

(1995) 08 MP CK 0039

In the Madhya Pradesh High Court

Case No : Writ Petition No. 609 of 1995

M.P. Koyla Mazdoor Sabha

APPELLANT

Vs

South Eastern Coalfields Ltd. and Others

RESPONDENT

Date of Decision : 31-08-1995

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 12(5), 2

Citation : (1996) 1 MPJR 285 : (1996) 41 MPLJ 326 : (1996) MPLJ 326

Hon'ble Judges : S.K. Dubey, J

Bench : Single Bench

Advocate : R.N. Shukla, for the Appellant; Prashant Jaiswal and O.P. Namdeo, for the Respondent

Final Decision : Allowed

Judgement

S.K. Dubey, J.

By this petition under Article 226/227 of the Constitution of India, the petitioner-union, which represents the workers and is a recognised union by the employer respondent No. 1, raised an industrial dispute relating to 112 workmen working in the Mines of Harad Incline, Kotma (West) and 86 workers working in Govind Colliery of Jamnuna Kotma Area, in Shahdol District of respondent No. 1 for seeking the relief of regularisation of services of the said workers, who were working regularly since long as contract labour through a Contractor. After holding the conciliation proceedings, the Assistant Labour Commissioner, Shahdol sent the report of no settlement as the main contest of the respondent No. 1 was that the workers are not employed by respondent No. 1. There is no relationship of employer and employee. The workers are not the workmen as defined u/s 2(s) of the Industrial Disputes Act, 1947 (for short "the Act"). The appropriate Government after going through the record and the failure report refused to refer the dispute u/s 12(5) of the Act for adjudication of Central Government Industrial Tribunal-cum-Labour Court (CGIT) vide orders (Annexures P-7 and P-8) for the reasons that the workers were engaged by a Contractor viz. Sadharam Gupta

and not by the management of South Eastern Coalfields and, therefore, no industrial dispute exists between the management of South Eastern Coalfields and the workmen. Hence this petition.

Shri R. N. Shukla, learned counsel for the petitioner contended that the appropriate Government has delved into the merits of the dispute on an erroneous view of the law and the facts as the question that the workers are continuously working in the mines of the respondent who is the principal employer, whether they are to be treated in such facts and circumstances of the case as the workmen of the respondent No. 1 or not and if so to what relief they are entitled, that question could not have been decided on the stand taken by the employer. Therefore the appropriate Government committed an error in refusing the dispute u/s 12(5) of the Act, for adjudication of the CGIT. Learned counsel pressed into service the decision of the Supreme Court in *State of Bombay Vs. K.P. Krishnan and Others*, *Telco Convoy Drivers Mazdoor Sangh and Another Vs. State of Bihar and Others*, and *Dena Nath and others Vs. National Fertilisers Ltd. and others*, .

Shri Prashant Jaiswal, learned counsel for the respondent No. 1 contended that on the material produced by the parties and the fact that the workers are employed by the contractor under the provisions of Contract Labour (Regulation and Abolition) Act, 1970 (for short "Contract Labour Act"), the appropriate Government on its prima facie satisfaction arrived at the conclusion that the - workers employed by the Contractor are not the workmen within the definition of "workman" u/s 2(s) of the Act and, therefore no industrial dispute as defined in Section 2(k) of the Act exists; hence rightly did. not refer the dispute for adjudication of the CGIT, reliance was placed on the decision of the Supreme Court in case of *Prem Kakar Vs. State of Haryana and Another*, ..

After hearing the counsel for the parties, I am of the opinion that in the background of the facts and the clear averment of the petitioner that the workers employed through the contractor are actually employed by the respondent No. 1, but, the respondent No. 1 under the garb of contract labour is exploiting the labour and is not paying them regular pay scales and due wages for the work of extraction, loading and unloading, blasting for extracting the coal from the mines of the respondent No. 1, which is the regular work of the industrial establishment of the respondent No. 1, the dispute whether the workers for whom the dispute is raised are workmen or not, could not have been decided by the appropriate Government in exercise of its administrative function u/s 10(1) of the Act by delving on the merits taking the erroneous view of mixed question of law and fact, which is the province of the Tribunal or the Court.

