
(2014) 09 CAL CK 0125
In the Calcutta High Court
Case No : W.P. No. 12808(W) of 2011

MMTC Ltd.

APPELLANT

Vs

The Learned Fourth Industrial Tribunal

RESPONDENT

Date of Decision : 26-09-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227

Contract Labour (Regulation and Abolition) Act, 1970 — Section 1(iv), 10(1), 12, 7

Citation : (2015) 144 FLR 484 : (2014) 4 LLJ 750 : (2015) 1 LLN 107

Hon'ble Judges : Sambuddha Chakrabarti, J

Bench : Single Bench

Advocate : Dipak Ghosh, Amitabha Shukla and R. De, Advocate for the Appellant; R.N. Majumder and Supratim Bhattacharya, Advocate for the Respondent

Final Decision : Allowed

Judgement

Sambuddha Chakrabarti, J.—By this writ petition the petitioner has inter alia prayed for a writ in the nature of Mandamus commanding the respondents Nos. 1 and 2 to cancel and rescind the Award dated March 31, 2011 and a writ in the nature of Prohibition commanding the respondents not to take any step or further step pursuant to the said Award.

2. The case of the petitioner is that it is a Government of India Enterprise. Some activities in its regional office in Kolkata like cleaning, sweeping etc. have been outsourced and are carried on by a contractor viz., Sri Hemanta Mallick. Sri Mallick engaged 17 contract labourers. They were all paid by him and the entire work was supervised by him. Although these contract labourers had their own employer their union, i.e., the respondent No. 3, raised a dispute for their regularization. The matter was ultimately referred to the Fourth Industrial Tribunal. In the order of reference two issues were raised, viz., whether the action of the management of the petitioner in not regularizing the 17 workmen was just and to what other relief the workmen were entitled to.

3. The case of the workmen in the reference was that the petitioner company was perpetuating unfair labour practices by not regularizing the service of its casual workmen or daily wagers who had been working there uninterruptedly against regular vacancies. They were performing their jobs which were perennial in nature. After the abolition of the contract labour system a direct relationship of employer and employee had been created between the workmen and the petitioner and a right has been created in their favour for being regularized as employees in the respective establishment in which they were working. As the petitioner company was neither registered as a principal employer nor was the contractor a licensed one the contract system was a mere camouflage and if one lifts the veil the company emerges as the real employer of those workmen.

4. The petitioner company contested the case by filing a written statement. The contention of the petitioner was that the contract labourers are not employees of the petitioner company on their regular payrolls and as such the union was not eligible to represent them. Since the petitioner is a Government of India Enterprise no reference can be made by the State Government rendering the reference made to the Tribunal by it and the Tribunal had no jurisdiction to entertain or adjudicate upon the same. The labourers did not have any right of regularization as they were employed by an employer and there was no relationship of employer and employee between the petitioner and the labourers.

5. Evidence was adduced on behalf of both the parties. The Learned Judge of the Fourth Industrial Tribunal passed an Award on March 31, 2011 holding the employees under the order of reference to be employees of the petitioner company which was held to be a principal employer and the employees having worked for more than 240 days in the last preceding year regularization of the service was not justified.

6. This Award has been assailed by the petitioner in the present writ petition on various grounds. According to the petitioner the Contract Labour (Regulation and Abolition) Act, 1970 (the Act, for short) is totally inapplicable to it as the total number of workforce is less than 20 in its Kolkata establishment. It has further assailed the finding of the Tribunal that the factum of contract labour was not genuine. On the contrary the evidence clearly establishes that they were contract labourers and their employer was Sri Mallick. The order of regularization has been passed without considering several factors as mentioned in the writ petition.

7. The respondent No. 3, i.e., the union, has filed an affidavit-in-opposition denying the allegations made by the petitioner. It has been contended by the answering respondent that the establishment of the petitioner company is not a registered one as a principal employer nor the contractor viz., Sri Hemanta Mallick is a licensed contractor. The contract labour system is a mere camouflage and draped in a paper arrangement. The workmen covered by the Award had been continuously working for about two decades and discharging the same nature of job as are being performed by the regular employees rendering the action of the petitioner an unfair labour practice. The respondent No. 3 denied

that the provisions of the Act is totally inapplicable to the petitioner or to the answering respondent. In exercise of the power conferred by Section 1(iv) of the said Act a notification dated March 29, 1976, was issued and the provisions of the Act had been made applicable to establishments where more than 10 or more workmen were employed on any date of the preceding 12 months from the date of the notification. Therefore, it was incumbent upon the petitioner company to get its establishment in Kolkata registered u/s 7 of the said Act and correspondingly Sri Mallick was also required to take license u/s 12 of the said Act. The respondents prayed for a dismissal of the writ petition.

