
(2015) 04 RAJ CK 0081

In the Rajasthan High Court

Case No : Civil Special Appeal (W) Nos. 1276, 1334, 1391, 1393, 1400, 1401, 1406, 1410, 1411, 1440, 1449, 1467, 1613, 1672 and 1673 of 2014

Ganpat Singh and Others

APPELLANT

Vs

Ambuja Cement Limited and Others

RESPONDENT

Date of Decision : 10-04-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 10-A, 2, 33-C(2), 39

Citation : (2015) 4 CDR 2191 : (2015) 147 FLR 568 : (2016) 1 RLW 123

Hon'ble Judges : Sunil Ambwani, C.J.; Jaishree Thakur, J

Bench : Division Bench

Advocate : Nupur Bhati, Gajendra Singh Rathore and Umesh Chandra Sharma, for the Appellant; R.S. Saluja and Nitin Ojha, Advocates for the Respondent

Final Decision : Allowed

Judgement

Sunil Ambwani, C.J—Heard learned counsels appearing for the parties.

2. A preliminary objection has been raised by learned counsel appearing for the respondent - Ambuja Cement Limited that Labour Court, Jodhpur had no jurisdiction to entertain the reference made by the State Government on 17.03.2009 in respect of the alleged employees of Ambuja Cement Ltd. inasmuch as Ambuja Cement Limited, Rabriyawas, Tehsil Jaitaran District Pali is specified industry included in the First Schedule of Industries (Development and Regulation) Act, 1951 at item No. 35. It is submitted that industrial disputes relating to the employees of the specified industry can be adjudicated only by the Central Industrial Tribunal constituted by the Central Government. He has relied on judgment in Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., AIR 2001 SC 3527 : (2001) 91 FLR 182 : (2001) 7 JT 268 : (2001) LabIC 3656 : (2001) 2 LLJ 1087 : (2001) 5 SCALE 626 : (2001) 7 SCC 1 : (2001) SCC(L&S) 1121 : (2001) 4 SCT 1 : (2001) AIRSCW 3574 : (2001) 6 Supreme 602 . In paragraph-122 of the judgment, the Constitution Bench held that after January 28, 1986 in view of the new definition

of the expression "appropriate Government", the answer to the question as to which government will be appropriate Government for specified industries has to be found in Clause (a) of Section 2 of the Industrial Disputes Act i.e. if (i) the concerned Central Government company/undertaking or any undertaking is included therein eo nomin, or (ii) any industry is carried on (a) by or under the authority of the Central Government or, (b) by railway company or (c) by specified controlled industry, then the Central Government will be the appropriate Government otherwise in relation to any other establishment, the Government of the State in which that other establishment is situate, will be the appropriate Government. It is submitted that the Cement Company being specified controlled in the State, the appropriate Government for reference of the industrial dispute raised by the workman will be the Central Government and not the State Government.

3. In reply, it is submitted by the learned counsel appearing for the appellants that so far as the Cement Industries are concerned, by a notification dated December 8, 1977 issued under Section 39 of the Industrial Disputes Act, 1947 the Central Government directed that all the powers exercisable by it under that Act and rules made thereunder in relation to the Cement Industry be exercised also by all the State Governments subject to the condition that the Central Government shall continue to exercise all the powers under the Act and Rules made thereunder - (i) relating to mines and quarries even where such mines and quarries form part of the Cement Industry; and (ii) relating to the dispute between the employers who are members of the Cement Manufacturers Association, Express Building, Churchgate, Bombay and their workmen represented by Indian National Cement and Allied Workers" Federation, Mazdoor Karyalya, Congress House, Bombay, which has been referred for arbitration in pursuance of Section 10-A of the said Act, read with Notification No. S.O.757(E) dated November 8, 1977 [No.S. 11025/9/77DI(A)], in terms of the arbitration agreement published by the notification of the Government of India in the Ministry of Labour Order No. L.29013/2/77-D.O.III(B), dated November 28, 1977.

