

PETITIONER:
JAMSHEDPUR CONTRACTORS' WORKERS' UNION

Vs.

RESPONDENT:
STATE OF BIHAR AND ORS.

DATE OF JUDGMENT 22/08/1990

BENCH:
MISRA RANGNATH
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MISRA RANGNATH
PUNCHHI, M.M.
RAMASWAMY, K.

CITATION:
1990 SCR (3) 977 1991 SCC Supl. (1) 158
JT 1990 (3) 650 1990 SCALE (2) 402

ACT:

Industrial Disputes Act, 1947: S. 10/Contract Labour (Regulation & Abolition) Act, 1970: S. 10--Contract workers engaged by Tata Iron and Steel Company Ltd. in permanent and regular nature of work--Whether entitled to permanent employment under the principal employer.

HEADNOTE:

The contract workers engaged by the management of the Tata Iron and Steel Company Ltd., Jamshedpur in the permanent and regular nature of work before February 11, 1981 in (1) transportation of materials within the plant which was not dependent on outside supply, (2) processes connected with manufacturing process, (3) removal and handling of waste products, and (4) sweeping and cleaning of machines etc., sought permanent employment under the principal employer. The dispute was referred by the State Government under s. 10 of the Industrial Disputes Act to the Industrial Tribunal.

The Tribunal held that the workmen constituted the contract labour and, therefore, the reference was not maintainable. It further held that action, if any, had to be taken under s. 10 of the Contract Labour (Regulation and Abolition) Act, 1970, power to take steps for which vested in the State Government and not in the Tribunal. The writ petition challenging the award was dismissed by the High Court in limine.

In the appeal by special leave it was brought to the notice of the Court on behalf of the management that contract labour was now confined to item 3 only.

Disposing of the appeal, the Court ordered:

1. The reference to the Tribunal shall now read: "Whether the contract workers engaged by the management of the Tata Iron and Steel Company Ltd., Jamshedpur in the permanent and regular nature of work before 11.2.1981 are entitled to permanent employment in

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regard to items 1, 2 and 4 under the principal employer".
[980B-C]

2. The State Government to take its own decision within three months under the provisions of the Contract Labour

(Regulation and Abolition) Act, 1970 in regard to item No. 3 as to whether the contract labour employment should be terminated. [980D]

3. The Tribunal to dispose of the dispute within six months. [980F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4380 of 1990.

From the Judgment and Order dated 4th October, 1985 of the Patna High Court in C.W.J.C. No. 4065 of 1985.

R.K. Garg and A. Sharan for the Appellant.

K.K. Venugopal, P. Chidambaram, S. Sukumaran, K.K. Lahiri, D. Partha Sarthy and S.N. Jha (N.P.) for the Respondents.

The following Order of the Court was delivered:

Special leave granted.

We have heard Mr. Garg for the appellant, Mr. Chidambaram for the Principal Employer and Mr. Venugopal for the respondent Union.

A reference was made by the State Government of Bihar under section 10 of the Industrial Disputes Act to the Industrial Tribunal, Ranchi, on 9.7.81 referring to the following disputes for adjudication:

(1) Whether the contract workers engaged by the management of the Tata Iron and Steel Company Ltd., Jamshedpur in the following permanent and regular nature of work before 11.2.1981 are entitled for permanent employment?

(2) Transportation of materials within the plant which is not dependent on outside supply;

(3) All processes connected with the manufacturing process;

(4) Removal and handling of waste product; and

(5) Sweeping and cleaning the machines, conveyors, shops and offices.

The Tribunal by its Award dated 18.12.1984-, came to hold that the workmen constituted the contract labour and, therefore, the reference was not maintainable. If further held that action, if any, had to be taken only under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and the power to take steps under that statutory provision vested in the State Government and not in the Tribunal.

It may be pointed out that prior to the reference being made to the Tribunal, the matter had been taken before the Patna High Court and by judgment dated 4.9.1981 the writ petition was disposed of holding that a reference had already been made to the Industrial Tribunal and the Award was awaited and it was open to the State Government to take steps under section 10(1) of the Contract Labour (Regulation and Abolition) Act, 1970. The High Court in its ultimate conclusion indicated:

"When the Award was finally made by the Industrial Tribunal, to the State Government, as the learned Advocate General assures us, shall determine the matter in accordance with law. If after such an Award is made and no decision is taken by the State Government within a reasonable time, the petitioners shall be at liberty to move this Court again"

The subsequent events have exposed the fallacy of the conclusion of the High Court. In fact if the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 had been properly kept in view; no reliance could have been placed on the fact that the Award was awaited.

When the Award was made challenge was raised before the High Court but it refused to entertain the writ petition. The appeal by special leave is against the in limine dismissal of the writ petition.

We have heard learned counsel for the parties at some length and it has been brought to our notice by Mr. Chidambaram that in regard to Items 1, 2 and 4 of the heads of dispute as indicated in the reference, the contract labour system is no more vogue and contract labour is now

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confined to Item 3 only. In view of the changed situation and taking into consideration the background of the dispute as also the fact that the litigation has been pending for almost a decade now, we do not think it would be appropriate to take a technical view of the situation and endorse the decision of the Tribunal. We are, therefore, inclined to substitute the terms of the reference to the Tribunal by indicating that the reference shall now read thus:

"Whether the contract workers engaged by the Management of the Tata Iron and Steel Company Ltd., Jamshedpur in the permanent and regular nature of work before 11.2. 1981 are entitled to permanent employment in regard to Items 1, 2 and 4 under the Principal Employer."

In regard to Item No. 3 it shall be for the State Government to take its own decision under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 as to whether the contract labour employment should be terminated, and since the State Government had already been considering this matter for some time, we direct the State Government to take its decision in terms of the assurances held out by its learned Advocate General to the Patna High Court several years back within three months from now.

To regulate the matter in a more effective way before the Tribunal and keeping in view the submissions made by Mr. Venugopal we direct that the Tribunal shall initially devote attention to identify the workmen who are desirous of being permanently absorbed under the Principal Employer and after such identification is made, the matter should be proceeded with in accordance with law. All parties should be given full opportunity to raise their contentions and substantiate the same with such evidence as they like to lead but the Tribunal shall ensure that the dispute is disposed of within six months from today. If necessary, full attention should be given to this case so as to comply with the direction regarding disposal within the time limit set by us. There would be no order for costs.

P.S.S.

Appeal disposed of.

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