

(2003) 03 JH CK 0039

In the Jharkhand High Court

Case No : C.W.J.C. No's. 3431, 3627 and 3633 of 1996 (R)

Gramin Vikash Kendra and Others and Tata Engineering and
Locomotive Co. Ltd.

APPELLANT

Vs

State of Jharkhand and Others
 Workmen of Tata
Engineering and Locomotive Co. Ltd. Vs Presiding Officer,
Industrial Tribunal and Others

RESPONDENT

Date of Decision : 13-03-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 2

Citation : (2003) 3 JCR 702

Hon'ble Judges : Vikramaditya Prasad, J

Bench : Single Bench

Advocate : S.N. Jha and A.K. Sinha, in CWJC No. 3627/96R, R.P. Singh, V.P. Singh and A.K. Singh, in CWJC No. 3633/96R and S.N. Jha and A.K. Sinha, in CWJC No. 3431/96R, for the Appellant; R.P. Singh, V.P. Singh and A.K. Singh III in CWJC No. 3627/96R, S.N. Jha and A.K. Sinha in CWJC No. 3633/96R and R.P. Singh, V.P. Singh and A.K. Singh in CWJC No. 3431/96R, for the Respondent

Judgement

Vikramaditya Prasad, J.—All these writ petitions have been taken together for the reason that the same award (Annexure-1) made in Reference Case Nos. 1/85 and 2/96 by the Presiding Officer. Industrial Tribunal, Ranchi, has been challenged by each of the petitioners.

2. For the sake of the appreciation of the relevant claims of the each of the petitioners in these writ petitions, the relevant portions of the award are quoted below :

"15. Ext. W-15 has been filed to show that the notice was issued on 20.10.83 by the Assistant Manager (Dev.) to the effect that Mr. Lakshman Singh, ARDO, will be incharge for co-ordinating the movement for Vikas Vahan (two trucks) unswe Gram Vikash Kendra and Community Development and that he will also be

responsible for the maintenance of the said vehicles through Transport Department and further that drivers Mr. Bhavendra Singh and Md. Yunus will report to him for their duties with copies of several authorities of G.V.K. and TELCO as well as drivers concerned. I would like to mention here that G.V.K. would not have been the part and parcel of C.D.I.S.W.D. of TELCO, the notice to the above noted effect would not have been issued."

"20. Now I shall proceed to make a consideration regarding the IIIrd aspect which is necessary to be considered to come to a conclusion to the effect as to whether a particular reference is or is not maintainable. It was urged before me by Sri Tiwary, the learned counsel for the management of TELCO that the charter of demand is in respect of the absorption of concerned workmen in TELCO like 37 workmen of G.V.K. who have been absorbed in TELCO but the term of reference is in respect of the permanency of the concerned workmen in TELCO and their entitlement for pay scale and other facilities equivalent to the workmen of TELCO factory and as such the term of the reference is not in consonance with the charter of demand. On the other hand it was urged before me by Sri Singh, the learned counsel for the workmen, that the term, "absorption" is wider term than the term "permanent" in as much as unless there will not be absorption the question of permanency will not arise and as such, it can very well be said that the term of the reference is in consonance with the charter of demand. Having regard to the abovenoted contention and counter contention made on behalf of the parties as well as having regard to the other relevant materials available on the record, I find and hold that the term of reference is in consonance with charter of demand".

"22. Thus, in view of the discussions made above regarding the facts, circumstances and evidences both oral and documentary adduced and produced on behalf of the parties as well as in view of the above noted contentions made and authorities cited above on behalf of the parties, it is to be concluded that the dispute which is the subject matter of the present reference is not an industrial dispute in as much as the dispute concerned has not been raised either by the union or substantial number of workmen. I find and hold accordingly.

23. To sum up the whole things about which discussions have been made above, I find that there is relationship of employer and employees between the management of TELCO and the concerned workmen and that on the date of reference the concerned workmen were the employees of TELCO and further that the terms of reference is in consonance with the charter of demand and also that the dispute which is the subject matter of the present reference is not an industrial dispute.

24. In the result, for the reasons stated above, I find and hold that the present reference is not valid and proper and as such, the same is not maintainable and consequently, the present reference is disposed of accordingly".