4. Learned counsel for the appellants submits that in *Shri Yovan, India Cements Employees Union and another Vs. Mangement of India Cements Ltd. and others*, AIR 1994 SC 558 : (1993) 6 JT 273 : (1994) LabIC 38 : (1994) 1 LLJ 920 : (1993) 4 SCALE 244 : (1994) 1 SCC 572 : (1993) 3 SCR 381 Supp : (1994) 1 SLJ 120 : (1994) 1 UJ 67 , the question as to whether State Government will be the appropriate Government in respect of the workman of the Cement Industry was decided with reference to the notification dated December 8, 1977 and it was held that in respect of such dispute both the Central Government and the State Government are appropriate Governments under the Act.

5. In view of the judgment in *Yovan, India Cements Employees Union (supra)*, the preliminary objection is rejected and it is held that in respect of the employees of the Cement Industry covered by the notification dated December 8, 1977 both the Central Government and the State Government are appropriate

Governments and thus, in the present case, Labour Court, Jodhpur has the jurisdiction to decide the dispute referred by the State Government of Rajasthan.

6. In the present case, the Labour Court has held that employees for whom industrial dispute was referred by the State Government are entitled to the pay allowances and other benefits in accordance with Cement Wage Board award from the date of their appointment in March 2000. The Labour Court did not accept the plea that workmen were employed through contractors and thus held that the Cement Wage Board award will be applicable to them. The Labour Court after assessment of the evidence led by the parties did not accept the defence that as employees of the contractors, the workmen will not be entitled to the benefit of Cement Wage Board award.

7. On the defence taken by Ambuja Cement Limited-Employer that a Bipartite Settlement dated 14.06.2010 effective from 11.10.2010 to 10.10.2014 between Minakshi Construction-the Contractor and Ambuja Cement Limited, in pursuance to which, the wages were paid to the workmen who had raised the industrial dispute, and thus the second Bipartite Settlement which had been substituted by the first Bipartite Settlement dated 13.10.2006 will apply for the wages, according to which, wages were being paid to workmen, the Labour Court recorded findings that the workman was not employed through contractor. The defence that workman was initially employed through Gram Kalyan Vikas Samiti was not accepted on the ground that Gram Kalyan Vikas Samiti was not the contractor for engagement of workmen. From the statement of Arvind Singh Chief Security Officer, it was found that office bearers of Gram Kalyan Vikas Samiti were officers of Ambuja Cement Limited, Gram Kalyan Vikas Samiti was a society for the welfare of the workmen of the industry, and was not a contractor.

8. A further defence taken by Ambuja Cement Limited that said workmen have been employed on contract through Minakshi Construction, a registered contractor for supplying the labourers was not accepted by the Labour Court on the ground that the dates and the period for which the workmen were employed through Minakshi Construction was not given in the evidence by the employer. The workmen had produced slips by which deductions were made from their wages towards Employees Provident Fund giving their membership number, contribution of the employer and the employee. In these EPF slips, the employer was shown to be Ambuja Cement Limited.

9. The Labour Court further held that the defence that workmen are covered by a Tripartite Settlement was not acceptable as the said Tripartite Settlement was not produced. The employer was in fact taking inconsistent stand that wages were paid to the workmen under second Bipartite Settlement dated 14.06.2010, whereas reference was also made to a Tripartite Settlement of the year 2010 which was not produced.

10. The Labour Court further held referring to paragraph 50 of the award that the wages as recommended by the Cement Wage Board award were to be paid

to the employees of Cement Industry, as well as those who were engaged through contractors. The Labour Court found from the statement of Vijay Singh and Arvind Singh that it was admitted that Cement Wage Board award is applicable to the establishment since 23.06.1997 and that presently 252 workmen were paid in accordance with the Cement Wage Board award. In the statement of Vijay Singh produced by the employer, it was admitted that 252 workmen are being paid wages in accordance with the Cement Wage Board award and that the other 600 workmen are not paid in accordance with the Cement Wage Board award. He also admitted that the employees in the packing plant are employed through contractor who are not paid in accordance with the Cement Wage Board award as they were not permanent employees of the company.

