

(2002) 11 JH CK 0032
In the Jharkhand High Court
Case No : CWJC No. 2746 of 1997 (R)

Employees in relation to the Management of Central Mine Planning and Design Institute Ltd. APPELLANT

Vs

Presiding Officer, Central Govt. Industrial Tribunal No. 1 and Another RESPONDENT

Date of Decision : 29-11-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 2

Citation : (2003) 1 BLJR 313 : (2003) 1 JCR 409 : (2003) 2 LLJ 1139

Hon'ble Judges : Vikramaditya Prasad, J

Bench : Single Bench

Advocate : A.K. Sinha and Amitabh, for the Appellant; R.N. Sahay and M.K. Roy, for the Respondent

Final Decision : Dismissed

Judgement

Vikramaditya Prasad, J.—The petitioner-management of the Central Mine Planning & Design Institute (hereinafter called as CMPDI) has filed this writ application for quashing the award dated 24th April, 1997, as contained in Annexure 8 passed by the Presiding Officer, Central Government Industrial Tribunal No. 1, Dhanbad, respondent No. 1, whereby and whereunder the reference has been allowed in favour of the respondent No. 2-workmen (represented by the Secretary, National Coal Workers' Congress, water Board Colony, Hirapur, Dhanbad).

2. On perusal of "Annexure-8, it transpires that the following reference was made to the tribunal by the Central Government, Ministry Of Labour ;

"Whether the action of the management of Central Mine Planning and Design Institute Ltd., Regional Institute No. II, P.O. Koyla Nagar, Dist. Dhanbad in not regularizing/absorbing S/Sri P.K. Barat, Hare Ram Pandey as Electrician, Shri A.K. Banerjee as Water Carrier and Shri Janardan Prasad Singh as Cat. I.

Mazdoor is justified and if not, to what relief the workmen concerned are entitled and from what date ?

3. The reference was contested by both the parties i.e. the employer (petitioner) and the workmen. The following issues were framed :

"(a) As to whether or not the action of the management in not regularizing/ absorbing the concerned four workmen as electrician, water carrier and general mazdoor Cat.-I was justified ?

(b) If not, to what relief the workmen were entitled and from what date ?

It transpires that the learned Presiding Officer examined the witnesses on behalf of workmen as well as management and after evaluating the evidences, answered both the issues against the employer (petitioner).

4. Being aggrieved by that award, the petitioner-employer has filed this writ application, in which the following questions have been framed by the petitioner :

(1) Whether the respondent No. 1 being creature of a Statute is bound to act within the four corners of the Statute ?

(2) Whether the establishment of the petitioner can be said to be a mine and further whether in view of the fact that the petitioner neither owns any Mine nor carries on any mining activities, the Respondent No. 1 can be said to be the appropriate Government in respect of the alleged dispute which could have been referred for adjudication before the respondent No. 1?

(3) Whether the establishment of the petitioner can be said to be "Controlled Industry" in view of the role and functions carried out by the petitioner's establishment and whether there is a notification by the Central Government notifying the role and functions of petitioner's establishment as "Controlled Industry" under the relevant provisions of Industries (Development & Regulations) Act, 1951, and in view of the said matter whether the Union of India can be said to be the appropriate Government in respect of the alleged dispute between the petitioner and the workmen concerned?

(4) Whether in view of the fact that there was no relationship of employer and employee between the petitioner and the concerned workmen the respondent No. 1 could have directed for regularisation of the services of the concerned workmen?

