

(2003) 12 JH CK 0074
In the Jharkhand High Court
Case No : L.P.A. No. 382 of 1997 (R)

Metallurgical Engineering Consultants (I) Ltd. and Others	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 23-12-2003

Acts Referred:

Constitution of India, 1950 — Article 136, 226
Industrial Disputes Act, 1947 — Section 10(2)

Citation : (2004) 1 LLJ 793 : (2004) 1 JCR 542

Hon'ble Judges : P.K. Balasubramanyan, C.J.; Tapen Sen, J

Bench : Division Bench

Advocate : K.B. Sinha, S. Piperwal and R.B. Mahato, for the Appellant; Raj Nandan Sahay, M.K. Roy and P.K. Sinha K. Roy, Pandey Neeraj Rai and G. Kumar, for the Respondent

Final Decision : Allowed

Judgement

P.K. Balasubramanyan, C.J.—This appeal is by the petitioner in CWJC No. 2827 of 1995 on the file of this Court. By the Judgment under appeal dated 4.8.1997, the writ petition was dismissed by the learned Single Judge. The said dismissal is challenged.

Events leading to this appeal :

1. Canteen Mazdoor Sabha approached the Supreme Court with Writ Petition (Civil) No. 702 of 1986 seeking the issuance of a writ of mandamus directing the Chairman cum Managing Director of the Metallurgical and Engineering Consultant (India) Limited (herein after referred to as the MECON) and the Chairman of the Steel Authority of India Limited to treat the employees of the Canteen run by MECON Welfare Committee at par with the employees working in the VIP Guest House and Tea Club of MECON and to grant them every benefit given to those employees and to treat them as employees of MECON. The writ petition was taken on file. It was observed in the order dated 23.2.1987, that there was a dispute on the question whether the nature of the services performed by the

members of the Sabha correspond to those performed by the employees of the MECON and there was a further dispute whether the members of the Sabha or the employees of the Canteen were employees of the registered society. The writ petition was directed to be listed after Judgment was pronounced in Writ Petition Nos. 12143-12214 of 1984. On 19.10.1992, the writ petition was finally disposed of. It was stated in the order that the parties agree that a joint Reference u/s 10(2) of the Industrial Disputes Act, 1947 be made to Industrial Tribunal for adjudication of the disputes between the Sabha and MECON. The disputes set out in the order are :

1. "Whether the employees of Canteen engaged and employed by MECON Welfare Committee consisting of the representatives of MECON (Non-Executive) Employees Union, MECON Executive Association and nominees of MECON, are entitled to the same service conditions as are applicable to the employees of the VIP Guest House and of the Tea Club who are employed and engaged by MECON?

2. If so, from what date?

3. In view of the nature of work performed by Canteen employees engaged and employed by MECON Welfare Committee, are they justified in law in asking for parity with the employees of MECON working in the VIP Guest House and the Tea Club keeping in view that the total number of the Canteen employees are only 25 and the said Canteen run by MECON Welfare Committee is a non-statutory and non-recognised canteen?"

2. The order directed the State Government to refer the above disputes to the Industrial Tribunal u/s 10(2) of the Industrial Disputes Act for adjudication. Pursuant to this order, the State Government referred the above questions to the Industrial Tribunal, Ranchi for a decision. It was taken on file as Reference Case No. 1 of 1993. The Industrial Tribunal raised the following points for consideration based on the pleadings of the parties.

(i) Whether the present reference is bad in law and on facts?

(ii) Whether the relationship of employer and employees exists in between the Management of MECON or the management of MECON (SAIL) Welfare Committee and the employees of MECON Canteen, and

(iii) Whether the employees of MECON Canteen are entitled to get pay scale and other benefits which pay scale and other benefits are made available to the employees of VIP Guest House as well as the employees of Tea Club of MECON?

