

PETITIONER:
FOOD CORPORATION OF INDIAWORKERS UNION.

Vs.

RESPONDENT:
THE FOOD CORPORATION OF INDIAAND ANOTHER.

DATE OF JUDGMENT: 16/07/1996

BENCH:
PARIPOORNAN, K.S.(J)
BENCH:
PARIPOORNAN, K.S.(J)
KULDIP SINGH (J)

CITATION:
JT 1996 (6) 424 1996 SCALE (5)218

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

PARIPOORNAN, J.

Delayed condoned. Special leave granted.

2. The appellant is the Food Corporation of India Workers Union claiming to be a registered trade Union at Calcutta. The present proceedings are filed by its Secretary. The respondents are - (1) the Food Corporation of India, New Delhi and (2) The Presiding Officer, Central Government Industrial Tribunal at Calcutta. This appeal is filed assailing the award passed by the Central Government Industrial Tribunal (the 2nd respondent) dated 5.11.1993 in Reference No. 13 of 1977 and published by the Central Government on 5.3.1994.

3. We heard counsel. This litigation has a chequered history. This is the third round in this Court. The first respondent, the Food Corporation of India, is a statutory Corporation established for the purpose of trading in foodgrains and other food stuffs and for matters connected therewith and incidental thereto. It undertakes purchase, storage, movement, transport, distribution and sale of foodgrains and other food stuffs. The Corporation has set up its godowns/depots and other storage facilities. Labour is engaged at different stages in the various Depots for handling storage and transit of foodgrains and other food stuffs. The Corporation is functioning through various offices and depots through out India. It seems that the Corporation adopted different methods at different places for employing labour for handling foodgrains. We are concerned in this case with one such Depot set up by the Corporation at Siliguri in West Bengal State. It is stated that at the relevant time, 464 workmen designated as Handling Majdoors were attached to the said Depot. Initially, a contractor was engaged by the Corporation for handling, storage and transit of foodgrains at Siliguri Depots. Subsequently, the procedure of direct payment to 'labourers was followed by the Corporation. The workmen at

its Siliguri Depot went on strike in about January 1975, which was called off in March 1975. Thereafter, the Corporation changed the method of payment. The direct payment system was superseded. The payment through contractor was reintroduced. The 464 workmen already accepted as the workmen of the Corporation, agitated through their Union that the change-over was illegal and malacious. The question arose, whether the aforesaid 464 persons represented by the Union and attached to Siliguri Depot were the workmen of the Corporation and the change in the conditions of service made by the Corporation was valid and legal. This led to an industrial dispute. The matter came up finally before this Court in Civil Appeal No. 1055(NL)/81. By judgment dated 28.2.1985, a three-Member Bench of this Court examined the matter in great detail, and held thus:

"Examining the system of direct payment as set out in the letter dated April 28, 1973 further amplified by the letter dated October 29, 1973, it becomes crystal clear that name of every workman engaged to handle foodgrains at Siliguri Depot will be mustered in a register and his daily out turn will be specified. The payment will be by piece rate as was in vogue at the time of the contractor system. The bill will be prepared setting out the name of the workmen and the out-turn of each. The pay bill will be prepared setting out the names of the workmen and the out-turn of each. The pay bill will be prepared by the Depot staff who are regular employees of the Corporation. The payment will be made by the Corporation but will be distributed to each workman according to the piece rate by what are called Sardar/Mondal. The bills with the acquittance in original evidencing payment would be filed with the Corporation."

"When the direct payment system was introduced, the intermediary contractor disappeared from the picture. The work rendered by each workman had to be entered into a muster roll register. The Corporation will distribute the wages calculated on piece rate to each workman and each workman was required to be a party to the acquittance roll to be retained by the corporation. The wages were distributed by Sardars/Mondals."

(p. 97 Main paperbook)

".....the conclusion is inescapable that since the introduction of the direct payment system, the workmen became the workmen of the Corporation and a direct master-servant relationship came into existence."

"if what was intended to be done

was retrenchment, ex facie the action is contrary to the provisions of Sec. 25F of 9 the I.D. Act, 1947. Viewed from either angle, the action of introducing so as to displace the contract of service between the Corporation and the workmen would be illegal and invalid and an initio void and such action would not alter, change have any effect on the status of the afore-mentioned 464 workmen who had become the workmen of the Corporation."

(pp. 101-102 Main Paperbook)

".....an award be made that the afore mentioned 464 workmen who had become the workmen of the Corporation continued to be the workmen employed by the Corporation and shall be entitled to all the rights, liabilities, obligations and duties as prescribed for the workmen by the Corporation. A formal award to that effect shall be made by the Tribunal."

