CASE NO.:
Appeal (civil) 4263 of 2006

PETITIONER:
Steel Authority of India Ltd

RESPONDENT:
Union of India & Ors.

DATE OF JUDGMENT: 26/09/2006

BENCH:
S.B. Sinha & Dalveer Bhandari

JUDGMENT:
J U D G M E N T
[Arising out of SLP (Civil) No. 12621-13236 of 2004]

S.B. SINHA, J :

Leave granted.

Appellant is a Government company. In carrying out its activities of manufacture of steel and other products it appointed several contractors. Respondent Nos. 4 to 618 herein are said to have been employees of the contractors. They raised a dispute before the State Government demanding their absorption as permanent employees.

By a notification dated 19.11.1985, the State Government referred the following industrial dispute for adjudication by the Presiding Officer, Labour Court, in exercise of its power under Section 10(1)(c) of the Industrial Disputes Act, 1947 (for short, 'the 1947' Act') :

"Are the contract workers employed in the nature of contract work listed as per Annexure working in the premises of Visveswaraya Iron and Steel Ltd., Bhadravathi, justified in demanding absorption as regular permanent employees of Visveswaraya Iron & Steel Ltd. Bhadravathi?

In the said proceedings, the workmen in their statements of claim filed on 26.02.1986 prayed for their absorption as permanent employees in the employment of Appellant. Inter alia, a jurisdictional question was raised by Appellant herein on the premise that the matter relating to the regulation and abolition of contract labour being governed by the Contract Labour (Regulation and Abolition) Act, 1970 (for short, 'the 1970 Act'), the reference made by the State Government was impermissible in law. It was contended that the State Government having not issued any notification prohibiting employment of contract labour in terms of Section 10 of the 1970 Act, the workmen did not have any legal right to claim absorption.

Indisputably, during the pendency of the said dispute before the Labour Court, Appellant herein filed a writ petition, questioning the legality and/or validity of the said reference, which was marked as Writ Petition No.26874 of 1995. One of the questions which was raised therein was that the State Government had no jurisdiction to make a reference in relation thereto. The writ petition was disposed of by the High Court observing that Appellant may raise a preliminary issue in that behalf.

The workmen, however, on 21.11.1997 filed an additional claim statement alleging that the contracts entered into by and between Appellant and the contractors being sham and bogus, they were direct employees of

the management.

By reason of an award dated 13.07.1999, the said reference was held to be not maintainable. A writ petition came to be filed by some trade unions alleging that the workmen were direct employees of Appellant and were, thus, entitled to be absorbed as permanent workmen.

A learned Single Judge of the High Court, by an order dated 05.12.2001, while holding the said writ petition to be not maintainable, directed :

"For the reasons stated supra, these writ petitions are allowed with a direction to the Union of India \026 the 2nd respondent to accept the petition presented before this Court as the petition submitted by the petitioner \026Union raising an industrial dispute in terms of Section 2(k) read with Section 12(1) of the I.D. Act and also under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970. Further, keeping in view the law laid down by the Supreme Court in the Steel Authority of India Ltd. case and notwithstanding the fact that the conciliation proceedings are conducted, the second respondent shall in exercise of its power, make reference to the appropriate Central Industrial Tribunal or the Labour Court for adjudication of the existing industrial dispute between the workmen of the petitioner/Union and the respondent No.1 Management within eight weeks from the date of receipt of a copy of this order. The respondents 2 and 3 while exercising their power under Section 10(1)(d) of the I.D. Act shall not consider the pendency of these petitions before this Court from the year 1999 keeping in view the law laid down by the Apex Court in the Steel Authority's case referred to and pass appropriate order making reference either to Central Industrial Tribunal or Labour Court for adjudication of the existing Industrial dispute between the workmen and first respondent."

Intra-court appeals were filed thereagainst on the ground that no industrial dispute could be raised by the workmen concerned in terms of the judgment of this Court in Steel Authority of India Ltd. and Others v. National Union Waterfront Workers and Others [(2001) 7 SCC 1]. It was further contended that the award of the Labour Court having been accepted by the workmen, the matter relating to abolition of contract labour could only be decided by the Appropriate Government in terms of Section 10 of the 1970 Act and not otherwise. By reason of the impugned judgment, the said appeals have been dismissed.

It is not disputed before us that the matter relating to abolition of contract labour being governed by the provisions of the 1970 Act, the Industrial Court will have no jurisdiction in relation thereto. It is also not in dispute that the decision of the Constitution Bench of this Court in Steel Authority of India Ltd. (supra) governs the field.

In the said decision, it was, inter alia, held :

"(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.

xxx xxx xxx

(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."