8. At the hearing of the writ petition the petitioner has not pressed the applicability of the Act to the petitioner and whether the State Government was the appropriate Government to make any reference. Therefore, there is no necessity for going into those two issues for the disposal of the present petition.

9. Mr. Ghosh, the learned Advocate for the petitioner company raised the issue of the absence of employer and employee relationship between writ petitioner and the workmen and submitted that as such the question of regularization did not arise. He has referred to a very basic criteria for determining the relationship of employer and employee, i.e., who is the paymaster and who has got the control and supervision over the contract labourers. Reliance has been placed on the case of General Manager (OSD), Bengal Nagpur Cotton Mills, Rajnandgaon Vs. Bharat Lal and Another, There the Supreme Court had the occasion to deal with this issue and the tests which have been propounded were twofold, i.e., who used to pay the money and in whose hand lay the control and supervision of contract labourers. The Supreme Court observed that two of the well recognized tests to find out whether the contract labourers are the direct employees of the principal employer are whether the principal employer pays the salary instead of the contractor and whether the principal employer controls and supervises the work of the employee. With regard to the facts of that particular case the Supreme Court held that the Industrial Court placed the onus wrongly upon the appellant in that case with regard to the first test, i.e., who pays the salary. It is for the employee to aver and prove that he was paid salary directly by the principal employer and not by the contractor. Even in regard to the second test the employee did not establish that he was working under the direct control and supervision of the principal employer. The Industrial Court misconstrued the meaning of the terms control and supervision and held that as the officers of the appellant company had given some instructions to the first respondent working as a guard he was deemed to be working under the control and supervision of the appellant. In this context the Supreme Court relied upon the observation made in the case of International Airport Authority of India Vs. International Air Cargo Workers' Union and Another, wherein it was held that if the contract was for supply of labour the labour so supplied will work under the directions, supervision and control of the principal employer; but that would not make the worker an employee of the principal employer, if the salary is paid by the contractor, if the right to regulate him is with the contractor and the ultimate

supervision and control lies with the contractor. The principal employer only controls and directs the work to be done by a contract labourer when such labour is assigned or allotted to him. It was very specifically held in the latter case that a worker being an employee of the contractor the ultimate supervision and control lay with the contractor.

10. From the evidence of the witnesses for the workmen it is clear that the workers were really paid by the contractor. P.W. 1 Molay Kumar Laha who was the Vice President to the respondent No. 3, union has very specifically stated in his cross-examination that he had no document to show that these 17 workers were the employees of the petitioner company. He admitted Sri Hemanta Kumar Mallick to be the contractor and stated that these 17 members of the unions were working through Sri Mallick. He could not produce any letter of appointment of these 17 persons whom the union represented and frankly admitted that he would not be in a position to produce any pay slip issued by the company to them. The very specific deposition of the PW 1 was that these employees were working under Sri Mallick the contractor: "It is a fact that all the 17 employees to [sic] whom I represent were working under the contractor. MMTC did not pay salary to these 17 employees to [sic] whom I represent."

11. PW 2 Sri Tapas Kr. Dey who was working in the petitioner company as a peon was one of those 17 employees. He stated that he was working under the contractor, viz., Hemanta Mallick who had no license. He spoke not only of himself, but said that all the 17 employees including himself were working under the said contractor Sri Mallick.

12. P.W. 2 further admitted in cross-examination that the petitioner company did not pay him any salary and since 1993 he has been receiving his salary from Sri Hemanta Mallick.

13. Mr. Ghosh has also referred to a letter written on behalf of the petitioner company to Sri Hemanta Mallick on September 7, 1993 which was an offer to engage him as a contractor. The letter very specifically recited that the petitioner company had been pleased to enrol him for supply of casual hands as per the stop-gap requirement of the company on purely temporary basis at a consolidated rate or remuneration as fixed by the statutory authority. This letter was accepted by Sri Mallick.

