CASE NO.:
Appeal (civil) 1902-1903 of 2000

PETITIONER:
M/s Bharat Coking Coal Ltd.

RESPONDENT:
Rashtriya Colliery Mazdoor Sangh

DATE OF JUDGMENT: 16/01/2006

BENCH:
ARIJIT PASAYAT & TARUN CHATTERJEE

JUDGMENT:
J U D G M E N T

ARIJIT PASAYAT, J.

Appellant calls in question the legality of the judgment rendered by a Division Bench of the Patna High Court upholding the judgment of the learned Single Judge. By the said judgments certain persons were held to be workmen of the appellant.

Factual background in a nutshell is as follows:

The Central Government in exercise of power under Section 10 of the Industrial Disputes Act, 1947 (in short the 'Act') referred the following two disputes for adjudication to the Central Government Industrial Tribunal No.1, Dhanbad (hereinafter referred to as the 'Tribunal'):

Reference No.32 of 1989 dated 16th March, 1989:

1. "Whether the action of the management of Sudamdih Colliery of M/s in denying employment to Shri Karma Rout and 21 others with effect from 9.7.1977 is justified? If not, to what relief the concerned workmen are entitled" and

Reference No.35 of 1989 dated 20th March, 1989:

2. "Whether the action of the management of Sudamdih Area of M/s BCCL in denying employment to Shri Bhagwat Singh and 3 others, viz. Shri Sapan, Karan Sahi and Shanti Thakur, who were engaged as sump cleaning mazdoors is justified? If not, to what relief are the workmen entitled"?

As the controversy involved in both the cases was the same, the Tribunal heard them analogously and answered the references in favour of the workmen declaring them to be workmen of the principal employer, namely, the Management of M/s. Bharat Coking Coal Ltd. (hereinafter referred to as the 'management') and directing for their reinstatement in service with effect from the dates of references with 75% back wages. Being aggrieved by the said combined Award, the management filed two writ petitions before the Patna High Court, being CWJC No.859/1993 (R) and CWJC No. 856/1993 (R), which were dismissed by the learned Single Judge on 10th August, 1998. Not being satisfied with the judgment of the learned single Judge, the management has filed two appeals under clause 10 of the Letters Patent.

Relying on a decision of this Court in Air India Statutory Corporation etc. v. United Labour Union and others (AIR 1997 SC 645) the Division Bench held that the decision of the learned Single Judge

was unexceptionable. Reference was also made to a decision of this Court in Secretary, Haryana State Electricity Board v. Suresh & Ors. etc. (JT 1999 (2) SCC 435) to hold that where the engagement of workmen by a contractor is a camouflage to conceal the real relationship between principal employer and the workmen, then also the workmen employed through unlicensed contractor are liable to be treated as workmen of the principal employer.

Mr. Ajit Kumar Sinha, learned counsel for the appellant submitted that the view expressed by the learned Single Judge and the Division Bench cannot be sustained in view of the Constitution Bench judgment of this Court in Steel Authority of India Ltd. and Ors. v. National Union Waterfront Workers and Ors. (2001 (7) SCC 1). It was pointed out that though dispute purportedly relating to the period 1976-77 was raised long after i.e. about a decade and on that score alone the claimants were not entitled to any relief. There was a settlement arrived at which was binding. But the Tribunal and the High Court did not take note of the same. Additionally, in the reference names of the workmen were not given and it was not clear as to whose cause was being espoused by the union. For the first time in the statement filed before the Tribunal by the Union, the names were indicated. The reference was, therefore, incompetent, but the Tribunal had lightly brushed it aside.

Mr. S.B. Upadhyay, learned counsel for the respondent on the other hand submitted that the decision in Steel Authority's case (supra) applies to the present case as the so-called contractor was introduced as a camouflage. This aspect has been noticed by the Tribunal. Additionally, the respondents were not inactive and they were making all the efforts to get the matter settled. Merely because the names were not given, that did not render the reference incompetent. Further, the settlement referred to had no legal sanction.

In order to appreciate the rival submissions observations of this Court in various cases need to be noted.

In Steel Authority's case (supra) it was observed, inter alia, as follows (at para 125):

"125 - The upshot of the above discussion is outlined thus:
(1)(a) Before 28-1-1986, the determination of the question whether the Central Government or the State Government is the appropriate Government in relation to an establishment, will depend, in view of the definition of the expression "appropriate Government" as stood in the CLRA Act, on the answer to a further question, is the industry under consideration carried on by or under the authority of the Central Government or does it pertain to any specified controlled industry, or the establishment of any railway, cantonment board, major port, mine or oilfield or the establishment of banking or insurance company ? If the answer is in the affirmative, the Central Government will be the appropriate Government; otherwise in relation to any other establishment the Government of the State in which the establishment was situated, would be the appropriate Government;
(b) After the said date in view of the new definition of that expression, the answer to the question referred to above, has to be found in clause (a) of Section 2 of the Industrial Disputes Act; if (i) the Central Government company/undertaking concerned or any undertaking concerned is included therein eo nominee, or (ii) any industry is carried on (a) by or under the authority of the Central Government, or (b) by a railway company;