3. In CWJC NO. 3627/9GR, the Gramin Vikas Kendra, TELCO Town, (hereinafter

G.V.K.) and others are the petitioners and they have prayed for a writ of certiorari for quashing that part of the award by which the Tribunal held that G.V.K. is the part and parcel of TELCO.

In CWJC NO. 3431/96R, the workmen of M/s. Tata Engineering and Locomotive Company (hereinafter TELCO), have challenged that findings in the award that there was no industrial dispute and reference was not maintainable.

In CWJC NO. 3633/96R M/s. TELCO is the petitioner. This petitioner has prayed for a writ of certiorari for quashing the following findings in the award.

(a) G.V.K. is a part and parcel of the Community Development and Social Welfare Department of TELCO, and

(b) there is relationship of the employer and employee in between the management of the petitioner and the concerned workmen.

4(a) G.V.K.'s case is that it is a Registered Society registered on 5.10.78 having its registered office at Jamshedpur. TELCO is a registered company, which has a Community Development undertaking various social works for the benefit of its employees at Jamshedpur in TELCO Township and that Department G.V.K. undertakes various social activities to the workmen and their family of TELCO within the TELCO Township. Within the area of 20 (sic) many organizations developed and worked for the villagers who were not getting the advantage from the C.D.D. of TELCO. These Organizations were involved in many types of development and some of the villagers of those villages were the employees of TELCO and as such they also started participating in the activities of such Organizations or Samithies. TELCO used to give some assistance as benevolent gestures to such Organizations/ Samities. G.V.K. had its own rules and regulations and the management of these organizations, besides its own Governing Body. It raised funds from the Government, Public Bodies and Industrial Undertakings not only from the inhabitants of the area in and around of TELCO, but also from the Institutions of Public, but major assistance for meeting its expenditures came from TELCO and therefore, it was thought appropriate to get the activities of G.V.K. in such a manner that its funds were not misused and for that purpose, some top Officials of TELCO were inducted in its Governing Body on voluntary basis, which is apparent from Annexure - 3. Thus, the employees of G.V.K. were not at any time employees of TELCO and the employees of G.V.K. always received honorarium from G.V.K. and no salary was ever received by the concerned workmen. In the year 1997, TELCO had started a process of recruitment and many of the employees of G.V.K. applied for those employments and in that process. 37 employees of G.V.K. were selected and appointed as workmen of TELCO, the remaining employees of G.V.K. remained employees of G.V.K. In the year 1984, 52 persons who were in the employment of G.V.K., raised a dispute that they were the employees of TELCO. The said dispute was raised by five persons on behalf of the said 52 persons, which was referred to the Tribunal in the following term.

"Whether the 52 workmen (list enclosed) working in the Gram Vikash Kendra, Jamshedpur, who were employed by the Community Development and Social Welfare Department of M/s. Tate Engineering and Locomotive Co. Ltd. Jamshedpur, prior to 5.10.1978 are entitled to permanency in TELCO Ltd., Jamshedpur and pay scale and other facilities equivalent to the workmen of the TELCO Factory? If not, what relief they are entitled to?

(b) TELCO's case was that the industrial dispute having not been raised by any workman or by the Union of the workmen of the Company's establishment at the relevant time of making reference does not constitute an industrial dispute, besides alleging that 52 employees whose names have been listed in the list of reference were the employees of G.V.K. The various other grounds were also taken, besides the aforesaid main ground, Annexure-6.

(c) The workmen's case as appearing from their written statements shortly is that for the better functioning of the C.D.D. were created and G.V.K. was one of them. The number of workmen in C.C.D. was increased in the year 1997 and those persons whose cases have been referred were appointed by the Company, as gate passes were issued: they were paid salary from the funds of the Company's fund. In the year 1997, 37 workmen of C.D.D. were made regular and 52 workers were discriminated, though they were performing the same duties as they were performing in the year 1978. 52 workers raised the demand for their being made permanent, Annexure-7. The rejoinder was filed by the TELCO refuting the claim of the workmen, Annexure-8. The workmen also filed the rejoinder staking their claim. G.V.K. also filed written statements, annexure-10. TELCO then raised the preliminary issue to first determine whether the dispute was an industrial dispute and whether there was any relationship of employer and employee between the TELCO and those 52 persons.