14. This it appears that the witnesses for the workmen themselves had at various places and in different ways admitted quite candidly that the petitioner company never paid any salary to those 17 workmen and their salaries were although paid by the contractor i.e. Sri Mallick. It further appears from Exbt. "B" i.e. the letter written by Sri Mallick to the General Manager of the petitioner company that he was paying the minimum wages as per the instruction of the Labour Commissioner, Government of West Bengal. Exbt. "C" is a document proved by O.P.W. 1, Sri Binod Kumar Jha who was at the relevant point of time the Senior Manager (Administration) of the petitioner company. From Exbt. "C",

it appears that Sri Mallick had paid the ex gratia to those employees. Exbt. "E" has been proved by O.P.W. 1. By this letter dated March 2, 1998, Sri Mallick was requesting the company for enhancing of daily wages as the Government has enhanced the rate for the same.

15. The evidence thus leaves no scope of doubt that Sri Mallick was really the contractor and the petitioner company was the principal employer. The evidence further brings out that as a contractor Sri Mallick was the paymaster and as a paymaster full supervision was exercised by him. The conclusion reached by the learned Judge of the Tribunal below that since the petitioner company herein is the principal employer of the workmen, it is incumbent upon the company to consider the case of regularization of their services had no legal basis. There was no occasion for holding that the contract was a sham contract. The Tribunal was of the opinion that the employees under the order of reference were not the contract labourers under Sri Mallick only on the ground that neither the petitioner company was registered under the said Act or Sri Mallick was registered as a licensee.

16. The question of regularization does not arise unless there is valid relationship of employer and employee between the petitioner company and the workmen. The Supreme Court in the case of U.P. Power Corporation Ltd. and Another Vs. Bijli Mazdoor Sangh and Others, had very held that there cannot be a case for regularization without their being employee and employer relationship. The concept of regularization is linked with Article 14 of the Constitution. Again in the case of Bilas Sarkar and Ors. vs. Union of India and Ors. Reported in JT 1998(9) SC 509, the Supreme Court was considering the case of regularization of licensed porters of the Railways. In that case, the Tribunal had held that as the appellants sometimes worked as independent persons for the Railway administration for which they were paid remuneration at a mutual agreed rate as per the instructions of the contractor, they could not be regarded as casual employees engaged by the Railway administration. In that context, the Supreme Court observed that since there was no relationship of master and servant between them and the Railway administration, they could not be regularized as Railway employees or as casual labourers or substitutes.

17. Mr. Ghosh has referred to the evidence of P.W. 1 and P.W. 2 who deposed that the concerned 17 employees were casual workers. Relying on the case of Bilas Sarkar (supra) a learned Single Judge of this court in the case of Uttam Majumdar Vs. Union of India and Others, held that if a casual worker/labourer is discontinued, he cannot claim regularization of his service as the relationship of master and servant ceases.

18. Thus, the petitioner has argued that there was no employer and employee relationship between them. The contract labourers named in the order of reference have got no legal right to be regularized in the service of the petitioner.

19. In reply to the contentions of the petitioner, Mr. Majumder argued that since

the workmen under reference were working under the contractor it was incumbent upon the petitioner company to get the establishment registered u/s 7 of the Act and correspondingly the contractor was also required to obtain a licence u/s 12 thereof. Since these have not been done, either by the company or by the contractor, the contract between the company and Shri Hemanta Mallick is a sham contract which entitles the workmen to be regularized in the service of the company.

20. Mr. Majumder relied on the case of Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., The Supreme Court had declared that any direction issued by any industrial adjudicator or any court including the High Court for absorption of contract labour following earlier judgment shall hold good. On issuance of a notification u/s 10(1) of the 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 contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for the establishment under a genuine contract or is a camouflage to evade compliance of various beneficial legislation so as to deprive workers of the benefits thereunder.

21. Mr. Majumder laid great stress on this observation and submitted that if the contract is found to be not a genuine one 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 regularize the service of the contract labour in the establishment concerned subject to the conditions as may be specified by it for that purpose. Even if the contract was found to be genuine and prohibition notification u/s 10(1) of the Act has been issued prohibiting employment of contract labour in any process or work and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour if otherwise found suitable.

