
(2009) 05 JH CK 0117
In the Jharkhand High Court

Workmen represented by the Secretary namely Shekhar Sharma

APPELLANT

Vs

Employer in Relation to the Management of Bhaga Bandh Colliery of B.C.C.L. and Others

RESPONDENT

Date of Decision : 08-05-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 10(5), 25 F

Citation : (2009) 122 FLR 633

Hon'ble Judges : R.R. Prasad, J; Amareshwar Sahay, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Amareshwar Sahay, J.—The relevant facts, in short, for the purpose of deciding this appeal are as follows:

By a reference dated 17/09/1990, the Central Government referred the following dispute for adjudication to the Industrial Tribunal:

Whether the demand of the workmen of Kendwadih Colliery of Messrs Bharat Coking Coal Limited Post Office Kusunda, district-Dhanbad for regularization of blacksmith mentioned in the Annexure as departmental workers is justified? If so, to what relief are the concerned workmen entitled?

1. Chandan Manjhi, 2. Dukhan Mistry, 3. Saudagar Mistry, 4. Sarju Mistry, 5. Rah Kishore Paswan, 6. Gyan Chand paswan, 7. Mala Paswan, 8. Ram Chandra Garhari, 9. Deo narain Mistry, 10. Ashok Paswan, 11. Bigan Mistry, 12. Surjdeo Paswan, 13. Chandrika Mistry, 14. Jagaranath Mistry, 15. Rajendra Mistry, 16. Munilal Mistry, 17. Rajeshwari Mistry, 18. Ishwar Chandra Mistry, 19. Jago Mistry, 20. Laxman Mistry.

Subsequently, vide order dated 09/11/1990 one another notification was issued describing it to be an amendment/corrigendum of the first reference. By the second reference the following dispute was referred for adjudication:

Whether the action of the management of Bhagaband Colliery of M/s Bharat Coking Coal Ltd. in not giving employment to Contractors workers Shri Siya Ram Biswakarma and seven others shown in Annexure is justified? If not, to what relief are the concerned workmen entitled?

1. Siya Ram vishwakarma, 2. Janeshwar Vishwakarma, 3. Paras Nath Prasad, 4. Ramdeo Rewani, 5. Prem Bhuiya, 6. Sarjan Bhuiya, 7. Kamta singh, 8. Indrajit Paswan, 9. Dhaneshwar Prasad.

2. The Industrial Tribunal by an award dated 28/08/1997 held that the action of the management Bhaga Bandh Colliery of M/s Bharat Coking Coal Limited in not giving employment to Contractors workers Shri Siya Ram Bishwakarma and others as per the corrigendum was not justified and, thereafter, directed the management to employ/ regularize the concerned workmen as blacksmiths at the entry level category and also pay them at least 30% of full back wages from that very date within two months from the date of publication of the award in the Gazette.

The Industrial Tribunal held that the concerned workmen worked on permanent and perennial nature of job for continuous period from 1981 to 1985 and, therefore, the stoppage of work by the management on making claim by the workmen for their regularization without notice or without compensation was violative to the provision of Section 25 F of the Industrial Dispute Act and, therefore, it was void ab initio.

3. The Management of B.C.C.L. challenged the aforesaid award of the Industrial Tribunal by filing a writ petition before this Court, which has been allowed by the learned Single Judge by the impugned order dated 12/04/2006 holding;

Firstly, that the original reference dated 17/09/1990 and the subsequent corrigenda dated 09/11/1990 were completely different from each other. Earlier reference related to the demand of workmen of "Kendwadih Colliery" for regularization of blacksmith, whereas the second reference was as to whether the action of the management of "Bhaga Bandh Colliery" in not giving employment to contractor's workers was justified or not and, therefore, cancellation/supercession of the first reference by second reference was against the law laid down by the Supreme Court in the case of The State of Bihar Vs. D.N. Ganguly and Others, ".

