

M/S B.C.C.L Vs. their Workmen and anr

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Court : Jharkhand

Decided On : Aug-07-2013

Appellant : M/S B.C.C.L

Respondent : their Workmen and anr

Judgement :

W.P.(L)No.3381of2001 --- An application under Article 226 of the Constitution of India ---- M/s. Bharat Coking Coal Limited ...Petitioner -Versus- Their workmen represented by Sri B.K. Ghose, Executive Member, Janta Mazdoor Sangh, Bihar Building, P.O. Jharia, District- Dhanbad & anr. ..Respondents. --- For the Petitioner : Mr. A. K. Mehta, Adv. For the Respondents : Mr. Mahesh Tiwari, Adv. --- PRESENT HON'BLE MR. JUSTICE APARESH KUMAR SINGH Reserved on 25.07.2013 Pronounced on 07 / 08 /2013 Aparesh Kumar Singh, J.

Heard learned counsel for the parties.

2. The writ petitioner-management is aggrieved by the Award dated 20th March, 2011 delivered in Reference Case No. 101 of 1991 by Central Government Industrial Tribunal No. 1, Dhanbad, whereby while answering the reference it has held that the workmen named in the list enclosed with the reference are entitled to regularization as permanent employees of Madhuban Washery Project of M/s. B.C.C.L Ltd. in Category-I General Mazdoor. The management was directed to implement the Award within 30 days from the date of its publication.

3. The Central Government, Ministry of Labour, vide Notification dated 11th October, 1991, in exercise of powers conferred under Section 10(1)(d) and sub-Section (2A) of the Industrial Disputes Act, 1947, had referred the following dispute for adjudication to this Tribunal: Whether the management of Madhuban Washery Project of M/s. BCCL is justified in not according regularization with proper categorization and corresponding wage payment as per NCWA-IV to the following 14 workmen employed through sub- contractor, M/s. Ratan Engineering Works If not, to what relief are the workmen entitled?

- 1) Shri Arjun Mahto;
- 2) Shri Jugal Mahato;
- 3) Shri Madan Mahato;
- 4) Shri Suresh Prasad;
- 5) Shri Dwarika Prasad;
- 6) Shri Ramdev Prashad;
- 7) Shri Gouri Shankar Saw;
- 8) Shri Ramji Saw;
- 9) Shri Mahednra Singh;
- 10) Shri Mathur Mondal; 11) Shri Kisun Mahato
- 12) Shri Jiten Mahato;
- 13) Shri Aghru Mahato
- 14) Md. Sirajuddin Ansari.

2. 4. The case of the workmen as per their written statements filed before the learned Tribunal was that M/s. M.A.M.C Ltd. was appointed as contractor for construction of work by the management of Madhuban Washery Project. M/s.

M.A.M.C Ltd. in turn had sub contracted the work to M/s. H.S.C.L M/s. Ratan Engineering works was the petty contractor of the sub-contractors. Arjun Mahato and 13 others named in the schedule were on the roll of the petty contractor performing the job of operators, fitters, welders, gas-cutting, helpers and mazdoors, respectively as per employment. These petty contractors were working under a contract awarded by the Coal Company-BCCL Ltd. The concerned workmen were therefore entitled to be regularized on proper scale of wages like all other employees in the Coal Industry as they were arbitrarily being paid lessor wages than the category wages for the corresponding jobs as per National Coal Wages Act (NCWA). Therefore, the action of the management in not regularizing these workmen in proper categorization and corresponding wage payment in terms of NCWA is not justifiable. In such circumstances, they claimed to be regularized under the employment of the management of BCCL, for which they had raised industrial dispute which was referred before the learned Tribunal.

5. The management in their written statement took a stand that it had awarded turn key contract to M/s. Mining & Allied Machinery Corporation Ltd., a Govt. of India Undertaking, Durgapur vide an agreement dated 9th December, 1985 for complete design, engineering, supply, delivery to site, erection and commissioning of a coal washery of 2.5 MTA at the cost of Rs. 72,50,00,000/- (Rupees Seventy two crores fifty lakhs) only. M/s. M.A.M.C. was required to complete the erection of plant within the stipulated time and to commission the same and hand over charge to M/s.BCCL. The washery was located at Madhuban Project of the Management.

