

(2006) 06 OHC CK 0036
In the Orissa High Court
Case No : OJC No. 12291 of 1999

Secretary, Sundargarh Mining Labour Contract Cooperative
Society Ltd.

APPELLANT

Vs

Bharat Badaik and Others

RESPONDENT

Date of Decision : 20-06-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Industrial Disputes Act, 1947 — Section 10(1), 10(2A), 25B, 25F, 7A

Citation : (2006) 06 OHC CK 0036

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Advocate : Jagannath Das, for the Appellant; Sanjit Mohanty, for Opp. Party No. 1, J.K. Tripathy, for Opp. Party No. 3 and S.C. Samantaray, for Opp. Party Nos. 4 and 5, for the Respondent

Judgement

A.S. Naidu, J.—The Sundargarh Mining Labour Contract Cooperative Society Limited, through its Secretary, seeks to assail the Award dated 30th June, 1999 passed by the Presiding Officer, Industrial Tribunal, Rourkela in Industrial Dispute Case No. 5/97(C).

2. 107 workers claiming themselves to have been engaged by the Petitioner Organisation at Purnapani Limestone and Dolomite Quarry of Rourkela Steel Plant raised a dispute with regard to their illegal termination from service with effect from 16.2.1987. Conciliation having failed, Government of India in the Ministry of Labour in exercise of powers conferred by Clause (d) of Sub-sections (1) and 2(A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") referred the following dispute for adjudication of the Industrial Tribunal. It was asserted by the workmen that no order terminating their services or any notice to that effect was issued to them prior to their termination. They were employed by the Management on permanent basis and were in continuous service. Thus the action of the Management in terminating their services was in violation of the provisions of the Act and was therefore

illegal and not justified.

In its written statement the Management strongly repudiated the averments of the workmen and took the stand that the dispute was hit by the principles of res judicata as some workmen similarly placed like the present workmen had earlier raised a dispute of the very nature and on being referred by the Central Government the same was registered as I.D. Case No. 37/1988(C) before the Industrial Tribunal, Bhubaneswar and the Tribunal had held the same to be not maintainable. The specific case of the Management was that the workmen were engaged on casual basis and their employment was necessitated for repair and maintenance of roads. They were engaged only for a particular period of thirty days. They were never in continuous employment and, as such, the provisions of Section 25-F read with Section 25-B of the Act were not applicable to their case. With the aforesaid averments the Management prayed for rejection of the claim of the workmen.

3. On the basis of the pleadings of the parties the Tribunal framed two issues and both sides adduced oral and documentary evidence. The Tribunal by the impugned Award dated 30th June, 1999 (Annexure-1) came to the conclusion that the workmen were engaged under the Management as casual labourers continuously from the respective dates of their engagement, that is for a period of one year and that the Management in whose custody all the registers were there had not proved the same to show that the workmen had not worked for 240 days in one calendar year preceding their termination with effect from 16.2.1987. On the basis of the such conclusion the Tribunal held that the action of the management in terminating the services of the workmen was not legal and/or justified and, as such, the workmen were entitled to reinstatement in service with full back wages and other consequential benefits.

4. Mr. Jagannath Das, learned Senior Advocate appearing for the Petitioner, criticized the impugned Award from various angles. According to him, the impugned Award reveals complete non-application of mind of the Tribunal. There are several errors in the Awards as would be apparent on the face of the record; the Tribunal has failed to appreciate the fact some workmen similarly placed like the present workmen had earlier raised a dispute of the very nature which was found not maintainable by the Industrial Tribunal, Bhubaneswar in I.D. Case No. 37 of 1988(C), vide the Award, Annexure-2; and the Tribunal has arrived at conclusions which are contrary to the evidence on record. He submitted that even though the earlier Award, Annexure-2, was available before the Tribunal, it did not refer to the same. Apart from that, the case was never heard by the Presiding Officer and therefore the impugned Award not only suffers from the vice of non-consideration of material evidence, but also it was passed in gross violation of the principles of natural justice and equity. Relying upon a decision of the Supreme Court in the case of Shree Subhlaxmi Fabrics Pvt. Ltd. Vs. Chand Mal Baradia and Others, , Mr. Das submitted that it is a fit case where this Court should quash the impugned Award.