22. Mr. Majumder further relied on the case of G.M. ONGC, Shilchar Vs. ONGC Contractual Workers Union, where the Supreme Court had held that even the ONGC had admitted that since 1988 there was no licenced contractor and that the wages were being paid through one of the leaders of the union. He was on the acquaintance roll and received wages. The Supreme Court found that the employers of the ONGC would be ipso facto entitled to all the benefits available in that capacity and the issue of regularization would, therefore, pale into insignificance. It was further observed that the Industrial Tribunal and the High Court were justified in lifting the veil to determine the nature of employment.

23. Mr. Majumder further relied on a judgment of the Bombay High Court in the case of General Manager (P & A), Hindustan Petroleum Corporation Ltd., Mumbai - 400020 vs. General Secretary, General Employees Association, Mumbai - 400014 and Others, reported in The General Manager (P and A) Hindustan

Petroleum Corporation Ltd. Vs. The General Secretary, General Employees Association, List of Workmen (1-16) and Shri. A.A. Lad, Presiding Officer, (CGIT) No. 2, . In that case the Industrial Tribunal passed an Award directing the petitioner, Hindustan Petroleum Corporation Ltd. to treat 37 contract workmen as their permanent employees. The Award was challenged in High Court. While dismissing the writ petition, a learned Single Judge of the Bombay High Court held that the Tribunal had held that there was employee and employer relationship between the concerned workmen and the petitioner and the said relationship was proved. It was further observed that determination of the question whether the concerned employees were the employees of the contractor or the principal employer has never been an easy task. There is no decision laying down any hard and fast rule nor it is possible to do so as no single test has been held to be the determinative factor for determining the relationship of employer and employee. Previously, the solution lay in applying the "control" test. However, with the increased sophistication of industrial process and the greater number of professional and skilled people being in salaried employment the test proved to be insufficient. Control was thus not the sole written although it remains an important factor.

24. The Bombay High Court in that case observed that in the search of a substitute test ideas had been put forward of an "integration" test, i.e., whether the person was fully integrated into the employer's concern. Subsequently, even the integration test came to be considered as insufficient in itself but it was a potential factor allowing the court to take a wider and more realistic view. The modern approach had been to abandon the search for a single test and instead to take a multiple or pragmatic approach weighing all the factors for and against a contract of employment and determining on which side the scale eventually settled. The factors which a modern court is required to consider are: a) who is the appointing authority i.e., the contractor or the principal employer who is the paymaster, and b) the extent of control and supervision, i.e., who directed how the job was to be done.

25. The next case relied upon by Indian Oil Corporation Ltd. Vs. Union of India (UOI) and Others, That was for a proposition that it is for the industrial adjudicator to decide whether the relief of regularization can be granted to workmen and if not what other relief can be granted to them. 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 regularize the service of the contractor labour in the establishment concerned and if necessary by relaxing the conditions.

26. Mr. Majumder referred to the Award and submitted that the finding of the tribunal that abolition of contract labour system ensures a right of the workmen for their regularization as employees in the establishment in which they were working as contract labour and the contractor stands removed has been a valid one. Thus, a direct relationship of employer and employee is created between

the principal employer and the workmen. Mr. Majumder supported the conclusion of the tribunal that as the company was neither registered as a principal employer nor the contractor was a licenced contractor the contract system was a camouflage and draped in a paper arrangement. After lifting the veil it can be easily seen that the company is the real employer of the said workmen.

27. In support of his contention Mr. Majumder relied on the case of Sadhu Ram Vs. Delhi Transport Corporation, for a proposition that the jurisdiction of a High Court under Article 226 of the Constitution of India, even if wide, has to be exercised with great circumspection. A High Court is not an appellate court over the tribunals constituted under special legislation to resolve disputes of a kind qualitatively different from ordinary civil disputes and to re-adjudicate upon questions of fact decided by those tribunals. It is not proper for the High Court for substituting its judgment for that of the labour court.