5.(a) The validity of the aforesaid reference was questioned by the TELCO in CWJC No. 898/85R. The aforesaid writ petition was disposed of with the following directions :

"This question may be raised by the petitioners before the Labour Court who shall decide the matter. Even if that decision is given in favour of the petitioners, the Labour Court shall proceed to dispose of the reference also on other points that may be available to the parties under the reference".

(b) The Industrial Tribunal refused to decide the preliminary question, then again TELCO preferred another writ petition being CWJC No. 866/87R and the following order was passed. Annexure-11 :

"We, therefore, hereby direct that the Tribunal will decide as a preliminary issue the question whether the workmen are employees of TELCO or not. After the decision of the preliminary issue, if it goes against the Company, it will be open to it to agitate that question as well as other questions against the final award including the order on the preliminary issue".

At that stage, the G.V.K. was not made a party; hence G.V.K. made an application for being impleaded as a necessary party and after hearing the parties, the Tribunal passed the order on 6.2.1988. After considering the evidence relating to the preliminary issues only and not on the merit of the case in the background of Annexure - 11. As the evidence on merit was to be adduced only after the preliminary issue had been decided. It was alleged by the petitioner G.V.K. that ultimately the reference was disposed of by an award on 19.6.1993 without evidence on merit having been adduced and the Tribunal passed the award that the concerned 52 workmen were entitled to permanency and pay scale and other facilities equivalent to the workmen at TELCO Factory, Annexure - 12.

6. The questions to be decided in these writ petitions are (i) whether the finding of the Tribunal in the award that the G.V.K. is a part and parcel of TELCO was within the scope of Reference and is perverse, (ii) whether the finding of the Tribunal that there is relationship of employer and employee between TELCO and the workmen is perverse and (iii) whether the finding that no industrial dispute was there is a perverse finding.

Question No. (i) The learned Tribunal has examined this issue from many angles. The Court below found that all the Members of the Governing Body of G.V.K., which though a registered Society, are TELCO employees. The Tribunal rejected the plea that in many organizations the President and Prime Minister of India is the Chairman, which does not mean that the employees of such Organizations become the Government employee. In many cases the highly placed officials are found to the President or the Chairman, but the crux of the test is whether the each and every Governing Body members is a Government employee or whether there is non-Governmental members. If each and every Governing Body members is a Government official, then in that circumstances, only inference will be that it is a Government controlled organization. In the present case as per Annexure-2, which is the Memorandum of Association of G.V.K., there are 7 permanent members and one ordinary member. The Tribunal, on consideration of evidences, found that all the Governing Body Members of G.V.K. were TELCO Officials.

(ii) 37 worker of this concern were made workmen of TELCO though the management of TELCO claimed that they were appointed as per the norms of the Company, but no chit of paper was furnished from the side of TELCO in supporting this plea.

(iii) Deployment of many workers of G.V.K. was made by the TELCO with a copy of that to G.V.K. The workers in G.V.K. had worked in TELCO for 6-7 years.

(iv) They were paid honorarium from the fund of TELCO.

(v) The letter heads used by both TELCO and G.V.K. are identical. The question of law arose whether this finding is beyond the scope of the reference and therefore, it has vitiated the finding. This finding of the Court below came in view

of the judgment passed by a learned single Judge of this Court in CWJC No. 967/1994R who had directed that this matter should be examined as an incidental matter and consequently the matter was examined in that ambit. This direction, in my view, is justified because of some sham and make-believe stand taken by TELCO and G.V.K. both. I fortify my view with the decisions rendered in the case of Uttam Chand Jain v. State of Bihar reported in 1995 (2) LLJ 1019 Daljeet & Co. (P) Ltd. v. State of Punjab and Ors. reported in 1995 (2) LLJ 166 and a decision of the Apex Court rendered in the case of Gujarat Electricity Board, Thermal Power Station, Gujarat v. Hind Mazdoor Sabha and Ors. reported in 1995 (2) LLJ 790. It is true that these cases deal with contract labour but real question for the workmen was to establish that the contract labour system was only a sham and camouflage to deny their legal right. G.V.K. does not claim to be a contract labour but nevertheless in the given situation, this was necessary to decide whether it was sham society to deny the right of the workers; therefore, the issue was to be decided to pierce the veil. On the basis of the aforesaid discussion, it is held that the finding of fact that G.V.K. is part and parcel of TELCO is on a proper appreciation of fact. In the High Court this question of fact can be assailed.