6. It is further stated on their behalf that M/s. M.A.M.C. awarded the contract to M/s. Hindustan Steel Works Construction Ltd., Calcutta vide an agreement dated 30th September, 1986. The details of works to be carried out by the contractor were enumerated in the schedule of quantities and the value was Rs. 11,11,97,463/- (Rupees Eleven crores eleven lakhs ninety thousand four hundred sixty three and fifty paise) only. As the contract involved various type of works, the contractor selected and engaged sub-contractors having specialization on certain items of works. In that process M/s. Hindustan Steel Works Construction Ltd. engaged various sub-contractors from time to time. These sub contractors selected and recruited their own workers, paid them their wages, supervised their

works and exercised all kinds of control over them. The sub contractors paid them the retrenchment compensation notice pay after 3. completion of their works and thus released them after giving full and final payments. These concerned workmen are claiming to have worked under the sub contractor, M/s. Ratan Engineering Works during the period of his contract under M/s. Hindustan Steel Works Construction Ltd. The sub-contractors' work was over in the middle of 1991 and all the workmen were paid the notice pay and retrenchment compensation at the time of completion of the contract job. They received all other dues at the time of their termination of service under the sub- contractors. M/s. Hindustan Steel Works Construction Ltd. also completed its civil construction works in the middle of 19 91 and retrenched all the surplus workmen not wanted by it in different contract jobs. Therefore M/s. B.C.C.L- had awarded turn key contract to M/s. Mining and Allied Machinery Corporation Ltd. and in no way was concerned with the designing, planning, management, administration or day to day work of the company. It was required to check the performance of the washery after it was commissioned and certified. Therefore, the management had no liability of any kind in respect of workmen employed by M/s. Mining and Allied Machinery Corporation Ltd. or by M/s. Hindustan Steel Works Construction Ltd or by sub contractor. The management of BCCL was not involved during the period of construction of the project and the project was not a mine, no work connected with mining of coal. The project mainly consisted of civil construction work, structural erections and installation of machineries. Thus, it was not falling within the definition of the mine or control industry and the reference itself was incompetent due to want of jurisdiction of the learned tribunal. The workmen had no employer or employee relationship with the management of B.C.C.L at any point of time. They received their wages from the sub-contractor, who could not make payment of wages less than the minimum wages prescribed. These workmen therefore cannot claim regularization or absorption in the employment of management of BCCL. The claim of the workmen was therefore without any merit and the reference should be answered against them.

7. Before learned Tribunal certain material exhibits were produced on behalf of the management being the photocopy of agreements as Ext.- M-1 & M-1/1 of the work awarded to M/s. Mining and Allied Machinery Corporation Ltd. on turn key basis.

They had also produced photo copy of the license of M/s. Mining and Allied Machinery Corporation Ltd. under Section 12 of the Contract Labour (Regulation & Abolition) Act, 1970, dated 18th November, 1986 marked as Ext.-M/2. They had filed license of M/s. Hindustan Steel Works Construction Ltd as contractor under Section 12 of the Act of 1970 dated 18 th November, 1988. They had also filed wage-sheet regarding full and final payment made to the concerned persons by M/s. Rabi & Co. and M/s. Ratan Engineering Works 4. marked as Exts. M-3 and M-3/1. One Ashok Kumar, a Superintending Engineer, working at Madhuban Coal Washery since 1986 under M/s. B.C.C.L, was examined as MW-1, who deposed that the work had been allotted to M/s. Mining and Allied Machinery Corporation Ltd by M/s. BCCL for construction of Madhubhan Coal Washery, which appointed sub contractors namely M/s. Hindustan Steel Works Construction Ltd, a Govt. of India Undertaking, who in turn, further awarded petty works to other contractors including M/s. Rabi & Co. and M/s. Ratan Engineering works.

8. The said management witness also deposed that these concerned workmen were employed by petty contractors whose work was supervised by sub-contractor and payments were made by sub-contractor. He also stated that supervision of M/s. B.C.C.L Ltd. was to see as to whether the work was done according to specification of contract with M/s. MAMC Ltd.