The industrial dispute was raised by two Unions, namely, Visveswaraya Iron & Steel Ltd. Workers Association, Bhadravathi and Visveswaraya Iron & Steel Ltd. Contract Employees' Union, Bhadravathi.

The award dated 13.07.1999 was confined to only one issue, namely, Issue No.6 framed by the Labour Court. The said issue was determined by the Labour Court pursuant to or in furtherance of the order of the High Court passed in Writ Petition No.26874 of 1995. While determining the said question, the Labour Court framed seven issues by an order dated 31.12.1998, some of which are :

"(i) Whether the 1st party proves that they were employed by the 2nd party Management in the job of permanent and perennial in nature.

(ii) Whether the 2nd party Management proves that the 1st party workmen were employed under different contractors in the job of permanent and perennial in nature in various departments of the Management.

(iii) Whether the 2nd party proves that system of contract labour in respect of the nature of the workers involved in this Reference was not abolished in the 2nd party Industry and that this Reference is not sustainable."

The Labour Court opined :

"\005The plain reading of the first point in dispute to be decided by this Court is that "are the contract workers employed in the nature of contract work, justified in demanding absorption as regular permanent employees of the management VISL, Bhadravathi (hereinafter called the Management). Therefore the point in dispute pre-supposes that the 1 party Union Employees are the contract workers employed in the nature of contract work under certain contractors and whether such contract workers are to be absorbed by the Management. The fact that the Union Employees who seek their absorption by the Management are the contract workers is further very much evident from the averments made in the claim statement preferred on behalf of the 1 party Union. Para 1 of the claim statement reads that they are representing the contract labourers of the Management against whom the present reference is made by the Government\005"

The learned Presiding Officer of the Labour Court observed that in the light of the judgment of the High Court between the parties, the moot question that arose for consideration was as to whether the court could decide the validity of the reference as it stood, holding :

"\005It was contended that the dispute under reference since pertained to the abolition of contract labour which contract labour was not abolished by the appropriate Government under Sec.10 of the Contract Labour Act by way of Notification as contemplated under the said provision the reference is bad in law inoperative and illegal. I find substance in his arguments. Undisputedly, there is no abolition of Contract Act under Sec. 10 of the said Act by the appropriate Government in this case. It was well argued that the Industrial Disputes Act where under the present reference is made is a general enactment and therefore, a special central enactment namely, the Contract Labour Act shall prevail to the extent that it applies over the provisions of I.D. Act\005"

It was further held :

"\005This Court certainly has got no jurisdiction to pass Award in favour of the employees holding them to be the employees of principal employer namely the management. The question under reference, raised before this Court, certainly, relates to the abolition of contract labour and that question cannot be decided by this Court but by the competent appropriate Government under the provisions of Sec. 10 of the Contract Labour Act\005"

The Labour Court also took into consideration the contention raised by the representatives of the Union that the issue as to whether the members of the Unions were really the employees of the management and not those of the employees of the contractors was to be tried and decided by the said court as both the parties had led their oral and documentary evidences in that behalf. Having regard to the nature of reference by the Appropriate Government, which fell for consideration before the Labour Court, it declined to go into the said question, opining that it was not within its province to go into the question as to who the actual employer was as the same did not fall in the category of matters, which can be said to be incidental to the main dispute. It was opined :

"\005Therefore, it is clear that the I party Union itself apprehended that the reference made to this Court was

not in accordance with the law. The principle laid down by his lordship of our Hon'ble High Court in the case reported in ILR 1994 Karnataka page 2603, taken support of by Learned Representative for the I Party Union contending that jurisdiction point cannot be raised by the management at this belated stage, in my opinion again had no much substance the management in this case has challenged the jurisdiction of this court at earliest point of time at para 2 of its counter statement. Therefore, it cannot be said that the jurisdiction point was raised by the management at a belated state. Therefore, as contended for the management and as observed by his lordship of our Hon'ble High Court in the above said unreported judgment, the proper course and remedy available for the I party Union was not by way of reference on hand at least with the present terms, but by way of approaching the Hon'ble High Court invoking its writ jurisdiction seeking directions to the Central Government to take a decision under Section 10 of the Contract Labour Act, as was already done in respect of the 23 employees at Sl. No.26 Annexure to reference on hand. Therefore, for the reasons foregoing I am constrained to hold that reference is not valid and proper and that this court has no jurisdiction to adjudicate upon the same. Accordingly Issue No. 6 is answered in the affirmative and following order is passed."