The Tribunal after noticing the facts that were not in dispute, proceeded to discuss some of the evidence and entered a finding that the Reference was not bad either in law or on facts; that the relationship of employer and employees existed between the management of MECON and the workmen of MECON Canteen and that the workmen of MECON Canteen are entitled to get pay scales and other benefits which were/are available to the workmen of MECON VIP Guest House and MECON Tea Club from the respective dates of appointments of the

concerned workmen. This award was challenged by MECON in the writ petition before this Court. It was argued on behalf of MECON that the Tribunal had misdirected itself in framing the question as to whether there existed a relationship of employer and employees between the Management of MECON and the Workmen in the Canteen or the Management of MECON SAIL Welfare Committee and the employees of MECON Canteen. It was contended that the question that was referred to, as directed by the Supreme Court was whether the employees of the Canteen engaged and employed by MECON Welfare Committee consisting of the representatives of MECON Employees Union, MECON Executive Association and the nominees of MECON are entitled to the same service conditions as applicable to the employees of the VIP Guest House and of the Tea Club, Who are employed and engaged by MECON. The question referred as directed by the Supreme Court clearly implied that the workers of the Canteen were employed by the MECON

Welfare Committee, distinct from MECON, and the question was whether those persons employed by the committee were liable to be treated at par with the employees of MECON. Since the Tribunal had posed a wrong question for decision and had given a wrong answer to that question, the award was liable to be interfered with. On behalf of the Sabha, it was contended that the Tribunal considered the relevant aspects and has entered a proper finding and that there was on reason to interfere in exercise of jurisdiction under Article 226 of the Constitution of India. A preliminary objection was raised to the effect that the writ petition was not maintainable, since the Reference was made as directed by the Supreme Court and the Reference having been answered by the Tribunal, the MECON had to approach the Supreme Court for challenging the decision and could not approach this Court under Article 226 of the Constitution of India. The learned Single Judge rejected the preliminary objection raised on behalf of the Sabha, but upheld the plea that no ground was made out for interference under Article 226 of the Constitution of India, except to the extent of modifying the relief by limiting the same to be given effect to from the date of the Award of the Tribunal dated 26.4.1995.

The Preliminary Objection

3. Before us also, learned counsel for the Sabha the respondent reiterated his preliminary objection that the writ petition ought not to have been entertained by this Court and that MECON should have been left to approach the Supreme Court with its challenge to the award passed by the Tribunal based on the reference made, as directed by the Supreme Court in the proceeding initiated under Article 32 of the Constitution of India. According to the counsel, the Supreme Court having directed that the reference be made and having formulated the questions to be referred, any objection to the findings of the Tribunal could be raised only before that Court and MECON was not entitled to approach this Court with a writ petition under Article 226 of the Constitution of India. We find it difficult to uphold the objection. Of course, the learned Single

Judge has also overruled this objection. As we understand the order of the Supreme Court, all that the Supreme Court did, was to direct the invocation of the machinery set up by the Industrial Disputes Act for adjudication of the dispute between the parties. The Supreme Court, no doubt, formulated the issues that have arisen, based on the agreement between the parties and directed the State government, i.e., the appropriate Government, to make a reference to the concerned Industrial Tribunal in terms of Section 10(2) of the Industrial Disputes Act leaving it to the Tribunal to answer the issues in terms of the Act. In other words, the Supreme Court did not decide the question raised before it, notwithstanding that in some of the other cases, it had granted relief then and there and took the view that the dispute in this case should be adjudicated by recourse to the Industrial Disputes Act. Once that position is reached, it is obvious that the party aggrieved could approach this Court under Article 226 of the Constitution of India, even though the party might also have attempted to appeal to the Supreme Court against the award of the Industrial Tribunal under Article 136 of the Constitution of India. But the fact that the Supreme Court could have been approached under Article 136 of the Constitution of India is not a ground for holding that MECON is not entitled to invoke the jurisdiction of this Court under Article 226 of the Constitution of India. That an aggrieved party can approach the High Court under Article 226 of the Constitution with a challenge to the award passed by the Industrial Tribunal has been clarified by the Supreme Court earlier. In fact, that position was not disputed by the learned counsel for the Sabha also. His only argument was that the reference having been directed to be made by the Supreme Court and what is attempted to be argued, involves an interpretation of the order of the Supreme Court and, therefore, it would have been appropriate for this Court to decline jurisdiction to entertain the writ petition. This contention was not accepted by the learned Single Judge, and in our view, rightly, as he has considered the case of the parties in exercise of the jurisdiction under Article 226 of the Constitution. Sitting in appeal, we cannot say that the learned Single Judge was not justified in overruling the preliminary objection raised on behalf of the respondent Sabha. According to us also, there is no merit in the contention on behalf of the respondent that the writ petition would not lie in this Court, in the facts and in the circumstances of the case.