9. The Union had examined two of the concerned workmen as M.W-1 and M.W-2, namely, Khedam Mahato and Arjun Mahato, who deposed that they were working under petty contractor in Madhuban Washery Project from May, 1987 to June, 1991 which belongs to M/s. B.C.C.L. They were also performing the works of fitter, helper etc and used to prepare column beam and other articles as per specification. Initially they got Rs. 17/- per day which was raised to maximum of Rs. 27/- per day which is much less than the wages of N.C.W.A. They accordingly demanded for regularization under the employment of M/s. BCCL.

10. Learned Tribunal after discussing the evidence adduced by the rival parties, came to a finding that it is admitted case of the management of M/s. B.C.C.L Ltd. that the concerned persons have worked in construction work of Madhuban Washery project under petty contractors, M/s. Rabi and Company and M/s. Ratan

Engineering works. It had not filed any license of these two petty contractors to show that they were licensee under section 12 of the Act of 1970. The management of M/s. B.C.C.L. had also not filed any registration certificate under Section 7 of the Act of 1970 to show that Madhuban Washery project of M/s. B.C.C.L. was registered as principal employer for engaging contractor. Therefore, learned tribunal came to a finding that the management of Madhuban Washery Project of M/s. B.C.C.L was not having a registration under Section 7 of the Act, 1970 and petty contractors also did not have license under Section 12 of the same Act. Therefore, it proceeded to hold that in view of settled principle of law as rendered by Hon'ble Apex court in several cases including in the case of Secretary, Haryana Steel Electricity Board-Vs.- Suresh others reported in 1999 L.L.R page 433 and Air India Statutory Corporation-vs.- United Labour Union reported in 1997 Lab. I.C. Page 365, in 5. absence of any registration certificate of the principal employer or license of the contractor, the contractor's workers shall be deemed to be the employees of the principal employer. He accordingly proceeded to render the Award for regularization of these workmen as permanent employees of Madhuban Washery Project of M/s. B.C.C.L in Category No. 1 General Mazdoor.

11. Learned counsel for the petitioner in the wake of the aforesaid facts and the material produced before the learned tribunal, assails the findings and the Award rendered by it on the following grounds (a) it is undisputed case of the workmen that they were working under the petty contractor, M/s. Ratan Engineering works and were paid wages by the petty contractor who was the petty contractor of the sub-contractor, M/s. Hindustan Steel Works Construction Ltd. Therefore, in no case the management of M/s. B.C.C.L was the principal employer of the workmen (ii) it is also undisputed fact that the petitioner-M/s. B.C.C.L had awarded a turn key contract for construction of Madhuban Coal Washery to M/s. Mining & Allied Machinery Corporation Ltd., a Govt. of India Undertaking, Durgapur which had sub-contracted the work to M/s. H.S.C. Ltd., who in turn, had engaged petty contractor, namely, M/s. Ratan Engineering Works Ltd. (iii) the aforesaid contract was not prohibited under any notification under section 10(1) of the Act of 1970 (iii) M/s. Mining & Allied Machinery Corporation Ltd and Hindustan Steel Works Construction Ltd were having proper license and registration under the Act of 1970

since these workmen themselves have admitted that they were engaged by the petty contractor who was engaged by sub-contractor Hindustan Steel Works Construction Ltd who in turn was given contract by turn key contractor M/s. M/s. Mining & Allied Machinery Corporation Ltd. The management of BCCL in no case therefore could have been held to be the principal employer of the workmen in question. He further submits that the findings of the learned tribunal that the petitioner did not have a registration under Section 7 of the Act of 1970 and the petty contractors did not have a license under Section 12 of the same Act, does not ipso facto lead to the simple conclusion that the petitioner is the principal employer of the workmen and they should be regularized in its employment. For non compliance of the provision of Sections 7 or 12 of the Act of 1970, it is well settled that penal consequences may follow but it cannot lead to automatic regularization of the workmen. He relies upon a judgment rendered in the case of Dena Nath & others-Vs.- National Fertilizers Ltd. reported in (1992) 1 SCC 69.as also in the case of Municipal Corporation of Greater, Mumbai-Vs.- K.V.Shramik Sangh & others reported in (2002) 4 SCC 60.in support of his aforesaid submission.