5. In short the case of the petitioner is that P.K. Barat had approached the petitioner for awarding him some contract for repairing and maintenance of electrical lines as and when required. He had got a shop at Bank More, Dhanbad, and carried that shop in the name of Mahua Electricals. Therefore, the management, considering him as the representative of Mahua Electricals, awarded the service contract. Thus, according to the petitioner, on demand Shri Barat or any other person as representative of Mahua Electricals used to come to the management to attend the repairing job of the petitioner. Similar was the

case with Hare Ram Pandey. Thus, both Hare Ram Pandey and P.K. Barat were not the employees of the management, they worked casually 5-6 hours on some days and no one was required to come when there was no break down in the electrical line or there was no fault in any machine. Consequently, these two persons, according to the petitioner, cannot demand for their employment under the petitioner-management. A.K. Banerjee was never employed, according to the petitioner, as workman of the management. He used to supply drinking water to the people residing in the locality near the new premises of the management and for that he charged fixed rate per bucket of water supplied to the persons in the locality. For a short duration, he also supplied water @ Rs. 2/- per bucket during the period from May to July from 8.00 a.m. to 10.00 a.m. and thus, he was engaged hardly for two hours in a day for his Job. The management had permanent arrangement to supply drinking water through pipe lines and therefore, there was no reason of obtaining water through Sri A.K. Banerjee. There was no requirement of engaging any regular water carrier for supplying drinking water at the premises of the management.

It is further averred that the job of supplying of drinking water in the premises of the building was not required on regular basis as the pipe lines were laid and water could be supplied within the reach of every person. With regard to Janardhan Prasad Singh, it has been submitted by the petitioner that he was engaged on contract basis as temporary, attendant during the period from October, 1986 to August, 1987, and he was engaged as and when required on contract basis and he was never put in continuous service and the total number of days worked by him was less than 240 days. It is admitted that the petitioner had filed written statement and rejoinder before the tribunal and both the parties before the Tribunal had filed several documents and had led oral evidences in support of their respective cases. It has been further averred that the management had examined two witnesses, namely, MW 1 and MW 2 and they had stated before the Tribunal that P.K. Barat and Hare Ram Pandey were not the employees of the petitioner and they were the contractors employees and with regard to A.K. Banerjee, it was definitely said by them that he was not appointed nor he was the employee of the petitioner and it was admitted by Hare Ram Pandey that Mahua Electricals was owned by other concerned workman namely Shri Barat and that Shri. Banerjee was being paid by vouchers.

6. Counter-affidavit was filed by the respondent No. 2-workmen and the contention raised in the writ application that P.K. Barat had any shop in the name of Mahua Electricals was denied on the ground that there was no document to prove that the job was awarded to Mahua Electricals, of which P.K. barat was the proprietor. It was further contended that the learned Labour Tribunal had rightly come to a finding that the workmen were not the employees of the Mahua Electricals and all other contentions of the petitioner were denied and Annexure-A & B were annexed, which are the copies of the evidences of the workmen. Hare Ram Pandey, Janardhan Prasad Singh, A.K. Banerjee and Bansidhar Kumbhkar. It was transpires that the respondent No. 2 filed a petition u/s 17-B of the

Industrial Disputes Act for reliefs under that section.

7. Then the management-petitioner filed a petition for early hearing of this writ application in view of the decision of the Apex Court rendered in the case of Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., .

8. From the case made out in the writ application and the counter-affidavit, the factual position is that the petitioner wants this Court to appreciate the evidences that were led before the Tribunal. I am afraid that this Court, exercising the writ jurisdiction, has power to appreciate the evidences that were adduced before the Tribunal. Therefore, Annexure-A,B,C & D relied upon by the respondent No. 2 and the averments made to that effect and Annexure-6 series relied upon by the petitioner are not being considered by this Court.

9. The question No. 1 is a meaningless question in the sense that being a creature of Statute respondent No. 1 (Tribunal) is expected to act within the four corners of the Act.

10. The question No. 2 is divided in two parts-the first part, in fact, requires a decision whether or not the petitioner is an "industry" within the meaning of the Industrial Disputes Act and the second part that whether or not respondent No. 1 can be said to be the appropriate Government so far the first part is concerned. As per the main grievance of the petitioner is that it did not own any mine, nor did it carry any mining operation, therefore, it is not an industry and consequently, the Central Government is not the appropriate Government.