4. Having overruled the preliminary objection raised on behalf of the respondent, the only other aspect to be noticed is that the Sabha filed an appeal seeking to challenge the deletion by the learned Single Judge of the grant of the benefit prior to the award passed by the Tribunal. The said appeal was not pursued and it got dismissed. The question, therefore, to be decided in this appeal is whether the learned Single Judge was justified in rejecting the challenge of the MECON to the award passed?

The Question :

5. The learned counsel for the appellant argued that the learned Single Judge

was in error in holding that no ground for interference with the award under Article 226 of the Constitution of India has been made out in this case. He submitted that the question directed to be referred to by the appropriate Government u/s 10(2) of the Act was different from the one the Tribunal posed for decision. He Submitted that the Tribunal had asked itself a wrong question and thereby had committed an error outside jurisdiction. He further submitted that even that question has been erroneously answered by the Tribunal and that error is one apparent on the face of the record and on that basis also, the award called for interference. The learned Single Judge was in error in taking the view that the case on hand was not covered by the ratio of the decision of the Supreme Court in *Employers in relation to the Management of Reserve Bank of India Vs. Their Workmen*, and was further in error in purporting to apply the two Judge Bench decision in *Parimal Chandra Raha v. Life Insurance Corporation of India* AIR 1995 SC 1666, as against the three Judge Bench decision in *Reserve Bank of India* case, particularly when the facts present in the instant case were, more or less, the same as the facts found in the *Reserve Bank of India* case. He, thus, submitted that the Judgment of the learned Single Judge called for interference and award of the Industrial Tribunal deserves to be quashed. He finally submitted that since the case on hand was squarely covered by the ratio of the decision in the *Employers in relation to the Management of Reserve Bank of India Vs. Their Workmen*, there was on need to remit the proceedings to the Industrial Tribunal for a fresh adjudication. The learned counsel for the Sabha, on the other hand, submitted that the Tribunal had made a correct approach to the dispute and had entered a finding of fact on the dispute referred to it on consideration of the relevant facts and has held that the relationship of employer and employees exists between the Management of MECON and the workmen of the Canteen and that the workmen of the Canteen are entitled to get the pay scales and other benefits available to the workmen of the MECON VIP Guest House and MECON Tea Club employed by MECON. He submitted that the finding of fact by the Tribunal was based on appreciation of the evidence and the learned Single Judge was justified in not interfering with the award of the Tribunal. He further submitted that the Tribunal did not have the benefit of the decision in the *Reserve Bank of India* case and it was guided by the decision in *M.M.R. Khan v. Union of India* 1990 SCC 191, and the ratio of that decision has been rightly applied by the Tribunal. He therefore, submitted that no ground was made out for interference with the decision of the learned Single Judge.

6. As we have already observed earlier, the question that was directed to be referred by the Supreme Court was "Whether the employees of Canteen engaged and employed by MECON Welfare Committee consisting of the representative of MECON (Non-Executive) Employees Union, MECON Executive Association and nominees of MECON, are entitled to the same service conditions as are applicable to the employees of the VIP Guest House and of the Tea Club who are employed and engaged by MECON" and it was that question along with question Nos. 2 and 3 that were referred to the Tribunal by the appropriate Government. But the