(pp 107 Main paperbook)

(emphasis supplied)

"As it was stated before this Court that these workmen continued to be employes, undoubtedly under the contractor since the illegal change was introduced, the question of paying back wages does not arise. The Tribunal however must satisfy itself before making the final award whether any workman was denied work and consequently wages."

(pp. 107-108 Main Paperbook)

(emphasis supplied)

(Pages 83 to 108 - Main Paperbook contain the judgment dated 28.2.1985)

4. It seems that subsequent to the above judgment, the Tribunal passed an Award dated 24.11.1988 in the following terms :

"18. In view of what has been stated and discussed above, before I go into the determination of the question with regard to the back wages to be obtained by the eligible workmen concerned on proper materials to be produced before this Tribunal, this Tribunal in reference, to the direction of the Hon'ble Supreme Court in the penultimate first paragraph, makes the formal award as directed by the Hon'ble Supreme Court by way of interim award in the following manner.

19. The 464 workmen named and mentioned in the list annexed to the written statement of the

workmen and referred to by the Hon'ble Supreme Court in their judgment in Civil Appeal No. 1055(NL) of 1981, who had become the workmen of the Corporation continue to be the workmen employed by the Corporation and shall be entitled to all the rights, liabilities, obligations and duties as prescribed for the workmen by the Corporation".

(p. 4 Paperbook Part II)
(emphasis supplied)

5. The first respondent, Food Corporation of India, agitated the matter again and in Civil Appeal No. 155/90, a two-Member Bench of this Court by judgment dated 17.1.1990, passed the following order:

"Counsel on both sides and in our opinion very fairly submitted that there is need to identify the workmen who are entitled to reinstatement. In fact, with that understanding we made the order dated December 29, 1989 keeping in abeyance of the interim award of the Tribunal.

It seems to us having regard to the facts of the case, the identification of the workmen is a must and it should be properly done by the Tribunal. We therefore, direct the Tribunal to proceed to examine the identification of the 464 workmen including 203 persons in respect of whom there appears to be no dispute from the management."

(p.147 Main Paperbook)
(emphasis supplied)

6. Subsequently, the Tribunal had passed the Award dated 5.11.1993, after completing the identification exercise in respect of 287 workmen. (See Annexure to the order detailing "287" and their number in the list of 464, mentioned by the appellant-Union in the statement filed by it.) The Tribunal has taken the view that none of them were ever employed by the Food Corporation of India. It has stated that they will not be taken within the fold of 464 workmen dealt with in the above mentioned two appeals of this Court. It should be stated again that out of 464 workmen dealt with in the above mentioned two appeals of this Court. It should be stated again that out of 464 workmen dealt with in judgment in C.A. No.1055(NL)/81 dated 28.2.1985, the Corporation had no dispute with regard to 203 persons; and so, it appears, the dispute centered around 261 persons only; and perhaps it is in this context, only the cases of 287 workmen who came forward to prove their identity, as having been included in the total 464' were considered by the Tribunal in its order dated 5.11.1993.

7. The Special Leave Petition came up before this Court on more than one occasion. The counsel for the Corporation fairly stated that he shall contact the Corporation and assist this Court to settle the problem in an amicable way. The Counsel appearing for the parties were also heard at some length and this Court taken through the rather voluminous order of the Presiding Officer, Central Government Industrial Tribunal, which is assailed herein.

This will be evident from a perusal of the earlier orders dated 20.3.1995 and 3.4.1995. But, no satisfactory solution could be arrived at to solve the problem amicably.

8. We were informed by appellant's counsel during one or two hearings that a few workers were also present in Court. When the matter came up during hearing, we expressed the view that we will, on our own, examine a few specimen cases and endeavour to identify whether such persons present in Court would fall within the "287 persons" whose identifications were questioned and considered in the order of Tribunal dated 5.11.1993. A list containing the photo copies duly attested by the Tribunal of the Identity Cards of 22 concerned workmen was filed before us. We were informed that 287 workmen deposed before the Tribunal. The "Identification" exercise is attempted after a lapse of more than 15 years and due to lapse of time, there is every possibility of the photographs and writings thereon getting blurred. The workmen are illiterates or semi-literates. These vital handicaps have to be borne in mind in evaluating the "identification" to be undertaken and it is evident that the Tribunal was totally oblivious to the above stark or hard realities of the situation, in its approach and conclusion in the matter. We compared the Identity Cards of two such persons -- Permit No., 23 Sri Chandradeo Thakur date of issue of identity card, 14.4.1978; and Permit No.178, Sri Sachidanand Sahani, date of issue of the identity card, not easily traceable. They are available at pages 7 and 11 of the papers containing the xerox copies of the identity cards. We talked to the above persons, who were present in Court, in the presence of counsel and passed the following order on 4.5.1995 : (Page 264(A) - main paper book