Secondly, that the Tribunal after noticing the submissions of the parties, jumped to the conclusions that the workmen have worked on permanent and perennial nature of job continuously from 1981 to 1985 and the action of the Management in stopping the work was in violation of Section 25 F of the Industrial Dispute Act. According to the learned Single Sessions Judge, such finding of the tribunal was without any basis and without any evidence on record.

Thirdly, that from the evidence of the Union itself, it was clear that the workmen were working under a Contractor and in the absence of any notification u/s 10 of

the Contract Labour (Regulation & Abolition) Act it could not have been held by the Tribunal that the employer was not justified in getting the works in question done through a Contractor or it was a camouflage. There was no finding by the tribunal attracting violation of Section 25 F of the Industrial Dispute Act. The learned Single Judge also held that the decision in the case of "Workmen of Bhurkunda Colliery v. Management of Bhurkunda Colliery of Central Coalfields Limited reported in 2006 (2) JLJR 80 (SC)" relied on by the writ petitioner was of no help to the petitioner in view of the fact that in that case the dispute was regarding discrimination in employment/regularization of the casual workers whereas in the present case that was not the situation and, accordingly, the learned Single Judge set aside the award of the Industrial Tribunal by allowing the writ application.

4. The Union has filed the present appeal challenging the order of the learned Single Judge by which he set aside the said award of the Tribunal.

5. From the facts stated above, it is clear that the learned Single Judge allowed the writ application on two grounds, firstly that the amendment/cancellation of the first reference by a subsequent second reference was illegal and against the law laid down by the Supreme Court in the case of *The State of Bihar Vs. D.N. Ganguly and Others*, " and secondly on the merit of the case by holding that neither there was any material nor there was any finding by the Industrial Tribunal attracting violation of Section 25F of the Industrial Dispute Act and the onus was open to the union to prove the facts for establishing violation of Section 25 F of the Industrial Dispute Act, which the union failed to prove.

6. Mr. Srivastava, learned Counsel appearing for the appellant submitted that in view of Section 10(5) of the Industrial Dispute Act, the Central Government had the authority and powers to add or amend any reference made by it by subsequent corrigendum or amendment. He further submitted that the management after participating in the proceeding before the Tribunal for the adjudication of the second reference is stopped from challenging the reference because the management waived their right to challenge the cancellation/supersession/amendment of the first reference. It was further submitted by him that when the Tribunal on the basis of facts reached at a conclusion that the action of the management was in violation of Section 25 F of the Industrial Dispute Act then learned Single Judge could not have upset the finding of facts of the Tribunal in exercise of the powers under Article 226 of the Constitution of India like that of a Court of Appeal. It was further submitted by Mr. Srivastava that the learned Single Judge erred in not considering the judgment relied on behalf of the writ petitioner in the case of "Workmen of Bhurkunda Colliery v. Management of Bhurkunda Colliery of Central Coalfields Limited reported in 2006 (2) JLJR 80 (SC)", but this decision has been overruled in the case of *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, ".

7. On the other hand Mr. Mehta, learned Counsel appearing for the management/respondent submitted that the tribunal had directed the management to

regularize the concerned workmen as blacksmiths but now the said issue has already been set at rest by a Constitution Bench of the Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, " wherein the Apex court has held that in matters relating to regularization, the State and the Instrumentalities of the State under Article 12 of the Constitution of India are required to see that equal opportunity in matters of appointment have to be given to all eligible candidates and regularizing the employees who have entered into employment without observing the constitutional mandate of Article 14 would be illegal.

8. Mr. Mehta further submitted that in view of the decision of the Supreme Court in the case of The State of Bihar Vs. D.N. Ganguly and Others, the Central Government had no jurisdiction or authority under the law either to cancel/supersede the initial reference or substitute the same by absolutely a new reference describing it to be a corrigendum or amendment and this point was raised by the management before the tribunal.

9. Now, let us take the point with regard to the validity of the cancellation/supersession/amendment of the first reference made u/s 10(1) of the Industrial Dispute Act by the Central Government.

