
(2003) 02 CAL CK 0003
In the Calcutta High Court
Case No : Writ Petition No. 4029 (W) of 2002

Workmen represented by Colliery Mazdoor Sabha	APPELLANT
Vs	
Central Govt. Industrial Tribunal and Others	RESPONDENT

Date of Decision : 25-02-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Contract Labour (Regulation and Abolition) Act, 1970 — Section 12, 7
Industrial Disputes Act, 1947 — Section 10(1), 2A

Citation : (2004) 4 CHN 64

Hon'ble Judges : Pratap Kumar Ray, J

Bench : Single Bench

Advocate : K.H. Dasan, for the Appellant; Alok Banerjee and P.K. Das, for the Respondent

Final Decision : Dismissed

Judgement

Pratap Kumar Ray, J.—Heard learned Advocates appearing for the parties.

2. In the instant writ application, the petitioner has assailed the award dated 18.9.2001, passed by Sri B.P. Sharma, Presiding Officer, Central Government Industrial Tribunal at Kolkata in connection with Reference No. 16/85 whereby and whereunder reference was answered against the petitioner by holding that the petitioners being contractor's workers were not entitled to the relief of listing their names in the direct roll of the company and thereby to have regularisation of their services as direct employees of the organisation.

3. By order No. L-19012(66)/84-D.IV(B) dated 10.5.85, the Central Government in exercise of its power under Sections 10(1)(d) and (2A) of the Industrial Disputes Act, 1947, referred the following dispute to the Tribunal for adjudication :

"Whether the Management of Dhomomain Colliery under Sitarampur Area of Bastern Coalfields Ltd., P.O. Sitarampur (Burdwan) was justified in not taking the

workers shown in the Annexure in their direct roll from the date they are working as such? If not, to what relief the workers are entitled and from what date?"

4. In adjudicating the said dispute, being reference aforesaid, the Tribunal considered the evidence of the parties. The petitioners produced their witnesses, which includes the witnesses Sudhir Kumar and Saukat Ali. Such reference was opposed by the Management contending, inter alia, that as the petitioners were contractor's labourers under contractors Sudhir Kumar and Saukat Ali, they had no right to be absorbed in the organisation. Witnesses of the workmen, Sudhir Kumar and Saukat Ali both in the examination-in-chief as well as in cross-examination have admitted that the work orders were issued in the name of either Sudhir Kumar or in the name of Saukat Ali and payments were made by the Management by cheques in respect of the wages of the labourers in the names of those two persons and thereafter they had disbursed the wages. Having regard to such particular evidence from the own witnesses of the workmen concerned, the Tribunal held that the workmen were contractor's labourers working under Sudhir Kumar and Saukat Ali, and thereby no relief was granted.

5. Learned Advocate appearing for the petitioner workmen strongly contended, inter alia, that u/s 12 of the Contract Labour (Regulation and Abolition) Act, 1970, since there was no licence issued to the said Sudhir Kumar and Saukat Ali by the principal employer, accordingly the finding of the learned Tribunal below was not legally tenable. It has been further contended that under the statute, that is Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as the said Act for brevity) and in particular u/s 7 thereof, the principal employer was bound to have registration of the organisation for engagement of contract labourers. It has been submitted strongly that in the absence of any registration of the principal employer in terms of Section 7 and in absence of licence in favour of Sudhir Kumar and Saukat Ali granting licence in terras of Section 12 of the said Act, the status of the workmen as decided by the Tribunal is absolutely de hors of the statutory rule, It has been further contended that in absence of the statutory documents, namely, licence as well as registration, the workmen automatically became direct employees of the organisation. This Court need not wait to have an answer to this in view of the settled judgment of the Apex Court passed long back in the year 1992 in the case of Dena Nath and others Vs. National Fertilisers Ltd. and others, In the said case, the Apex Court held that merely because the contractor or the employer had violated any provision of the Act, namely, the said provisions or the rules, the Court could not issue any mandamus for deeming the contract labour as having become the employees of the principal employer. The view in Dena Natk's case subsequently has been confirmed and followed by a Constitution Bench in the case of Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., of the said report the Constitution Bench considered the impact of Dena Nath's case as passed by the two Judges Bench of Apex Court and thereby confirmed the views as expressed by the two-Judges

Bench. Paragraph 96 reads thus :