Question No. (ii) Whether there has been a relationship of employer and employee between the TELCO and the concerned workmen?

The learned Court below, after finding, that the G.V.K. is a part and parcel, found the followings, on appreciation of evidence-oral and documentary :-

(i) The litigational expenses of some of the concerned workmen, who were involved in a criminal case of motor accident was borne by TELCO.

(ii) Honorarium was paid to them by TELCO Fund. According to the Court below, in order to escape the liability of employer, this form of fund was designed.

(iii) The workers concerned like the workers of TELCO were given free Medical Treatment at TELCO Hospital.

(iv) The identity cards were issued to them as against the gate passes, like the workmen of TELCO.

(v) The deployment of the workmen was done by the C.D. & S.W.D. of TELCO with information to G.V.K.

The question herein is what constitutes the relationship of employer and employee. The test would be who was paying the salary and had control. The evidence collected do clearly show that the employees were given salary in the form of honorarium, their deployment was made by C.D. & S.W.D. and even the litigational expenses of some of them were made by the TELCO. These indicate that the TELCO was in overall control of the concerned workmen. This finding in the award is not therefore perverse.

Question No. (iii). Whether there was an Industrial Dispute.

The learned Court below, while holding that there was no industrial dispute, found that the case of the concerned workmen was not espoused by a majority of workmen. He also came to a finding that 5 workmen had sought to represent the workmen and for that a meeting was held but no chit of paper to that effect was filed. Then the learned Court below also accepted the argument of the management that the workmen who did the work of breaking the fatigueness of the TELCO employees and these workmen, who did various other works like the construction of the road, providing drinking" water etc., constitute different classes of workers. Though the learned Court below did not give answer as to how if there is a relationship of employer and employee as found by it itself, why it was necessary to examine this aspect that they constitute a different class of workers. Even if it is said that the concerned workmen are different classes of workmen, then also they do not lose the character of being the employee of the TELCO. The Court below did not consider that u/s 2(k) of the Industrial Disputes Act the work used is "workmen" and not class of workmen. Another aspect considered by the Court below that the concerned workmen were not the members of the Union of TELCO and since the members of TELCO Union was 23000 and the concerned workmen constitute only 52, so substantial number of workers or the Union has not come forward to espouse the cause of the concerned workmen and therefore, the industrial dispute did not exist. The learned Court below also held that the reference, was not good and not maintainable, which means that he held that the finding of the Government that an apprehension of dispute was there was not justified. Then the question arises whether in the aforesaid circumstances, it was required that the majority of the workers or substantial number of workmen or the Union of TELCO should or could have espoused the cause of the workmen. The learned Court has found that the management of TELCO has adopted a dubious method of creating the G.V.K. In such a situation, when the management itself is not treating the workmen as their workmen, rather the G.V.K. is treating them as their employees, then how could the workers become the member of the Union of TELCO employees. It was further found by the Court below that G.V.K. has got 73 workers and out of those 73 workers, 52 were involved in the reference. Now if these concerned workmen were not the members of the Union and the majority members of that Union are not espousing their cause for the reason aforesaid, if more than 60% of the workers of G.V.K., which is a sham imfit of TELCO. are themselves involved in the reference, then wherefrom the majority workmen of G.V.K. would have come to espouse their causes. This aspect was not extinguished by the Court below on the sole ground that as per the decisions rendered by the Apex Court, the Union or the substantial number of workers are to espouse their causes.

9. Section 2(k) does not postulate that there must be a Union of the workers and that only or substantial number of them should espouse the cause of the workmen. As the concept of collective bargaining developed, the Union became relevant and they became supposedly entitled to espouse their cause. If the

Union does not take, then the substantial number of the workers should take up their cause and in fact, relying on various decisions, the management had tried to bring home the point that in absence of the cause being espoused by the substantial number of workmen or the Union, there could be no industrial dispute, Consequently this finding is according to law.