It is undisputed that the petitioner is an organization, which is systematically organized, it employees workers and the purpose of such employment or activities of the petitioner is not individual or spiritual gain, rather it is an organization that helps different organizations in carrying out their business/activities by doing some specialized jobs, for which the petitioner has been constituted. Therefore, the petitioner comes within the definition of "industry". Section 2(a) of the Industrial Disputes Act is comprehensive, so far the question as to who is the appropriate Government in respect of whom is concerned. Section 2(a)(1) contains a list and in this list, the petitioner is not included. Therefore, it can contend that the Central Government is not the appropriate Government in respect of the petitioner and the reference made by the Central Government was bad. This requires scrutiny of the written statement (Annexure-2), which the petitioner did filed before the Tribunal. The averments made in paragraph No. 2 of the written statement (Annexure-2) filed before the Tribunal is "that it is submitted that the present reference is not legally maintainable". More than this, nothing was said, the written argument submitted before the Tribunal is Annexure-7 and in the entire argument, this plea that the Central Government was not the appropriate Government competent to refer the dispute to the Tribunal has not been raised/argued. The reference was not challenged by the petitioner before any Court when it was made. Even the

Tribunal, while making the award, did not frame any issue whether or not the reference was maintainable. Thus, if the petitioner did not make a specific plea and did not raise an argument and did not get the issue of maintainability of reference framed and decided as a Preliminary Issue, then in that circumstances, the petitioner cannot be allowed to refer this issue for the first time by way of writ. Once this conclusion is arrived at, the question of the petitioner of being "controlled industry or not" need not be answered.

11. The next question to be answered is whether there was a relationship of employer and employee between the petitioner and the workmen.

The petitioner had taken the plea that the Mahua Electricals was the Contractor through whom two persons namely Hare Ram Pandey and B.K. Barat, were engaged and B.K. Barat was the Proprietor of the Mahua Electricals. With regard to the rest of two workers, the petitioner's plea is that they used to work casually and did not work for any prescribed period, therefore, the decision of the Tribunal is against the law and in this context, the petitioner has relied upon the evidences contained in Annexure-5, 5/1, 6 and 6/1 and submitted that these evidences were not properly appreciated by the Tribunal.

12. There were two issues framed before the Tribunal and both these issues were decided together as they were inter-linked :

"(a) As to whether or not the action of the management in not regularizing/absorbing the concerned four workmen as electrician, water carrier and general mazdoor Cat.-I was justified?

(b) If not, to what relief the workmen were entitled and from what date?"

On perusal of the Tribunal's award, it transpires that the entire evidences were considered by the Tribunal along with the argument that were advanced. In paragraph No. 24 of the award, the conclusion with regard to the relationship of employer and employee has been discussed. The learned tribunal found that there was a relationship of employer and employee. Here a question arises whether, as per the claim of the petitioner, if two persons were at least engaged through a Contractor, Mahua Electricals and B.K. Barat himself was the Proprietor of Mahua Electricals, then whether the status of the petitioner was of principal employer or not. No doubt, this aspect of the matter has not been considered by the tribunal, but nonetheless a finding has come that the workers had worked continuously for 240 days. Now if the same B.K. barat is alleged to be himself the contractor, meaning thereby the proprietor of Mahua Electricals and he himself was working in the premises of the petitioner, then, it appears that this contractor was practically a camouflage in the beginning and therefore, the petitioner became the principal employer under the Contract Labour (Regulation & Abolition) Act, 1974. There is nothing on record that u/s 10 of this Act, there was any provision of employment of contract labourer, even if it is assumed for the argument's sake that B.K. Barat and Hare Ram Pandey were the contractor's labourers. Thus, I do not find any illegality/perversity in the finding of the

Tribunal with regard to the relationship of employer and employee between the petitioner and the workmen and in this jurisdiction, unless perversity is shown in the appreciation of evidences, the Court cannot look into the matter. Thus, this question is answered accordingly.

13. Thus, I do not find any merit in this writ application, which is accordingly dismissed. The order of status quo dated 31.1.2002 is vacated and as per the order dated 12.3.2002, 10% interest is awarded on the consequential benefit that has been awarded by the Tribunal.