10. Admittedly, initially by reference dated 17/09/1990, the Central Government did refer the dispute for adjudication to the tribunal regarding the demand of workmen of Kendwadih Colliery of M/S B.C.C.L. as to whether the demand of the workmen of Kendwadih Colliery for regularization of blacksmiths mentioned in the Annexure as departmental workers was justified or not?.

11. Subsequently, by issue of an amendment/corrigendum dated 09/11/1990, the original reference was modified or changed by amendment and this time reference was made to adjudicate as to whether the action of the Management of Bhagabandh Colliery of M/s Bharat Coking Coal Limited in not giving employment to Contractor's Workers Sri Siya Ram Vishwakarma and seven others shown in the Annexure was justified or not?.

12. Both the reference dated 17/09/1990 and 09/11/1990 are already quoted in Para-1 herein above. From perusal of both the aforementioned reference, it would appear that originally the dispute regarding the workmen named in the Annexure, who were 20 in numbers of "Kendwadih Colliery" was referred for adjudication but subsequently, by amendment dated 09/11/1990 a totally new dispute questioning the action of the management of "Bhaga Bandh Colliery" in not giving employment to Contractor's workers Siya Ram Vishwakarma and eight others were referred for adjudication. The Tribunal, on the basis of the subsequent amended reference dated 09/11/1990, adjudicated the dispute and passed the award and not with regard to the initial or original reference dated 17/09/1990. Therefore, it is apparent that the first initial original reference dated 17/09/1990 was cancelled and totally replaced by a totally new dispute for adjudicating the action of the employer in not giving employment to the

concerned Contractor's workers of Bhaga Bandh Colliery.

13. The submission of Mr. Srivastava that Section 10(5) of the Industrial Dispute Act empowers the Central Government to add or amend the reference made by it earlier u/s 10(5) of the Industrial Dispute Act.

For ready reference Section 10(5) of the Industrial Dispute Act is quoted herein below:

10(5) Where a dispute concerning any establishment or establishments has been, or is to be, referred to a Labour Court, Tribunal or National Tribunal under this section and the appropriate government is of opinion, whether on an application made to it in this behalf or otherwise, that the dispute is of such a nature that any other establishment, group or class of establishments of a similar nature is likely to be interested in, or affected by, such dispute, the appropriate Government may, at the time of making the reference or at any time thereafter but before the submission of the award, include in that reference such establishment, group or class of establishments, whether or not at the time of such inclusion any dispute exists or is apprehended in that establishment, group or class of establishments.

14. On a bare perusal of the aforesaid Section 10(5) of the industrial Dispute Act, it appears that where any dispute concerning any establishment has been made to the Labour Court/Tribunal and the Government is of the opinion that the dispute is of such nature that any other establishment, group or class of establishment of a similar nature is likely to be interested in, or affected by, such dispute, the Government, may at any time thereafter but before the submission of the award include in that reference such establishment, group or class of such establishments, whether or not at any time of such inclusion any dispute is exist or preferring in that establishment. In my view, Section 10(5) of the Industrial Dispute Act empowers the Government to add and include similar dispute regarding other establishment in the original reference but it does not speak that the original/initial reference can totally be substituted or replaced by way of amendment or corrigendum.

15. Here in the present case the original reference has totally been replaced or substituted by the second reference in the name of amendment/corrigendum, which, according to the Supreme Court, in the case of The State of Bihar Vs. D.N. Ganguly and Others, was not permissible in law. The Supreme Court in that case held that the Act does not expressly confer any power on the appropriate Government to cancel or supercede a reference made u/s 10(1) of the Act.

16. We are, therefore, in agreement with the view of the learned Single Judge that since the Central Government had no power or authority to cancel or supercede the initial original reference made u/s 10(1) of the Industrial Dispute Act and, therefore, the award passed by the Tribunal on the basis of the subsequent amended reference is nullity.

17. In view of the aforesaid findings, it is not necessary for us to go into the other points raised by the parties.

18. In view of the discussions and findings above, the impugned order of the learned Single Judge is hereby affirmed and this appeal stands dismissed. However, in the facts and circumstances of the case there shall be no order as to cost.