5. Mr. S.C. Samantaray, learned Counsel appearing for the workmen, at the other hand strongly repudiated the submissions raised by Mr. Das. Accordingly to Mr. Samantaray, the Tribunal analysed the materials available before it to the fullest extent and the conclusions arrived at by the Tribunal were just, proper and in consonance with law. He further submitted that the earlier Award Annexure-2 had absolutely no relevancy to the present case and the Tribunal rightly decided the issues framed by it. He strenuously submitted the Tribunal, after hearing the parties and analyzing the materials, has arrived at right conclusions and the same not be interfered with by this Court exercising Writ jurisdiction.

6. I have heard learned Counsel for the parties at length and perused the materials available on record.

In the decision reported in *Shree Subhlaxmi Fabrics Pvt. Ltd. Vs. Chand Mal Baradia and Others*, in para-42 thereof, the Supreme Court has observed that the High Court while exercising power under Articles 226 and 227 of the Constitution of India can interfere with an Award passed by Tribunal only:

(A) Where the Tribunal poses unto itself a wrong question and arrives at a wrong answer;

(B) Where the onus of proof is placed on the Management to disprove the claims of the workman before the same are proved by cogent evidence;

(C) The decision is taken upon irrelevant factors not germane to the purpose to arrive at correct finding of fact; and

(D) Where there is failure to take into consideration the relevant factors.

7. Though several contentions were raised by the learned Counsel for both sides, as this matter can be disposed of only on a single question, I confine to that without delving into other questions which may amount to pre-judging the issues.

A perusal at the order-sheets of the Tribunal reveals that by order dated 31.8.1998 a petition been filed on behalf of the second party for production of documents had been rejected and the case had been posted for hearing to 14.10.1998. The order dated 14.10.1998 reads as follows:

The representative of the Union and also the Management No. I are present. None appears for Management No. II (RSP). P.O. has not joined. Put up before P.O. on 27.11.1998 for hearing of petition dated 17.8.1998.

(Emphasis supplied)

Thereafter the case was adjourned on several dates as the P.O. had not assumed charge. The order dated 11.3.1999 reveals that though the P.O. joined, as power u/s 7A of the Act had not been notified, the case was adjourned to 19.4.1999 for hearing on the petition dated 17.8.1998. On 19.4.1999 the case was adjourned to 1.6.1999 for hearing in the petition dated 17.8.1998. So also on 1.6.1999 the case was adjourned to 26.9.1999 for hearing on the petition dated 17.8.1998.

The order dated 26.9.1999 reads as follows:

The representatives of the parties are present. The petition dated 17.8.1998 filed by the Management is put up. In the petition the Management has prayed for allowing it to examine Sri S.C. Nanda as a witness for the Management.

On perusal of the records it is found that the same prayer of the Management was rejected, vide order dated 16.6.1999 by this Tribunal. Hence the petition dated 17.8.1998 of the Management is rejected as it has no merit. Hearing is closed. Put up for passing Award.

8. The impugned Award was passed on the very next date, i.e. on 30.6.1999. After going through the order-sheets of the Tribunal, relevant portions of which has been quoted in the preceding paragraph, this Court is satisfied that in fact the Presiding Officer who passed the impugned Award after assuming charge and receiving the power u/s 7-A of the Act never heard the case on merit at all. In fact, it is evident from the order-sheets that the case was posted to 26.9.1999 only for hearing on the petition dated 17.8.1998 filed by the Management. The said petition was rejected on that date. In all prudence, the Presiding Officer ought to have thereafter posted the main case for hearing. But then the order-sheets reveal that the case was heard and Award was pronounced on the very next date.

9. It is needless to say that the I.D. Case was pending since 1997. Several petitions had been filed. Thus closing the case on the date to which it stood posted only for hearing on the petition filed on 17.8.1998 and delivering the Award on the very next date reveals that opportunity was not given to the parties to present their materials before the Tribunal in support of their respective cases. Thus there was gross violation of the principles of natural justice.

10. In view of the aforesaid conclusion, I have no hesitation to quash the impugned Award Annexure-1 and remit the matter to the CGIT-cum-Labour Court, which has now to deal with such matter, with a direction to dispose of the case as expeditiously as possible, and I direct accordingly. To avoid delay, I direct all the parties to appear before the Tribunal on 11th of July, 2006 when the Tribunal will post the case to a date as per its diary and dispose of the same after giving adequate opportunity of hearing to the parties.