28. Mr. Majumder lastly referred to the case of Central Mines, Planning and Design Institute Ltd. Vs. Union of India and Others, There a learned Single Judge of this court affirmed the Award of regularization in favour of the employees. It was observed by this court that the tribunal after careful consideration of the facts involved in this case and after consideration of the evidence both oral and documentary found that the concerned workmen were performing their jobs and were getting wages neither in the capacity of contractor nor in the capacity of the contract workers, rather as employees of the company since 1997. According to him, since the Award is based on a proper appreciation of evidence on record and the correct legal position, it calls for no interference by the present writ petition.

29. I have gone through the materials on record including the Award impugned and have given my anxious consideration to the contentions of the respective parties.

30. I am afraid, the judgments relied on by Mr. Mujumder have no application to the facts of the present case. Though it has become a little cliché with overuse it is still necessary to remind ourselves the age old adage that a decision is ultimately an authority on what it decides and not what is inferentially deducible from it. The decision in a case must be read in the factual context in which it was arrived at. The judgments are easily distinguishable as delivered in the context of particular facts of that case. The decision in the case of Steel Authority of India Ltd. (Supra) was relied on by Mr. Majumder only to counter the preliminary objection taken by the petitioner company that it being a Government of India Enterprise no reference could be made by the State Government and as such, the reference itself is bad. The petitioner company having not pressed this point at the stage of final argument it is not necessary to go into that aspect at all. The other observations in the said judgment which have been stressed by Mr. Majumder relate to propositions of law which Mr. Ghosh never sought to dispute.

31. In the case of G.M. ONGC, Shilchar (Supra) there was a positive finding of

fact that the concerned workmen were the employees of the ONGC and not the contract employees. It was upon this finding that the Supreme Court held the employees to be entitled to all the benefits available in that capacity. Similarly, in the case of General Manager (P & A) Hindustan Petroleum Corporation Ltd., Mumbai (Supra) the basis of the observations quoted was a fact about the existence of employer-employee relationship between the concerned workmen and the petitioner company. On the facts of that case the contract was found to be a sham one and after lifting the veil, the conclusion was reached that the writ petitioner was the real employer of the workmen.

32. Thus, the judgments relied on by the respondent No. 3 were delivered in the context of and on the basis of their respective factual foundations. I, however, could not convince myself with the submissions made by Mr. Majumder that in the present case also a similar conclusion can be drawn or the conclusion reached by the tribunal was unimpeachable or borne by the evidence on record.

33. It cannot be gainsaid that the Award impugned ignored a very substantial body of evidence adduced by the witnesses appearing for the workmen themselves. The tribunal failed to attach due importance to the same. While it is true that the Supreme Court in *Sadhu Ram* (Supra) had held that the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India is not empowered to substitute the finding of the tribunal by its own finding or that a High Court shall not sit but appeal over an Award passed by a tribunal created under a special legislation. It is equally true that subsequently the Supreme Court had in a large number of judgments held that the power of judicial interference by High Court cannot be denied if the Award is patently perverse and not based on sufficient evidence to sustain the conclusion of the tribunal. In the case of *Trambak Rubber Industries Ltd. Vs. Nashik Workers Union and Others*, the Supreme observed that the High Court was right in pointing out that the material evidence, especially the admission of the witnesses examined on behalf of the management were not considered at all. And that is why the Supreme Court held that the conclusion reached was wholly perverse and did not reasonably follow from the evidence on record.

34. Again in the case of *Seema Ghosh Vs. Tata Iron and Steel Company*, the Supreme Court observed that the High Court's interference under Articles 226 and 227 of the Constitution of India with an Award of a labour court was justified as the award had been rendered contrary to the law laid down by the supreme Court and as a measure of misplaced sympathy. Such an Award was thus a perverse one. The Supreme Court in the case of *G.M. ONGC. Shilchar* (Supra) summed up that interference with an Award of a labour Court would be limited to cases of patent illegality and perversity. It is a settled position of law that a judgment is vitiated by perversity when either it is based on no evidence or is the result of non-consideration of material evidence or the conclusion is such that no man or ordinary prudence would arrive at the said conclusion on the basis of the materials on record.

35. It has already been found that there is overwhelming evidence in the present case that there was no relationship of employer and employee between the petitioner and the worker and that the contractor was the actual paymaster.

36. I quite agree with the submissions of Mr. Ghosh that regularization per se requires existence of vacancies in an establishment to which regularization may be directed. In the absence of any such finding the direction given by the tribunal must be held to be unsustainable in law.