"One of the workers by the name of Chander Dev Thakur is present before us. We have seen him and talked to him. His photograph on the xerox copy of the identity card dt. 14.4.78 seems to be the photograph of Chander Dev Thakur. We have also taken his signatures before us and tally with the signatures which are on the identity card. Both the signatures are identical.

Another worker, Sachidanand Sawhney is also present in Court. After seeing him and seeing the photograph on permit No. 178, we find that the photograph is of the person who is standing before us.

We have examined these two workers only to test the findings of the Industrial Tribunal who found that the photographs of none of the workers tally with their actual face and profile. "

9. We would like to highlight a few facts. It is the Food Corporation of India Workers Union, the appellant herein, who was a party in the earlier proceedings which resulted in the decision of this Court in C.A. No.1055(NL)/81 and also C.A. No.155/90. The appellant claims to be a recognised trade Union. The first respondent - management, stated that the appellant was a recognised Union till 1984 and not thereafter, since no recognition was given to Union dealing with contract labour. It is so stated in the additional

affidavit filed by the first respondent dated 17.7.1995. The appellant has filed an affidavit in reply dated 18.7.1995. It has asserted that it is the only relevant trade Union, representing the handling and loading & unloading Mazdoors, contract labour, direct payment or departmental employees employed by the first respondent in the whole of India. The appellant has been representing the above mentioned workers for more than three decades. It also appears from the papers filed by the appellant that at various stages negotiations were carried on between the appellant - Union and respondent. So it cannot be said that the petitioner is not a valid or recognised Trade Union.

10. The second aspect which requires to be highlighted is this: the dispute originally concerned 464 workmen. It is stated that pending the proceedings a few persons died. According to appellant-Union, the number of persons who are dead is '56' and that has been accepted by the Tribunal. (Page 128 - paper book Vol . II). It may be a case where employment should be provided to the nearest kith and kin of the deceased workman as provided by the relevant rules/orders etc.. From the later order of this Court in C.A. No.155/90 dated 17.1.1990, it is evident that in respect of 203 persons, there was no dispute by the Management. Perhaps, it was in this context that evidence was led in respect of only 287 workmen. One clinching circumstance disclosed in the case in appreciating the rival pleas of the parties regarding the identity of the workmen, who were employed in the Siliguri Depot of the Food Corporation of India, deserves to be noticed. In the written statement filed by the appellant - Union before the Tribunal as early as 7.7.1978 in paragraph 10, it is stated thus :

"10. That the Siliguri depot of the Corporation, under the office of the District Manager, Siliguri, 464 Handling Mazdoors, as whom in Annexure marked 'A' with all relevant details, were employed on 21.7.75, for doing the handling workers of the Corporation."

(p.37 - Main paperbook)
(emphasis supplied)

The management filed a reply thereto dated 26.10.1978 which is available at pages 149 to 162 of the Main Paperbook. At page 153, in paragraph 10, the management stated thus:

"10. The statement as made in paragraph 10 of the written statement of the workmen is substantially correct."

The annexure to the written statement (the list) filed by the appellant's Union dated 7.7.1978 available at pages 44 to 59 contains the names and designation of the (464) Mazdoors of Siliguri Depot as on 21.7.1975. The employment of such persons as specified in the list was not disputed at all by the Management in the written statement. It does not appear that the Management ever contested the fact that 464 workmen, specified in the list, were attached to Siliguri Depot at the relevant time in two prior Appeals i.e. C.A. No.1055(NL)/81 and C.A.No.155/90. Indeed, in the later appeal, out of 464 workmen the Management had no dispute about 203 persons.