6. 12. The petitioner has also submitted that the learned tribunal has relied upon a judgment in the case of Air India Statutory Corporation-vs.- United Labour Union reported in 1997 Lab. I.C. Page 365, which were specifically overruled by Constitution Bench of Hon'ble Supreme Court rendered in the case of SAIL-Vs.- National Union Waterfront Workers reported in (2001) 7 SCC 1.

13. In such circumstances, the impugned judgment is completely bad in law. Even if the contract was prohibited under section 10(1) of the Act of 1970, the learned Tribunal had to follow the mandate laid down under the judgment rendered by Hon'ble Apex Court in the case of SAIL-Vs.- National Union Waterfront Workers reported in (2001) 7 SCC 1 (Supra) by giving a specific finding whether the engagement of the contractor to get the work performed was in the nature of a ruse or camouflage which has not at all been followed by learned tribunal in the instant case. The impugned Award is, therefore, bad in law.

14. Learned counsel for the workmen submits that Madhuban Coal Washery is undoubtedly under the management of M/s. B.C.C.L. He further submits that the work performed by the workmen were in relation to Madhuban Coal Washery in respect of which the management-M/s. BCCL awarded turn key contract to M/s. Mining & Allied Machinery Corporation Ltd. who had sub- contracted the work to M/s. Hindustan Steel Works Construction Ltd. and these workmen were working under the petty contractor, M/s. Ratan Engineering Works having been engaged by the sub-contractor of M/s. Hindustan Steel Works Construction Ltd. Therefore, if nature of work performed by the workmen were similar to the workmen being performed under Madhuban Washery Project of M/s. B.C.C.L, therefore, they were entitled for being regularized as workmen under the management of M/s. BCCL.

15. He has relied upon a judgment of Hon'ble Supreme Court rendered in the case of Hussainbhai, Caligut-Vs.- The Alath Factory Tejhila Union and others reported in A.I.R 197.SC 141.para 5, which lays down the test for determining a workman. As per the test laid down for determining the question whether a person is a workman or not, the workman in question in the present reference were clearly coming under the definition of workmen being engaged in works under the principal employer of M/s. B.C.C.L. The whole arrangement made through contractors was only the paper work employed by M/s. BCCL to deny the benefit of regularization to these workmen and similar wages as available to the employees of M/s. BCCL under NCWA.

16. In such circumstances, learned Tribunal has rightly found that M/s. BCCL should be deemed to be the principal employer of these workmen and they should be regularized in their employment .

7. 17. I have heard learned counsel for the parties at length and gone through the materials on record. The facts which have been borne on record and have been referred to in some details in earlier part of the judgment shows that M/s.B.C.C.L - petitioner had awarded the turn key work to M/s. Mining and Allied Machinery Corporation Ltd. for construction work of Madhuban Washery Project for a sum of Rs. 72,50,00,000/- (Rupees Seventy two crores fifty lakhs) only. M/s. Mining and Allied Machinery Corporation Ltd. was having a license as contractor under

Section 12 of the Act of 1970 dated 18th November, 1986 annexed as Ext. M-2.

18. M/s. Mining and Allied Machinery Corporation Ltd. awarded part of the work to its sub-contractor M/s. Hindustan Steel Works Ltd., who was also having a license under section 12 of the Act of 1970 dated 18th November, 1988. The Management had also filed agreement being Exts.- M-1 and M-1/1 under which the contract was awarded to M/s. Mining and Allied Machinery Corporation Ltd. on turn key basis. It is also not in dispute and has been accepted by the workmen themselves that they were working under the petty contractor, M/s. Ratan Engineering works who was engaged by sub-contractor M/s. Hindustan Steel Works Ltd. to perform certain works. M/s. Mining and Allied Machinery Corporation Ltd. and M/s. Hindustan Steel Works Ltd. both were Govt. of India Undertakings. Evidence of two workmen-witnesses i.e. W.W-1 and W.W.-2, namely, Khedam Mahato and Arjun Mahato also shows that they were working under petty contractor in Madhuban Washery Project from May, 1987 to June, 1991. The case of the management as per written statement was that these workmen were paid wages by the petty contractor after completion of the work and were also given compensation wages for the notice period and had received full and final payment on termination of their work.