37. It is now trite to say that in the matter of regularization there is no scope for any legitimate expectation, even if an employee works as a labour for a certain length of time.

38. The finding of the tribunal that the contract between the writ petitioner company and its contractor was a sham one is the result of a wrong appreciation of both the legal as well as the factual position. It can never be said that because the petitioner was not registered under the Act or the contractor was not a licenced one, the contract between two must be a sham one. There was an offer and acceptance between the contractor and the company in the matter of supply of labour. Once it has been acted upon the agreement is a concluded one. Failure to register u/s 7 of the Act by the company and u/s 12 of the Act by the contractor may certainly expose them to penal consequences. It does not alter the nature of relationship between the petitioner and the employees nor does it make the concerned workman direct employees of the petitioner. The conclusion reached by the tribunal is clearly unsupportable.

39. If the tribunal had properly appreciated the evidence and applied the tests for determining the relationship of employer and employee there was no scope whatsoever to hold these workmen to be the employees of anybody else other than the contractor.

40. There is a sweeping conclusion reached by the tribunal that the company used to pay through Shri Hemanta Mallick. This is a conclusion arrived at wholly ignoring the weight of the evidence to the contrary. In the case of Dena Nath and others Vs. National Fertilisers Ltd. and others, the Supreme Court had observed that it is a matter for the decision of the Government whether the employment of contract labour in any process or work should be abolished or not. For the violation of the provision of Sections 7 and 12 of the Act there is a penal provision in the Act itself. In a writ proceeding, merely because the contractor or the employee had violated the provision of the Act or the rules, the court could not issue mandamus for deeming the contract labour as having become employees of the principal employer. The Supreme Court disagreed with the observations made by the concerned High Court about the effect of non-registration of the principal employer or the non-licencing of the contractor. As a result of non-registration of the principal employer or failure to take licence by the contractor an employee cannot be thrust on the principal employer. That does not really confer any right upon the concerned employees to claim any

regularization for the lapses on the part of the principal employer or the contractor.

41. In the matter of regularization neither the period of attachment as a contract labour nor working for 240 days in a year as a contract labour has absolutely no bearing. In the case of Accounts Officer (A and I) APSRTC and Others Vs. K.V. Ramana and Others, the Supreme Court, relying on the case of Secretary, Secretary, State of Karnataka and Others Vs. Umadevi and Others, held that absorption, regularization or permanent continuance of temporary, contractual, casual daily wage or ad hoc employees de hors the rules of constitutional scheme of public employment cannot be granted by the courts. Even if the contract labourers or casual workers or ad hoc employees have worked for a long period they cannot be regularized de hors the rules for selection. Again in the case of Union of India (UOI) and Another Vs. Arulmozhi Iniarasu and Others, the Supreme Court placed reference on the case of Uma Devi (3) (Supra) and reiterated the same principle of law.

42. In support of his contention that in the absence of any direction for regularization per se is not permissible. Mr. Ghosh has relied on the case of Hari Nandan Prasad and Another Vs. Employer I/R to Management of FCI and Another, . In that case admittedly the appellant had worked for more than 240 days continuously preceding their termination. The tribunal in its Award, inter alia, held that the termination was illegal and the appellant No. 1 was entitled to be regularized in service. The Supreme Court specifically held that if there were no vacant posts such a direction for regularization would be impermissible. Giving direction to regularize a person only on the basis of the number of years put in by such a worker may amount to a backdoor entry into the service which is a anathema of Article 14 of the Constitution.

43. Thus the finding of the tribunal that since the concerned employees in the present case had worked for 240 days in the preceding years their regularization is justified is an unjust observation in view of the settled position of law.

44. Thus the totality of the facts and circumstances and the evidence adduced, leave no manner of doubt that the tribunal had passed the impugned Award clearly against the weight of evidence as well as the settled principle of law. It has not appreciated the evidence properly and ignored a major chunk of evidence and applied wrong legal tests to arrive at wrong decision. I find no reason to sustain this Award.

45. The impugned Award is set aside and quashed.

46. The writ petition succeeds.

47. There shall, however, be no order as to costs.

48. However, there will be no order as to costs.

49. Urgent Photostat certified copy of this order, if applied for, be supplied to the

parties on priority basis upon compliance of all requisite formalities.