Before adverting to the questions raised before us, we may at this juncture notice the contention of Mr. V.N. Raghupathy that whereas in the reference only 26 workmen were made parties, more than 600 workmen were made parties in the writ petition and, thus, only because before the appropriate Government a demand was raised by some of the workmen contending that they were workmen of the contractors, an industrial dispute could be raised that the contract was a sham one and in truth and substance the workmen were employed by the management.

Writ Petitioner No.1 was Visveswaraya Iron & Steel Limited Contract Employees' Union. 615 workmen were parties thereto. They were admittedly represented by Writ Petitioner No.1 only. An industrial dispute was also raised, as noticed hereinbefore, by Visveswaraya Iron & Steel Ltd. Workers Association and Visveswaraya Iron & Steel Limited Contract Employees Union. The Contract Employees' Union was common both in the proceedings under the Industrial Disputes Act also in the writ petition.

The 1970 Act is a complete code by itself. It not only provides for regulation of contract labour but also abolition thereof. Relationship of employer and employee is essentially a question of fact. Determination of the said question would depend upon a large number of factors. Ordinarily, a writ court would not go into such a question.

In State of Karnataka and Others v. KGSD Canteen Employees' Welfare Association and Others [(2006) 1 SCC 567], this Court held :

"Keeping in view the facts and circumstances of this case as also the principle of law enunciated in the above-referred decisions of this Court, we are, thus, of the opinion that recourse to writ remedy was not apposite in this case."

We may reiterate that neither the Labour Court nor the writ court could determine the question as to whether the contract labour should be abolished or not, the same being within the exclusive domain of the Appropriate Government.

A decision in that behalf undoubtedly is required to be taken upon following the procedure laid down in sub-section (1) of Section 10 of the 1947 Act. A notification can be issued by an Appropriate Government prohibiting employment of contract labour if the factors enumerated in sub-section (2) of Section 10 of the 1970 Act are satisfied.

When, however, a contention is raised that the contract entered into by and between the management and the contractor is a sham one, in view of the decision of this Court in Steel Authority of India Limited (supra), an industrial adjudicator would be entitled to determine the said issue. The industrial adjudicator would have jurisdiction to determine the said issue as in the event if it be held that the contract purportedly awarded by the management in favour of the contractor was really a camouflage or a sham one, the employees appointed by the contractor would, in effect and substance, be held to be direct employees of the management.

The view taken in the Steel Authority of India Limited (supra) has been reiterated by this Court subsequently. [See e.g. Nitinkumar Nathalal Joshi and Others v. Oil and Natural Gas Corporation Ltd. and Others (2002) 3 SCC 433] and Municipal Corporation of Greater Mumbai v. K.V. Shramik Sangh and Others [(2002) 4 SCC 609].

In A.P. SRTC and Others v. G. Srinivas Reddy and Others [(2006) 3 SCC 674, this Court held :
"\005If respondents want the relief of absorption, they will have to approach the Industrial Tribunal/Court and establish that the contract labour system was only a ruse/camouflage to avoid labour law benefits to them. The High Court could not, in exercise of its jurisdiction under Article 226, direct absorption of respondents, on the ground that work for which respondents were engaged as contract labour, was perennial in nature.

It was further held :

"\005The only remedy of respondents, as noticed above, is to approach the Industrial Tribunal for declaring that the contract labour system under which they were employed was a camouflage and therefore, they were, in fact, direct employees of the Corporation and for consequential relief\005."

Similar view has been taken in KGSD Canteen Employees' Welfare Association (supra).

The workmen whether before the Labour Court or in writ proceedings were represented by the same Union. A trade union registered under the Trade Unions Act is entitled to espouse the cause of the workmen. A definite stand was taken by the employees that they had been working under the contractors. It would, thus, in our opinion, not lie in their mouth to take a contradictory and inconsistent plea that they were also the workmen of the principal employer. To raise such a mutually destructive plea is impermissible in law. Such mutually destructive plea, in our opinion, should not be allowed to be raised even in an industrial adjudication. Common law principles of estoppel, waiver and acquiescence are applicable in an industrial adjudication.

The 1947 Act was enacted, as the preamble indicates, for investigation and settlement of industrial dispute and for certain other purposes. It envisages collective bargaining. Settlement between Union representing the workmen and the Management is envisaged thereunder. It provides for settlement by mutual agreement. A settlement or an award in terms of Section 18(3)(b) of the 1947 Act is binding on all workmen including those who may be employed in future.

What assumes importance is the ultimate goal wherefor the 1947 Act was enacted, namely, industrial peace and harmony. Industrial peace and harmony is the ultimate pursuit of the said Act, having regard to the underlying philosophy involved therein. The issue before us is required to be determined keeping in view the purport and object of the 1947 Act.