19. In the wake of such evidence brought on record, the learned Tribunal proceeded to render a finding that since Ms/. Madhuban Washery Project Ltd. was not registered under Section 7 of the Act of 1970 as a principal employer and the petty contractor M/s. Ratan Engineering Works was not also holding license under the same Act, therefore, the concerned workmen being the workers of the petty contractor should be deemed to be the employee of the principal employer. While recording the findings the learned Tribunal relied upon a judgment of Hon'ble Apex court rendered in the case of Secretary, Haryana Steel Electricity Board-Vs.- Suresh & others (Supra) as also in the case of Air India Statutory Corporation -Vs.- United Labour Union (Supra). However, the judgment of Hon'ble Apex court in the case of Air India Statutory Corporation -Vs.- United Labour Union (Supra) stood overruled by Constitution Bench judgment of the Apex Court rendered in the case of SAIL- 8. Vs.- National Union Waterfront Workers reported in (2001) 7 SCC 1 (Supra). Under the mandate of law prescribed under paras 125 and 126 of the

judgment in the case of SAIL-Vs.- National Union Waterfront Workers reported in (2001) 7 SCC 1 (Supra) on the issuance of prohibition notification under section 10(1) of the Act of 1970, the industrial adjudicator on a reference made before it is required to come to a finding on the basis of evidence adduced before it whether the engagement of contractor by the principal employer is in the nature of a ruse or camouflage. On rendering of such finding and after taking into account the factors which are enumerated in the said paragraphs of the judgment, the learned Industrial Tribunal has to come to a conclusion as to whether the workmen in question engaged through the contractor are required to be directed to be absorbed in the services of the principal employer. The impugned Award in the instant case was not given effect to as it had been stayed by interim order dated 31st July, 2001. Therefore the judgment of Constitution Bench in the case of SAIL-Vs.- National Union Waterfront Workers reported in (2001) 7 SCC 1 (Supra) would also be applicable to the facts of the present case. The consequences flowing out of non registration under section 7 of the Act of 1970 by the principal employer or the contractor/petty contractor not having a license under section 12 of the Act of 1970 are not that the workmen could be automatically deemed to be treated as the employees of the principal employer. The learned Tribunal in such circumstances has acted contrary to the law laid down in the case of Dena Nath & others-Vs.- National Fertilizers Ltd. reported in (1992) 1 SCC 69.as also in the case of Municipal Corporation of Greater, Mumbai-Vs.- K.V.Shramik Sangh & others reported in (2002) 4 SCC 609.

20. In the instant case there was no prohibition notification issued either. Even in such a case the learned Tribunal had to come an independent finding on the basis of materials on record whether the arrangement made by the petitioner management was in the nature of camouflage or ruse before it could have directed regularization of the workmen in the employment of the petitioner-M/s BCCL.

21. The facts of the instant case as has been discussed hereinabove, however portray a totally contrary picture in the sense that the work which was a turn key contract awarded to M/s. Mining and Allied Machinery Corporation Ltd executed through the sub-contractor M/s.Hindustan Steel Works Construction Ltd and the petty contractor M/s Ratan Engineering Works Ltd.in turn were in no way

connected with the operation of mine carried out by the petitioner-M/s. B.C.C.L. The turn key contract awarded to M/s.Mining and Allied Machinery Corporation Ltd was for the construction of Madhuban 9. Washery Project itself which involved design, engineering, supply, delivery to site, erection and commissioning of a coal washery of 2.5 MTA at the cost of Rs. 72,50,00,000/- (Rupees Seventy two crores fifty lakhs) only.

22. In such circumstances, when the workmen themselves accepted that they were working under the petty contractor, learned Tribunal committed serious error of law which goes to the root of the matter by rendering the impugned Award, directing regularization of these workmen in the employment of M/s. B.C.C.L.

23. In the aforesaid facts and circumstances and the reasons recorded hereinabove therefore the impugned Award cannot be sustained in law as well as on facts and it is accordingly, quashed. The writ petition is allowed. (Aparesh Kumar Singh, J) Jharkhand High Court, Ranchi The 7th / Aug. /2013 Jk/NAFR

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