sri Maitra referred to a decision of this Court reported in 2001 C.L.T. 324, Lakshmi Kanta Kahar v. State of West Bengal and others in order to draw the distinction between the concept of overruling and setting aside of an order. According to the learned counsel of the respondent-workmen, Supreme Court has overruled the judgment delivered in Air India case (supra), prospectively and as such the direction issued by the learned Industrial Tribunal for absorption of the respondent workmen following the judgment in Air India case (supra), was held good and the same cannot be set aside, altered or modified on the basis of the judgment of the Supreme Court in the case of Steel Authority of India, Ltd. (supra).

8. I am unable to accept the aforesaid contention of the learned counsel of the workmen. The learned Judge of the Industrial Tribunal passed the award and issued directions following the decision of the Supreme Court in Air India case (supra), and as such this said award is not sustainable in the eye of law as the judgment or the Supreme Court in Air India case has been overruled by the

subsequent judgment of the Supreme Court in Steel Authority of India Ltd. case. Though it has been mentioned by the Supreme Court in the case of Steel Authority of India Ltd., that the judgment of the Supreme Court in Air India case has been overruled prospectively but, the directions issued by the Industrial Tribunal if had not already been given effect to, then, in that case the award of the Industrial Tribunal cannot be sustained. The relevant extract from Para. 125(4), at page 172, of the judgment in the case of Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., :

"119. (4) We overrule the judgment of this Court in. Air India case prospectively and declare that any direction issued by any industrial adjudicator/ any Court including the High Court for absorption of contract labourer following the judgment in Air India, (supra), shall hold good and that the same shall not be set aside altered or modified on the basis of this judgment in cases where such a direction has been given effect to and it has become final."

9. Admittedly, in the instant case the award of Industrial Tribunal has not yet been implemented as the respondent-workmen have not yet been absorbed in terms of the award passed by the Tribunal and thus, the direction issued by the learned Tribunal has not been given effect to and cannot be said that the same has become final. For the foregoing reasons, the direction issued by the Industrial Tribunal following the decision of Air India case (supra) cannot be allowed to sustain and as such the same is set aside. However, in the aforesaid judgment of Steel Authority of India Ltd. (supra), Supreme Court also held in sub-paras. (5) and (6) to the following effect Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., :

"119. (5) On issuance of prohibition notification u/s 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labourer for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labourer in the concerned establishment subject to the conditions as may be specified by it for that purpose in the light of Para. 6 hereunder.

(6) If the contract is found to be genuine and prohibition notification u/s 10(1) of the CLRA Act in respect of the concerned establishment has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer

intends to employ regular workmen he shall give preference to the erstwhile contract labourer, if otherwise found suitable and, if necessary, by relaxing the conditions as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the Contractor and also relaxing the condition as to academic qualifications other than technical qualifications."

10. In the present case, Tribunal had no scope to consider the rights of the contract labour in the light of the aforesaid decision of the Supreme Court. Accordingly, the matter is remanded back before the Tribunal to decide the claims of the contract labour represented by the union afresh in the light of the aforesaid decision of the Supreme Court upon giving opportunity of hearing to the parties and also permitting both the parties to adduce necessary evidence. Since the matter is pending for a considerable time, it is expected that the Tribunal will decide the matter as expeditiously as possible and preferably within a period of four months from the date of receipt of the records from this Court.

11. Registrar-General is directed to send back the records of the Tribunal together with a copy of this order forthwith.

12. In view of the aforesaid direction, other points raised by the petitioner-company need not be decided. The writ petition is thus, disposed of and the impugned award passed by the learned Tribunal is set aside.

13. Having regard to the facts and circumstances of this case, there will be, however, no order as to costs.

Later- Let urgent xerox certified copy of this judgment be given to the learned advocate for the parties.