11. Our finding in the earlier order dated 4.5.1995, at least regarding two persons who were present in Court and whose identity could not and was not disputed with reference to their photographs and xerox copies of the Identity cards, signatures therein etc., (though illustrative) points

out the palpably erroneous conclusion of the Tribunal that "none" of the 287 persons, who claimed to be included in the list of "464" were able to establish that they were employees of the Siliguri Depot of the Food Corporation of India at the relevant time. We are of the view that this Court in C.A. No.155/90 by order dated 17.1.1990, only directed the Tribunal to examine the identification of 464 workmen, including 203 persons in respect of whom there was no dispute from the Management. There was no direction nor was any need to find out whether the said workmen mentioned in the list attached to the written statement filed by the appellant dated 7.7.1978 worked for the Corporation at the relevant time and that matter was settled by the judgment of this Court dated 28.2.85 rendered in C.A. No.1055(NL)/81. On the question as to whether the identification directed by this Court vide judgment dated 17.1.1990 in C.A. No.155/90 has been made properly by the Tribunal, we are of the view, in the light of our earlier order dated 4.5.1995, that we should proceed on the basis that the finding of the Tribunal in this regard is vitiated. The counsel for the appellant submitted before us that the concerned workmen produced before the Tribunal the following to prove their identity:

1. Identity Cards issued by the Food Corporation of India (attested by one of the officers of the Corporation).
2. Permit Slips issued by the Corporation at the relevant time.
3. Ration Cards issued to the workmen.
4. Certificates issued by the Commissioner, Panchayats.

From the specimen of the xerox copy of the identity card, (all of them similar) we find that apart from the signature of the workmen concerned, it was attested by the labour union official and also by the official of the first respondent Corporation. This fact was not denied at the time of hearing. We should bear in mind the undisputed fact that the identity cards are prepared by the Management and signed by one of their officials. In this case, it is proved that one Sri S. Dutta (WW 2) has signed in most of the identity cards. Sri S. Dutta is an official of the Corporation. His signature is admitted (page 12 of the paper book, Vol. II).

12. We are also informed that documents like the Pay sheets, deduction of Provident Fund Contribution, Hajira Sheets, xerox copies of Permit Slips, original list of workmen working with the Corporation, published on 12.12.1978 by the Corporation, which should admittedly be in the possession of the Corporation and directed by the Tribunal to be produced, were not produced by the Corporation. It seems that the Management filed an affidavit stating that the documents are not in their possession and the Tribunal stated that the plea of the appellant to call for the documents does not arise. That such primary documents should be and are available with the Corporation, cannot be denied, in view of the facts highlighted or stated by this Court in the earlier judgment in C.A. No. 1055(NL)/81. The Tribunal abdicated its duty in not taking effective or proper steps to obtain the said crucial and primary documents. In the circumstances, an adverse inference was called for, against the Corporation for non production of vital primary documents.

13. In disposing of C.A.No.1055(NL)/81 this Court had occasion to advert to the fact that the names of workmen engaged in handling foodgrains at the Siliguri Depot will be mustered in a Register and his daily out-turn will be specified. And further the payment will be made by piece rate and bill will be prepared setting out the names of the workmen and the out-turn of each, by the Depot Staff who are

regular employees of the Corporation; and the payment will be made by the Corporation and the same will be distributed to each workman according to the piece rate, and the bills with the acquittance in original would be filed with the Corporation. This Court also observed that the work rendered by each workman had to be entered in the muster roll register and each workman is required to be a party to the acquittance roll to be retained by the Corporation. Such registers, which should be available with the Corporation, were not even produced before the Tribunal. The first respondent Corporation could have demonstrated that the presumption flowing from the various identity cards, issued by it, permit slips, ration cards and the certificates issued by the Commissioner of Panchayats produced by the workmen, did not relate to either the 464 workmen or any of them, and who were mentioned in the list filed along with the written statement of the Union dated 7.7.1978. No such attempt was made by the Corporation, which at all times was in possession of the above primary records in the matter. It is evident that the best evidence available with the Corporation was withheld.

14. We have already adverted to the fact that the Corporation did not challenge the list filed along with the written statement of the appellant dated 7.7.1978; on the other hand, it was admitted in the written statement filed by the Corporation. On an examination of two illustrative cases (persons who were present in Court along with their identity cards), we are convinced, that the order passed by the Tribunal that "none" of the 287 workmen were able to establish that they were employees of the Siliguri Depot of the Food Corporation of India, is a palpable error.