question that was posed by the Tribunal was "whether the relationship of employer and employees exists in between the Management of MECON or the management of MECON (SAIL) Welfare Committee and the employees of MECON Canteen." In other words, it appears to us that instead of asking itself the question, whether employees of the Canteen employed by the MECON Welfare Committee, are entitled to the same service conditions as are applicable to the employees of the VIP Guest House or the Tea Club employed and engaged by the MECON, the Tribunal formulated the question whether the relationship of employer and employees existed between the members of the Sabha and the MECON? Obviously, the reference proceeded on the basis that the workers belonging to the Sabha were employed by the Welfare Committee of MECON and the question was whether they were entitled to the same service conditions as were applicable to MECON employees, employed in the VIP Guest House and the Tea Club. We are, therefore, inclined to find merit in the contention of the learned counsel for the appellant that the Tribunal had asked itself a wrong question or had proceeded to formulate a question that was not the subject matter of reference. It is settled that an Industrial Tribunal has jurisdiction only to answer the dispute referred to it and not to travel outside the terms of the reference. The question that was directed to be referred by the Supreme Court and that was in fact, referred to the Tribunal, proceeded on the basis that the workmen were employees of the Welfare Committee and the question was whether they were liable to be treated at par with the employees of MECON employed in the VIP Guest House and Tea Club. Therefore, when the Tribunal proceeded to pose the question whether there existed the relationship of employer and employee between MECON and the members of the Sabha, it was trying to answer a dispute that was not referred to it. To that extent, the Tribunal acted outside jurisdiction and has, therefore, invited interference by the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

7. But at the same time the Tribunal also had posed the question, whether the relationship of employer and employees exists between the Management of MECON (SAIL) Welfare Committee and the employees of the Canteen. In fact, that question was redundant, because the reference proceeded on the basis that there was the relationship of employer and the employees between the MECON Welfare Committee and the members of the Sabha and as noticed, the question was whether they were entitled to be equated with the workmen of MECON. The further question was whether the members of the Sabha were justified in asking for parity with the employees of MECON. Again, the Tribunal has not formulated that question and what it has formulated as question No. (iii) is whether the employees of the Canteen are entitled to get pay scales and other benefits made available to the employees of the VIP Guest House and the employees of Tea Club of MECON. In other words, the Tribunal has not asked itself the question whether in view of the nature of the work performed by the employees of the Canteen engaged and employed by the Canteen Welfare Committee, the workmen were justified in law in asking for parity with MECON employees. That

question, whether they are entitled in law to claim parity, has been left unanswered by the Tribunal. Thus, on that ground also, it has to be held that the Tribunal has not answered the question referred to it and has thereby committed an error of jurisdiction warranting interference under Article 226 of the Constitution of India. We are clearly of the view that the learned Single Judge was in error in holding that no jurisdictional error was committed by the Tribunal, while answering the questions referred to it for decision.

8. On the basis of the above conclusions, normally, we would have quashed the award of the Tribunal and remitted the reference to the Tribunal for a fresh decision in accordance with law. But at this stage, we have to consider the argument of the learned counsel for the appellant that the decision in Reserve Bank of India, case squarely covers the field and in the light of that decision, nothing remains to be decided by the Tribunal on the facts noticed by it in its award as undisputed facts and the learned Single Judge was clearly in error in purporting to distinguish the decision in that case. If we accept this argument on behalf of the appellant the remand of the proceeding to the Tribunal will be unnecessary. We, therefore, proceed to consider this argument on behalf of the appellant.

9. We have already noticed that the Industrial Tribunal did not have the benefit of this decision when it rendered the award and it had referred to and followed the decision in M.M.R. Khan's case. The learned Single Judge after holding that; the Reserve Bank of India, case is distinguishable, held that the decision in Primal Chandra Raha, (supra) can be applied to uphold the plea of the workmen. We may notice that in Primal Chandra Raha rendered by two learned Judges, the Principles emerging from the statute, law and judicial decisions are summarized as follows :

(i) "Where, as under the provisions of the Factories Act, it is statutorily obligatory on the employer to provide and maintain canteen for the use of the employees, the canteen becomes a part of the establishment and, therefore, the workers employed in such canteen are the employees of the management;

(ii) Where, although it is not statutorily obligatory to provide a canteen, it is otherwise an obligation on the employer to provide a canteen, the canteen becomes a part of the establishment and the workers working in the canteen, the employees of the management. The obligation to provide a canteen has to be distinguished from the obligation to provide facilities to run canteen. The canteen run pursuant to the latter obligation, does not become a part of the establishment.

(iii) The obligation to provide canteen may be explicit or implicit. Where the obligation is not explicitly accepted by or cast upon the employer either by an agreement or an award etc. It may be inferred from the circumstances, and the provision of the canteen may be held to have become a part of the service conditions of the employees. Whether the provision for canteen services has

become a part of the service conditions or not, is a question of fact to be determined on the facts and circumstances in each case.