The circumstances of the case are peculiar as stated above. In such a case, when the workers are actually controlled by the principal employer through the handmaid/sham Society as has been in this case and such workers have no union of their own nor they are the members of the Union of the management workmen, besides no substantial workmen is left to espouse their causes, even those workmen of sham society, whether it will be just to say that their causes cannot be espoused. In my view, in such a peculiar situation, the principle that the Union or the substantial members of the workmen must come forward cannot equally be applied, when the majority of the workmen themselves have become the party to the reference.

10. I have said earlier that it is not a case of contract labour, but nevertheless the principle laid down by the Apex Court in Gujrat Electricity Board case (supra) is as follows : -

"45. The last but equally important question that remains to be answered is : who can raise an industrial dispute for absorption of the workmen of the ex-contractor by the principal employer. As has been pointed out earlier, if the contract is not genuine, the workmen of the contractor themselves can raise such disputes, since in raising such dispute the workmen concerned would be proceeding on the basis that they are in fact the workmen of the principal employer and not of the contractor. Hence, the dispute would squarely fall within the definition of Industrial Dispute u/s 2(k) of the I.D. Act being a dispute between the employer and the employees. In that case, the dispute would not be for abolition of the contract labour, but for securing the appropriate service conditions from the principal employer on the footing that the workmen concerned were always the employees of the principal employer and they were denied their dues. In such a dispute the workmen are required to establish that the so called labour contract was sham and was only a camouflage to deny them their legitimate dues."

To meet such a situation, I find that the concerned workmen could themselves have raised the dispute which they did. Thus, the finding in this regard of the Labour Court in the impugned award is not based on correct position of law and the same is perverse and accordingly is not fit to be sustained.

11. The learned counsel for the workmen raised an argument that the finding of the Court below dated 19.6.1993 (the first award), in which reference is valid was reversed in the impugned award and the subsequent finding in the impugned award is hit by res judicata as the previous order was in the same proceeding (Y.B. Patil and Ors. v. Y.L. Patil AIR 1977 SC 392 .

I do not find any reason to discard this argument.

12. National Council for Cement and Building Materials Vs. State of Haryana and Others, was also cited to show that the management had itself tried to delay the matter by filing writs (Annexures - 2. 5 to CWJC No. 3627/96R) and therefore the learned trial Court had rightly decided all the issues simultaneously.

The contention of G.V.K. that after recording the evidence for deciding the preliminary issues (that G.V.K. was or was not part and parcel of TELCO), no further evidence was collected to decide other issues. I do not find that, such an argument was raised before the Court below. Such an objection at this stage cannot be sustained and is of no consequence. The decision reported in the case of Union of India and Ors. v. Basant Lal and Ors. (1993 LabIC 1) is not relevant for the reason that the facts that were considered in that case were not the facts alleged. Reliance was made on the decision rendered in the case of Kyas Constructions Co. (P) Ltd. v. Its Workmen reported in AIR 1959 SC 208 and of P.G.I. of Medica Education & Research, Chandigarh v. Raj Kumar reported in (2001) 2 SCC 54 to tell, this Court that has limited jurisdiction to interfere and appreciation of evidence of the Court below should not be disturbed. Each of the petitioners saying this make their own claims of reviewing the finding to the extent which does not suit their interest is ridiculous. The Court can interfere if some perversity is noticed.

13. In the result, it is held :

(i) The finding in the award that G.V.K. is part and parcel of TELCO is a just and proper finding.

(ii) There is relationship of Employer and employee between TELCO and the concerned workmen is also a just and proper finding.

(iii) The finding that Reference is not maintainable is bad in law, as it is against an earlier finding at the earlier stage of the proceeding and is hit by res judicata and the same is set aside.

(iv) The finding that there is no industrial dispute is not sustainable in law and is accordingly set aside.

14. In the result, CWJC No. 3627/ 96R filed by G.V.K. & Ors. and CWJC No. 3633/96R filed by TELCO are dismissed and CWJC No. 3431/96R filed by the Workmen is allowed.