or (c) by a specified controlled industry, then the Central Government will be the appropriate Government; otherwise in relation to any other establishment, the Government of the State in which that other establishment is situated, will be the appropriate Government.
(2)(a) A notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour in any process, operation or other work in any establishment has to be issued by the appropriate Government:
(1) after consulting with the Central Advisory Board or the State Advisory Board, as the case may be, and
(2) having regard to
(i) conditions of work and benefits provided for the contract labour in the establishment in question, and
(ii) other relevant factors including those mentioned in sub-section (2) of Section 10;
(b) Inasmuch as the impugned notification issued by the Central Government on 9-12-1976 does not satisfy the aforesaid requirements of Section 10, it is quashed but we do so prospectively i.e. from the date of this judgment and subject to the clarification that on the basis of this judgment no order passed or no action taken giving effect to the said notification on or before the date of this judgment, shall be called in question in any tribunal or court including a High Court if it has otherwise attained finality and/or it has been implemented.
(3) Neither Section 10 of the CLRA Act nor any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by the appropriate Government under sub-section (1) of Section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order absorption of the contract labour working in the establishment concerned.
(4) We overrule the judgment of this Court in Air India case (Air India Statutory Corpn. v. United Labour Union, (1997) 9 SCC 377 prospectively and declare that any direction issued by any industrial adjudicator/any court including the High Court, for absorption of contract labour following the judgment in Air India case (Air India Statutory Corpn. v. United Labour Union, (1997) 9 SCC 377 shall hold good and that the same shall not be set aside, altered or modified on the basis of this judgment in cases where such a direction has been given effect to and it has become final.
(5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to

be treated as employees of the principal employer who shall be directed to regularise the services of the contract labour in the establishment concerned subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.
(6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the establishment concerned has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications."

In a later case in Nitinkumar Nathalal Joshi and Ors. v. Oil and Natural Gas Corporation Ltd. and Ors. (2002 (3) SCC 433), it was noted in paragraph 8 as follows:
"8-In the present case, the appellants were not absorbed by the principal employer. Therefore, it cannot be said that the decision in Steel Authority of India Ltd. case ((2001) 7 SCC 1) cannot be applied. The directions issued by the learned Single Judge were modified by the Division Bench of the High Court and never given effect to. Therefore, the directions issued by this Court in Steel Authority of India Ltd. case ((2001) 7 SCC 1) are applicable on all fours."

So far as delay in seeking the reference is concerned, no formula of universal application can be laid down. It would depend on facts of each individual case.

However, certain observations made by this Court need to be noted. In Nedungadi Bank Ltd. v. K.P. Madhavankutty and Ors. (2000 (2) SCC 455) it was noted at paragraph 6 as follows:

"6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since heel) settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made. The only ground advanced by the respondent was that two

other employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising an industrial dispute was ex-facie bad and incompetent."

In S.M. Nilajkar and Ors. v. Telecom District Manager, Karnataka (2003 (4) SCC 27) the position was reiterated as follows: (at para 17)

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree. It is true, as held in M/s. Shalimar Works Ltd. v. Their Workmen (supra) (AIR 1959 SC 1217), that merely because the Industrial Disputes Act does not provide for a limitation for raising the dispute it does not mean that the dispute can be raised at any time and without regard to the delay and reasons therefor. There is no limitation prescribed for reference of disputes to an industrial tribunal, even so it is only reasonable that the disputes should be referred as soon as possible after they have arisen and after conciliation proceedings have failed particularly so when disputes relate to discharge of workmen wholesale. A delay of 4 years in raising the dispute after even reemployment of the most of the old workmen was held to be fatal in M/s. Shalimar Works Limited v. Their Workmen (supra) (AIR 1959 SC 1217), In Nedungadi Bank Ltd. v. K.P. Madhavankutty and others (supra) AIR 2000 SC 839, a delay of 7 years was held to be fatal and disentitled to workmen to any relief. In Ratan Chandra Sammanta and others v. Union of India and others (supra) (1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief. Although the High Court has opined that there was a delay of 7 to 9 years in raising the dispute before the Tribunal but we find the High Court factually not correct. The employment of the appellants was terminated sometime in 1985-86 or 1986-87. Pursuant to the judgment in Daily Rated Casual Employees Under P&T Department v. Union of India (supra) (AIR 1987 SC 2342), the department was formulating a scheme to accommodate casual labourers and the appellants were justified in awaiting the outcome thereof. On 16-1-1990 they were refused to be accommodated in the scheme. On 28-12-1990 they initiated the proceedings under the Industrial Disputes Act followed by conciliation proceedings and then the dispute was referred to the Industrial Tribunal cum-Labour Court. We do not think that the appellants deserve to be non suited on the ground of delay."

It appears that the Tribunal and the High Court did not consider the factual position in the background of the legal position as noted above. Of course at the point of time when the matter was decided Air

India's case (supra) held the field. But, in view of the pronouncement of the Constitution Bench in Steel Authority's case (supra) the matter needs to be re-examined by the High Court. Though it was submitted by Mr. Upadhyay that there is a finding about the appellant having adopted a camouflage, there is no definite finding by the Tribunal and/or the High Court in this regard. Mere reference to certain observations of this Court would not suffice without examination of the factual position. Additionally, the effect of omitting the names of the claimants whose cause was being espoused by the Union has not been considered by the High Court in the proper perspective. Similar is the position regarding purported settlement. In these peculiar circumstances, it would be appropriate for the learned Single Judge of the High Court to re-consider the matter. Accordingly, the matter is remitted to the High Court so that learned Single Judge can consider the matter afresh taking into account the principles set out above and consider their applicability to the background facts on the issues raised by the appellant. As the matter is pending since long, learned Chief Justice of the High Court is requested to allot the matter to a learned Single Judge who shall make an effort to dispose of the matter afresh within a period of six months from the date the matter is allotted by the learned Chief Justice.

The appeals are allowed to the aforesaid extent without any order as to costs.