It is interesting to note that in Modi Spinning & Weaving Mills Company Ltd. & Another v. Ladha Ram & Co. [(1976) 4 SCC 320], this Court opined that when an admission has been made in the pleadings, even an amendment thereof would not be permitted.

We are not oblivious of the decision of this Court in Panchdeo Narain Srivastava v. Km. Jyoti Sahay and Another [AIR 1983 SC 462 = (1984) Supp. SCC 594], wherein it has been held that an admission made by a party can be withdrawn and/or explained away; but we may notice that subsequently a Division Bench of this Court distinguished the said decision in Heeralal v. Kalyan Mal and Others [(1998) 1 SCC 278].

The effect of an admission in the context of Section 58 of the Indian Evidence Act has been considered by this Court in Sangramsinh P. Gaekwad and Others v. Shantadevi P. Gaekwad (Dead) through Lrs. and Others [(2005) 11 SCC 314], wherein it was categorically held that judicial admissions by themselves can be made the foundations of the rights of the parties and admissions in the pleadings are admissible proprio vigore against the maker thereof. [See also Union of India v. Pramod Gupta (Dead) by Lrs. and Others [(2005) 12 SCC 1]

Recently this Court in Baldev Singh and Others etc. v. Manohar Singh & Another etc. [2006 (7) SCALE 517], held :

"Let us now take up the last ground on which the application for amendment of the written statement was rejected by the High Court as well as the Trial Court. The rejection was made on the ground that inconsistent plea cannot be allowed to be taken. We are unable to appreciate the ground of rejection made by the High Court as well as the Trial Court. After going through the pleadings and also the statements made in the application for amendment of the written statement, we fail to understand how inconsistent plea could be said to have been taken by the appellants in their application for amendment of the written statement, excepting the plea taken by the appellants in the application for amendment of written statement regarding the joint ownership of the suit property. Accordingly, on facts, we are not satisfied that the application for amendment of the written statement could be rejected also on this ground. That apart, it is now well settled that an amendment of a plaint and amendment of a written statement are not necessarily governed by exactly the same principle. It is true that some general principles are certainly common to both, but the rules that the plaintiff cannot be allowed to amend his pleadings so as to alter materially or substitute his cause of action or the nature of his claim has necessarily no counterpart in the law relating to amendment of the written statement. Adding a new ground of defence or substituting or altering a defence does not raise the same problem as adding, altering or substituting a new cause of action. Accordingly, in the case of amendment of written statement, the courts are inclined to be more liberal in allowing amendment of the written statement than of plaint and question of prejudice is less likely to operate with same rigour in the former than in the latter case."

While laying down the principle, this Court followed Modi Spinning & Weaving Mills Co. (supra) and distinguished Hira Lal (supra).

It is, thus, evident that by taking recourse to an amendment made in the pleading, the party cannot be permitted to go beyond his admission. The principle would be applied in an industrial adjudication having regard to the nature of the reference made by the Appropriate Government as also in view of the fact that an industrial adjudicator derives his jurisdiction from the reference only.

There is another aspect of the matter which should also not be lost sight of. For the purpose of exercising jurisdiction under Section 10 of the 1970 Act, the appropriate Government is required to apply its mind. Its order may be an administrative one but the same would not be beyond the pale of judicial review. It must, therefore, apply its mind before making a reference on the basis of the materials placed before it by the workmen and/or management, as the case may be, While doing so, it may be inappropriate for the same authority on the basis of the materials that a notification under Section 10(1)(d) of the 1947 Act be issued, although it stands judicially determined that the workmen were employed by the contractor. The State exercises administrative power both in relation to abolition of contract labour in terms of Section 10 of the 1970 Act as also in relation to making a reference for industrial adjudication to a Labour Court or a Tribunal under Section 10(1)(d) of the 1947 Act. While issuing a notification under the 1970 Act, the State would have to proceed on the basis that the principal employer had appointed contractors and such appointments are valid in law, but while referring a dispute for industrial adjudication, validity of appointment of the contractor would itself be an issue as the State must prima facie satisfy itself that there exists a dispute as to whether the workmen are in fact not employed by the contractor but by the management. We are, therefore, with respect, unable to agree with the opinion of the High Court.

We would, however, hasten to add that this judgment shall not come in the way of the appropriate Government to apply its mind for the purpose of issuance of a notification under Section 10 of the 1970 Act.

For the reasons aforementioned, the impugned judgment cannot be sustained, which is set aside accordingly. The appeal is allowed. In the facts and circumstances of this case, however, there shall be no order as to costs.