15. The judgment of this Court in C.A. No. 1055(NL)/81 is conclusive to show that 464 persons attached to "the list" are workmen of the Corporation entitled to the benefit given by the judgment. The only further question that fell for consideration as a result of the later order of remit in C.A.No. 155/90 was "the identity of the 464 workmen" and not whether they or any of them, had been in employment at the relevant time. On a perusal of the order of the Tribunal we are inclined to hold that the Tribunal wholly misconceived the nature of the orders passed by this Court in C.A. NO. 1055(NL)/81 and C.A.No.155/90 and in conducting a fresh appraisal as to whether all or any of the "464" workmen included in the list were in employment of the Corporation at the relevant time. The approach made by the Tribunal, even in the matter of marshalling or considering the material placed before it, seems to be wrong for the following reasons. The Tribunal was apparently of the view, that there should be "evidence" to prove the facts, as per the provisions of the Evidence Act; It is not so. The Tribunal is not a Court. There should be only 'material' and not evidence as required by the Evidence Act. It appears that a good many witnesses were examined by another member who was the predecessor of the member, who delivered the final award. The Tribunal has stated that the evidence of the petitioner (workmen) is not "duly proved", "legally proved" or proved "beyond reasonable doubt". This approach was also wrong. The only question was whether on weighing the probabilities, the materials placed by the petitioner was acceptable or rendered probable. The Tribunal has considered at length the minute particulars in the case, in the light of the requirements of the Evidence Act and has made much of the minor lapses in evaluating the probabilities. There are vague generalisations and an unreal or impractical approach to the materials available before

it. Even where the predecessor has found resemblance in the signatures of the identity cards with other records, the later Tribunal has discarded cards as falling under four groups - 'no resemblance', 'some resemblance', 'little resemblance' and 'clear resemblance' - based on no clear guidelines or principles and has based the conclusion at its ipse dixit. To crown all this, the Tribunal has totally failed to note that the Management has no explanation, regarding workmen other than "203" admitted by it, and it did not produce any person bearing the name in the list of "464" nor did it offer any explanation, regarding such other persons (other than 203).

16. On a review of the above facts and circumstances, we are satisfied that the order of the Tribunal is infirm. The only question is, what is the further order to be passed to reach a finality in this long drawn litigation. The matter is pending for nearly two decades. No doubt, counsel for the Corporation invited our attention to certain difficulties involved in "conclusively" determining the identity of the persons as per orders of this Court dated 28.2.85 and 17.1.90. Be that as it may, long lapse of time cannot be ignored and this Court cannot shirk its responsibility in resolving the issue on the basis of available material, however, difficult or arduous it may be. After all, it is a "human problem" that calls for an urgent decision. Taking into account the totality of the facts and circumstances and to do complete justice in the matter, we hold that the only way to resolve this issue is to direct the appellant, (trade union), through a responsible office-bearer, duly authorised, to identify the persons, whose identity are questioned or disputed by the Management. On such identification being made by the appellant, the Management shall reinstate them in service forthwith and also continue to employ such workmen, who shall be entitled to all the rights, liabilities, obligations and duties as prescribed for the workmen by the Corporation, as held by this Court in C.A.No. 1055(NL)/81 dated 28.2.1985. We would, however, like to stress the fact, that the concerned officer of the appellant Union, should act with extreme candour and circumspection. If it turns out later, that any lapse or fraud in the matter was attempted or perpetuated, the concerned official of the Union along with the persons identified, will be liable to prosecution and further penalties. This order shall be implemented within a period of 3 months from today. For working out the above, the first respondent shall issue a detailed notice in writing to the appellant, with particulars, asking the appellant to produce the concerned workmen, along with their identity cards and such other records available with them and then, the representative of the appellant Union shall in writing endorse by a certificate the identity of the person concerned, as one covered by "the list" of 464 workmen (List filed along with the written statement dt. 7.7.1978).

17. In disposing of C.A. NO. 1055(NL)/81 by Judgment dated 28.2.1985, this Court did not award any backwages. The only direction given was that the Tribunal must satisfy whether any of the workmen was denied work and consequently it resulted in loss of wages. We direct that such of those persons, who are properly identified as coming within the list in the manner stated hereinabove, shall be reinstated in service forthwith. We are also satisfied, on an overall view of the matter, that the 1st respondent Corporation - an instrumentality of the State - has unnecessarily delayed the final disposal of the entire proceedings. If one expected a "fair and impartial" deal from the 1st respondent, he would

feel disappointed. We are constrained to say so, on the facts of this case. So, we further direct that such of those persons reinstated after identification, as indicated above, shall also be paid back wages calculated at 70% of the "normal earnings", from the date of the expiry of the period specified in C.A.No.155/90, i.e., 17.4.1990, till they are reinstated. It is ordered accordingly. We, therefore, set aside the order of the Tribunal appealed against and allow this appeal in the manner indicated hereinabove with costs - costs quantified at Rs. 25,000/-payable to appellant by the 1st respondent Corporation.

JUDIS