

(2023) 01 OHC CK 0116
In the Orissa High Court
Case No : Writ Petition (C) No. 24101 Of 2022

M/s. BOC India Limited, Sundargarh

APPELLANT

Vs

Shri Paramananda Das And Others

RESPONDENT

Date of Decision : 24-01-2023

Acts Referred:

Code of Civil Procedure, 1908 — Section 11
Industrial Disputes Act, 1947 — Section 10(4)

Citation : (2023) 01 OHC CK 0116

Hon'ble Judges : Arindam Sinha, J;M. S. Sahoo, J

Bench : Division Bench

Advocate : Anindita Pujari, Tusar Ku. Mishra

Final Decision : Dismissed

Judgement

Arindam Sinha, J

1. Ms. Pujari, learned advocate appears on behalf of petitioner (management). She submits, impugned is order dated 6th July, 2022 made by the labour Court rejecting her client's petition dated 10th March, 2022 for adding the contractor as party. She submits, the workmen were employed by the contractor. For purpose of effective adjudication on the reference, the contractor is a necessary and proper party.

2. Mr. Mishra, learned advocate appears on behalf of the workmen and relies on judgment of the Supreme Court in Globe Ground (India) Employees Union v. Lufthansa German Airlines reported in (2019) 15 SCC 273, paragraphs 18 and 19. In that context he also relies on sub-section (4) in section 10 of Industrial Disputes Act, 1947. Paragraph-19 is reproduced below.

"19.Further, having regard to limited scope of adjudication, to answer the reference, which is circumscribed by Section 10(4) of the Industrial Disputes Act, 1947, we are of the view that the first respondent is neither necessary nor proper party, to answer the reference by the Industrial Court."

3. On query from Court Ms. Pujari submits, grounds have been taken in the writ petition. We reproduce below ground-C.

"C. BECAUSE the Ld. Industrial Tribunal erred in not appreciating that in order to adjudicate the issue of existence/non-existence of employer-employee relationship between the petitioner and the Opp. Parties it is essential that the contractor is made a party as it is only the contractor who can lead necessary evidence to establish the employment relation, if any amongst the petitioner, the opposite parties and itself.

(emphasis supplied)

4. Section 11 provides for procedure and power of, inter alia the labour Court. Said Court has been provided to have same powers as vested in a civil Court under the Code of Civil Procedure, 1908, when trying a suit in respect of, inter alia, enforcing attendance of any person for examining him on oath and compelling production of documents.

5. We find in impugned order, reference to the first decision on adding parties to the reference, delivered by the Supreme Court in *Hochtief Gammon v. Industrial Tribunal* reported in AIR 1964 SC 1746. Law declared on test to be applied is extracted from two sentences in paragraph-12 reproduced below.

" xx xx xx The test always must be, is the addition of the party necessary to make the adjudication itself effective and enforceable? In other words, the test may well be would the non-joinder of the party make the arbitration proceedings ineffective and unenforceable? It is in the light of this test that the implied power of the Tribunal to add parties must be held to be limited."

It does appear from grounds taken in the writ petition that plea of the management to implead the contractor is for purpose of demonstrating in the reference that the workmen were not appointed by the management but by the contractor. Hence, the management wants the contractor to be added in the proceedings and be examined. In that regard we find from paragraph-4 in impugned order that when the matter was posted for further evidence, after closure of evidence from the workmen, the management filed the petition for addition of party.

6. Sub-section (4) in section 10 mandates confinement of the adjudication to points and matters specified and incidental thereto. Schedule to the reference is clear in specifying the points of adjudication to, inter alia, the termination of services of the workmen, whether legal or justified. For the purpose, clearly, the contractor is not necessary as a party, to be directed as ought to have been properly joined. Procedure and power of the labour Court will allow for the management to enforce attendance of the contractor by summons issued, for his examination as well as to compel production of documents in his custody. Accordingly petitioner did not pass muster on the test for exercise of the limited power of the labour Court, declared in *Hochtief Gammon* (supra).

7. Lufthansa German Airlines (supra) has no application because finding by the Supreme Court in that judgment was in view of the facts before it.

8. We find no illegality nor material irregularity in impugned order. Accordingly, no interference is warranted.

9. The writ petition is dismissed.

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