Where to provide canteen services had become a part of the service conditions of the employees, the canteen becomes a part of the establishment and the workers in such canteen become the employees of the management.

(iv) Whether a particular facility or service has become implicitly a part of" the service conditions of the employees or not, will depend, among others, on the nature of the service/facility, the contribution the service in question makes to the efficiency of the employees and the establishment, whether the service is available as a matter of right to all the employees in their capacity as employees and nothing more, the number of employees employed in the establishment and the number of employees who avail of the service, the length of time for which the service has been continuously available, the hours during which it is available, the nature and character of management, the interest taken by the employer in providing, maintaining, supervising and controlling the service, the contribution made by the management in the form of infrastructure and funds for making the service available etc."

10. Their Lordships then proceeded to examine the facts of that particular case and held on the facts established that, the canteen workers involved therein were, in fact, employees of the Life Insurance Corporation. It appears to us that the decision in the *Parimal Chandra Raha*, only emphasized the position especially in a case where there is no statutory obligation on the organization either under the Factories Act or any other Statute or standing orders governing it that the question would depend upon the facts of the particular case and the existence of master and servant relationship. It is in that context that the present case has to be adjudged. That apart, this Court cannot certainly go against the subsequent three-Judge Bench decision in the *Reserve Bank of India*, case wherein the decision in *Parimal Chandra Raha*, had also been considered. In that decision, it was held that in the absence of any statutory or other legal obligation and in the absence of any right in the Reserve Bank to supervise and control the work or details thereof in any manner regarding the canteen workers employed in three types of canteen, it could not be said that the relationship of master and servant existed between the bank and various persons employed in the three types of canteens. They were not workmen of the Reserve Bank of India and were not comparable to the employees employed in the officers* lounge. It may be noted that the Court envisaged three situations, first, all canteens being statutory canteens; second, non statutory recognised canteens and third, non-statutory non-recognised canteens. The " Court considered the decision in *M.M.R. Khan's* case and indicated that *M.M.R. Khan's* case was decided in respect of non statutory recognised canteen on the facts of that case, including the provision of the Railway Establishment Code and circulars issued by the Railway Board from time to time and the other documents. Their Lordships clearly stated that in their Lordship's opinion, the reasoning and conclusion in

M.M.R. Khan's case rested on its own facts.

11. At this stage, we may also notice that the Supreme Court in the State Bank of India and Others Vs. State Bank of India Canteen Employees' Union (Bengal Circle) and Others, held that the employees of the canteens run by the local implementation committee of the State Bank of India and the branches of the State Bank of India as per the welfare scheme of the Bank, were not employees of the Bank since there was no statutory or contractual obligation on the bank to run such canteens. Here, there is no case that there was any statutory or other obligation on MECON to run a canteen for its employees. It is not established that u/s 46 of the Factories Act, MECON had such an obligation. It is not proved that it was established under any Standing Order or Regulation. Therefore, this is a case where the Canteen was run apparently only as a welfare measure for the employees, but not under any obligation. There is no case that it was run as part of the service conditions of the employees of MECON. If we go by the ratio of the decisions in Reserve Bank of India and the State Bank of India cases, it is clear that the employees of such a canteen cannot be considered to be the employees of MECON. It appears to us on a consideration of the ratio of the various decisions, that the essential test to be satisfied in a case of this kind, is the existence of the relationship of master and servant between the alleged employer and the employees, here MECON and the employees of the canteen. This Court had occasion to consider this aspect in the decision in Bokaro Ispat Kamgar Union v. Chairman Steel Authority of India Limited 2003 JCR 663. This Court summarized the position arising out of various decisions in the Supreme Court and that of the Labour Appellate Tribunal to the following effect :

"If an institution like a Canteen is maintained in view of the obligatory provision, like the one in the Factories Act for use of the employees, such Canteen or institution becomes a part of the institution and the workers employed in such Canteen are employees of the Management. The ratio of the cases also indicate that the obligation to provide the facility of Canteen or other establishment, may be explicit or implicit and whether the provision for Canteen service or other service has become part of the service condition is a question of fact to be determined on the facts and in the circumstances of each case. It is also clear that if there is a mere obligation to provide facilities to run a canteen, the Canteen does not become part of the establishment. After referring to the other decisions, including the cases in Indian Overseas Bank AIR 2000 SC 1508, Union of India (Railway Board) and Ors. v. Subhaiah and Ors., AIR 1996 SC 2890 , and M.M.R. Khan held in that case that there existed no relationship of master and servant between the management and the workmen."