"In Dena Nath's case a two Judges-Bench of this Court considered the question, whether as a consequence of non-compliance with Sections 7 and 12 of the CLRA Act by the principal employer and the licensee respectively, the contract labour employed by the principal employer would become the employees of the principal employer. Having noticed the observation of the three-Judges Bench of this Court in Standard Vacuum's case and having pointed out that the guidelines enumerated in Sub-section (2) of Section 10 of the Act are practically based on the guidelines given by the Tribunal in the said case, it was held that the only consequence was the penal provisions under Sections 23 and 25 as envisaged under the CLRA Act and that merely because the contractor or the principal employer had violated any provision of the Act or the rules, the High Court in proceedings under Article 226 of the Constitution could not issue any mandamus for deeming the contract labour as having become the employees of the principal employer. This Court thus resolved the conflict of opinions on the said question among various High Courts. It was further held that neither the Act nor the rules framed by the Central Government or by any appropriate Government provided that upon abolition of the contract labour, the labourers would be directly absorbed by the principal employer".

6. The same view has been reiterated further in the two-Judges Bench in the case of Municipal Corporation of Greater Bombay Vs. K.V. Shramik Sangh and Others, . In the said case, a point was raised by the Union, who contested the matter on behalf of the workers that in absence of registration of the principal employer u/s 7 and the licence of the contractor in terms of Section 12 of the said Act, the workers became the direct employees of the organisation. Such contention was negated by the Apex Court. However, the learned Advocate for the petitioner relied upon a Single Bench judgment of Bombay High Court in the case of S. Shabari V. Nawalkar v. Juhu Vile Parle Gymkhana, Mumbai and Anr., reported in 2003(1) LLJ 376, wherein the learned Judge of Bombay High Court referred the matter back for consideration by the Tribunal on issue about the effect of non-registration of the principal employer u/s 7 of the Act, when any contract labourer is engaged. Learned Advocate for the petitioner further relied upon a judgment in the case of Secretary, H.S.E.B Vs. Suresh and Others etc. etc., , a judgment of two-Judges Bench of Apex Court, to contend that in absence of those documents, namely, registration of the principal employer u/s 7 of the said Act and the licence of the contractor in terms of Section 12 of the said Act, the contractor's workers would be deemed as direct employees of the organisation. In the said judgment, the Apex Court considered the material evidence and thereby held that in absence of registration and licence under the said Act, the employees concerned would be deemed as direct employees of the organisation and the contract system was a mere camouflage. That judgment on factual matrix of the issue is distinguishable for its applicability in the present case. Herein, in the impugned award, the learned Tribunal discussed in details about the evidence as recorded. It has been admitted by the workmen through

their own witnesses that work order was issued in the names of Sudhir Kumar and Saukat Ali, who had been entrusted with the job as contractors under the Management. It has been further established even in cross-examination that those two persons received all the payments through cheques in their names for disbursement of the amounts to the workers who were engaged by them. In view of such positive evidence, accordingly the Tribunal held that there was direct relationship of contractor labourer in respect of the workmen concerned with Sudhir Kumar and Saukat Ali. In view of such positive evidence as available before the Tribunal, the finding of the Tribunal cannot be said as perverse and/or illegal for interference by this Court sitting in writ jurisdiction under Article 226 of the Constitution of India. However, in view of the settled law of the Apex Court as confirmed by the Constitution Bench affirming the view in Dena Nath's case wherein it has been held that even in absence of any licence u/s 12 of the said Act in favour of the contractor allowing him to engage the labourer and even in absence of any registration of the principal employer u/s 7 of the said Act for engagement of contractor, workmen would not be entitled to claim their right as direct employees of the organisation this case has no merit. Besides, the judgment in Secretary, Haryana State Electricity Board with due respect, is not the ratio on the point in view of the Constitution Bench judgment passed in Steel Authority of India Limited (supra) affirming the views in Dena Nath's case. Having regard to such, the view as expressed in the case of Secretary, Haryana State Electricity Board (supra) has no binding effect before this Court in view of the Constitution Bench view as expressed later on though the Constitution Bench did not consider the view passed in the case of Secretary, Haryana State Electricity Board. Having regard to such, this Court is not finding any perversity or illegality in the award.

7. Hence, this writ application stands dismissed.