In case of *Telco Convoy Drivers Mazdoor Sangh and Anr. v. State of Bihar and Ors.* (supra)., the Supreme Court while quashing the order of the appropriate Government directed it to refer the dispute observing that while exercising power u/s 10(1) of the Act, the function of the appropriate Government is an administrative function and not a judicial or quasi judicial function and that in

performing this administrative function, the Government cannot delve into the merits of the dispute and take upon itself the determination of the lis, which would certainly be in excess of the power conferred on it by Section 10 of the Act. It is true that in considering the question of making a reference u/s 10(1) of the Act, the Government is entitled to form an opinion as to whether an industrial dispute "exists or is apprehended". But the formation of opinion as to whether an industrial dispute "exists or is apprehended" is not the same thing as to adjudicate the dispute itself on its merits which cannot be decided by the Government in exercise of its administrative function u/s 10(1) of the Act.

In case of *Dhanbad Colliery Karmachari Sangh v. Union of India and Ors.*, (1991) Supp. (2) SCC 10, a case relating to contract labour supplied by a contractor to work under coal mines, exactly the same stand as in the present case is, was taken by the employer and on that the appropriate Government refused to refer the dispute to the appropriate Industrial Tribunal u/s 12(5) of the Act on the conclusion that the workmen-employees are the workers of the contractor and were engaged in prohibited categories of work under Contract Labour (Regulation and Abolition) Act, 1976 and were not engaged by the management of the respondent company and, therefore, there was no relationship of the employer and the employee between the management of the respondent company and the employees. The Supreme Court observed that the Central Government instead of referring the dispute for adjudication to the appropriate Industrial Court u/s 10 of the Act, itself decided the dispute which is not permissible under the law. Hence the order of the Central Government was quashed and the Central Government was directed to refer the dispute for adjudication to the appropriate Industrial Court u/s 10 of the Act.

A Division Bench of this Court in Misc. Petition No. 2666 of 1992 decided on 28-1-1993, *M. P. Koyla Mazdoor Sabha v. South Eastern Coal Fields* considered a case between the same parties where the industrial dispute was refused by the Central Government stating that no employer-employee relation exists between the parties. The Court relying on the decision of the Supreme Court in case of *Dena Nath and Ors. v. National Fertilisers Ltd.* (supra) took the view that the Central Government being only authorised to make a reference of industrial dispute u/s 10 of the Act, cannot encroach upon the jurisdiction of the Industrial Court, who has to ultimately decide the reference. In refusing to make the reference, the Central Government reached the conclusion that no employer-employee relation exists between the parties. This was, in fact a question of adjudication by the Tribunal or Labour Court, concerned.

The decision relied upon by Shri Jaiswal in case of *Prem Kakar v. State of Haryana* and another (supra) is distinguishable on facts. In that case the matter related to an employee who was working in a supervisory capacity and was not found to be a workman within the definition of Section 2(s) of the Act. Therefore, the refusal by the appropriate Government was upheld by the Supreme Court holding that the appropriate Government for arriving at the conclusion has not

taken into account any irrelevant extraneous or foreign consideration.

As a result of the aforesaid discussion, I am of the opinion that the appropriate Government exceeded its jurisdiction by delving into merits, which is the province of the Central Industrial Tribunal-cum-Labour Court; hence the orders of the appropriate Government dated 5-12-1994 and 29-11-1994 (Annexure P.7 and Annexure P.8) cannot be sustained and are hereby quashed. A writ of mandamus is issued to appropriate Government to reconsider the matter and take a decision in accordance with law within a period of 3 months.

Accordingly, the petition is allowed with no order as to costs.