12. In this case, the question referred to, itself indicates that the members of the Sabha were appointed in the Canteen by the Canteen Welfare Committee and not by MECON. Primarily, therefore, the workmen were the employees of the Canteen Welfare Committee. The Canteen was not being run either under a statutory obligation or an obligation arising out of any standing order or other

binding circulars of MECON. It was also not established that providing of Canteen service was as part of the service conditions of the employees of MECON. It was also not based on any contract between MECON and its Workers. It is in this background that we have to consider whether there has come into existence the relationship of master and servant between MECON and the Canteen workers. In that context it is necessary to refer to some of the admitted aspects set out in paragraph 46 of the award and reproduced by the learned Single Judge in his Judgment in paragraph 3 of the order. Among the facts admitted were the fact that the Management of MECON had not recognised the Union of employees of the canteen. In case of necessity, an application for leave was given by the workmen to the Canteen Manager. Leave was taken from the Secretary of the Canteen Welfare Committee. The Canteen Manager worked in personnel department. The proceeds from the day-to-day sales were deposited in the account of the Canteen Welfare Committee at the cash counter of MECON. There was a Welfare Department for MECON to which funds were given every year by the Management. The Canteen was run by the Canteen Welfare Committee for the welfare of the staff and workmen of MECON. The facilities were made available only to the staff of MECON. Workmen of the Canteen were not transferred either to VIP Guest House or the Tea Club or vice versa. The workmen of VIP Guest House were appointed by MECON. There was no Bank account given to the workmen of the Canteen by the Management of MECON and the salary of the employees of the Canteen were not transferred to their respective Bank accounts by MECON, unlike in the case of the employees of the VIP Guest House and the Tea Club. These facts, viewed in the light of the principles laid down by the decisions, clearly show that there was no relationship of Master and servant between the management of MECON and the employees of the canteen, appointed by the Canteen Welfare Committee. We think that the ratio of the decision in the Reserve Bank of India, case based on more or less the same facts, is squarely applicable to the fact situation in this case and, therefore, it would be really futile to drive the parties to another round of litigation by remitting the proceedings to the Industrial Tribunal. We are inclined to the view that the learned Single Judge was in error in distinguishing the decision in Reserve Bank of India case by holding that the facts established do not attract the ratio of that decision. It is in that context that we come to the conclusion that it is not necessary to remit the matter to the Industrial Tribunal and to keep the parties in Court for another round of litigation. The employees of the Canteen have not produced their orders of appointment to show that their appointment was by MECON. On the other hand, the very question referred to for decision is whether the workers of the Canteen employed by the Canteen Welfare Committee can claim the same benefit as are given to the workmen employed by MECON in their Guest House and the Tea Club. In such a case, to postulate that the workmen are the workmen of MECON, it has necessarily to be shown that there has come into existence the relationship of Master and servant between MECON and the Canteen employees. Of course, if there was an obligation, statutory or otherwise, explicit or implicit, it may be open to the Court to pierce

the veil to come to the conclusion that the workmen are really the workmen of MECON and therefore they are entitled in law to an equal treatment with the other employees of MECON. But on the facts established here, it is not possible to come to such a conclusion. The entire control over the employees in the Canteen rests with the Welfare Committee which had appointed them. There is no material to hold that the creation of the Welfare Committee is only a ruse to claim that the workmen in the Canteen are not the workmen of MECON.

13. Thus, on an anxious consideration of the relevant aspects, we are satisfied that the learned Single Judge was in error in refusing to interfere with the award of the Industrial Tribunal. In our view, the award of the Industrial Tribunal deserves to be quashed. Therefore, we allow this appeal and setting aside the Judgment of the learned Single Judge allow CWJC No. 2827 of 1995 (R) filed by the appellant and quash the Award of the Industrial Tribunal in its entirety. In the circumstances, we direct the parties to bear their respective costs.