11. The Labour Court on the assessment of oral and documentary evidence held that in view of the admissions made by the employees of Ambuja Cement Limited and the non-production of Tripartite Settlement dated 14.06.2010, the workmen working since March 2000 were the employees of the company who were denied the benefits of the Cement Wage Board award without any justification.

12. It is submitted by learned counsel appearing for the workmen that learned Single Judge by a short judgment without going into the pleadings as well as findings recorded by the Labour Court while allowing of the writ petition, remanded the matter only on the ground that since Tripartite Settlement was not produced, an adverse inference should have been drawn against the employer. In recording the findings that the Tribunal was required to decide rights of the parties in accordance with the Tripartite Settlement, learned Single Judge failed to take into account that defence of Tripartite Agreement dated 14.06.2010 though was taken by the respondent-employer, but since that best evidence on which reliance was placed to decide the claim of the workmen was not produced, an adverse inference was rightly drawn by the Labour Court against the employer. It is submitted that the employer did not produce the Tripartite Settlement even in the writ petition in which the challenge was made to the award made by the Labour Court and also in the reply to the grounds of special appeal.

13. Learned counsel appearing for the respondent Ambuja Cement Limited submits that learned Single Judge did not commit any error in remanding the matter to consider as to whether the workman was employee of the contractor and was entitled to the benefits of Cement Wage Board award. He submits that the finding with regard to the defence taken by the employer that workmen were employees of contractor was recorded without appreciating oral evidence led by the parties. The findings were not substantiated on the evidence on record and thus the learned Single Judge rightly remanded the matter to consider the effect of Tripartite Settlement on the rights of the appellant-workman.

14. After hearing learned counsels for the parties, we are of the view that

learned Single Judge without appreciating the findings recorded by the Labour Court that the workmen were not the employees engaged by the employer through contractor and, that, the Cement Wage Board award was applicable to them even if they were engaged through a contractor, has remanded the matter only on the ground that the Tripartite Settlement was not produced.

15. The respondent-company despite opportunity of leading evidence did not produce Tripartite Settlement before the Labour Court. It also withheld the Tripartite Settlement from learned Single Judge in challenging the award and has not produced the Tripartite Settlement even in the Special Appeal. The respondent as such could not have been given an opportunity to consider the effect of Tripartite Settlement which was concealed from the court. The findings that the workman was not employed through contractor and that respondent failed to establish that the workman was engaged firstly through a Society and thereafter by Minakshi Construction are findings of fact arrived at after assessment of the evidence.

16. Learned counsel appearing for the employer has tried to raise an argument for the first time that since the workmen were not employed in the manufacturing process, the Cement Wage Board award is not applicable to them. We do not find any such plea either taken in the reply filed in the Labour Court or in the writ petition to consider the same at this stage. There is no averment in the reply or in the writ petition that the workman was not engaged in the manufacturing process or that the services were taken for any work other than the manufacturing process.

17. On the aforesaid discussion, we are of the view that learned Single Judge erred in law in allowing the writ petition and remanding the matter back to the Labour Court without disturbing the findings of the Labour Court on the questions of fact. The Tripartite Settlement was not produced nor its contents were disclosed either before the Labour court or before the learned Single Judge and, thus, the observation made by learned Single Judge that effect of the Tripartite Settlement on the rights of the workmen is required to be considered, could not be a ground to set aside the award of Labour Court and to remand the matter.

18. Learned Single Judge has also observed while allowing the writ petition that the award has not quantified the benefits which are to be paid to the workman. It appears that it escaped the attention of learned Single Judge that the Labour Court is not required to compute and quantify the benefits which are to be given to the workman in the award. The Labour Court is only required to answer the reference which is made to it by the appropriate Government. The question of quantifying the benefits will arise only when an application under Section 33-C(2) of the Industrial Disputes Act, 1947 is made to compute the amount to be paid by the employer.

19. All the special appeals are consequently allowed and the judgment of learned Single Judge is set aside.

20. A copy of this order be placed in all the connected appeals.