IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 7TH OF AUGUST, 2023

WRIT PETITION NO. 9373 OF 2014

BETWEEN:-

1. **FOOD CORPORATION OF INDIA (A STATUTORY CORPORATION CONSTITUTED UNDER THE FOOD CORPORATION OF INDIA ACT, 1964), REGIONAL OFFICE, CHETAK BUILDING, MAHARANA PRATAP NAGAR, ZONE-II, BHOPAL (M.P.), THROUGH ITS GENERAL MANAGER.**

2. **THE AREA MANAGER, FOOD CORPORATION OF INDIA, DISTRICT OFFICE, 10, CIVIL LINES, SAGAR (M.P.).**

. **.....PETITIONERS**

(BY SHRI S.K. RAO – SENIOR ADVOCATE – ASSISTED BY SHRI VINEET KUMAR PANDEY - ADVOCATE)

AND

1. **PREETAM SINGH KIRAR, S/O PAVRVAT SINGH KIRAR, AGED ABOUT 53 YEARS, R/O C/O RADHEKRISHNA GENERAL STORES, AMMEDPUR CHOURAHA, OPP. CENTRAL BANK OF INDIA, VIDISHA (M.P.).**

2. **GAJRAJ SINGH SEN, S/O SHRI GOVERDHAN SINGH SEN, AGED 46 YEARS, R/O CHINDORIA, POST CHINDORIA, DISTRICT VIDISHA (M.P.).**

3. **SMT. RADHABAI, WIFE OF LATE NANDKISHORE SHARMA, AGED ABOUT 58 YEARS, R/O 697/5, NEW BASTI,**

NIRANJANPUR AND PRESENTLY RESIDING AT 39, MOHANGIRI, GALI NO. 1, WARD NO. 20, INDORE (MP).

4. **LOKESH SHARMA, S/O SHRI HUKUM CHAND SHARMA, AGED 43 YEARS, R/O POORANPURA, LINK ROAD NO. 4, VIDISHA (M.P.).**

5. **DEEWAN SINGH KIRAR, S/O PARVAT SINGH KIRAR, AGED 51 YEARS, R/O CHIDORIA, DISTRICT VIDISHA (MP).**

6. **BALRAM AHIRWAR, S/O MOHANLAL AHIRWAR, AGED 42 YEARS, R/O AHMEDPUR CHOURAHA, CHUGGI NAKA, PREMCHAND BHAWAN, VIDISHA (M.P.).**

7. **M/S V.R. ENTERPRISES, CONTRACTOR OF FOOD CORPORATION OF INDIA, BANSLULI, NEAR GANESH TEMPLE, VIDISHA (M.P.).**

8. **CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, 1230, GOLE BAZAR, JABALPUR (MP) THROUGH THE SECRETARY OF THE COURT.**

.....RESPONDENTS

(NOS. 1 TO 7 BY SHRI K.N. PETHIA - ADVOCATE)

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Reserved on : 20/04/2023

Pronounced on : 07/08/2023

This petition having been heard and reserved for orders, coming on for pronouncement this day, the Court pronounced the following:

ORDER

This petition under Article 227 of the Constitution of India has been filed challenging the award dated 21.10.2013 (Annexure P/1) passed by the Central Government Industrial Tribunal-cum-Labour Court (hereinafter referred to as 'Tribunal') mainly on the ground that the finding given by the Tribunal is illegal, erroneous and contrary to the

evidence available on record. The award is beyond the scope of terms of the Reference and contrary to law laid down by the Supreme Court in the case of **Steel Authority of India Limited and others vs. National Union Waterfront Workers and others** reported in **(2001) 7 SCC 1**.

The facts of the case and the issue involved in the case lie in a narrow compass as would be clear from the narration of facts, which are as under:-

2. The petitioner Corporation is a statutory Corporation constituted under the Food Corporation of India Act, 1964 (for brevity 'Act, 1964'). It deals in the business of food grains and it also imports, procures, stores and distributes the food grains throughout the country. The petitioner has offices and depots in all over the country and for the purpose of effective supervision, they have established Zonal Offices, Regional Offices and District Offices in various parts of the country. The present dispute relates to Vidisha Depot which comes under the supervision and control of District Office of the Corporation at Bhopal (MP).

3. According to the petitioner, prior to 1989, to manage the affairs of the work carrying out by the petitioner, they used to acquire hands and as such they engage transport contractors on contract basis giving them entire responsibility to find out their own labourers from the open market to carry out work of the petitioner Corporation. The petitioner Corporation had no administrative or disciplinary control over such labourers engaged by the contractor. The petitioner in the said system used to pay an amount to the contractor in the head of 'handling charges' per bag but not directly to the labourers engaged for their work.

4. According to the petitioner-Corporation, in the contract system

they had no direct connection with the labours engaged by the contractor and it was the duty of the contractor to pay the wages to the labourers engaged in the work assigned by the petitioner-Corporation to the contractor.

5. The contract system was not accepted by the Labour Unions and as such they raised demand to introduce some other system and a meeting between the petitioner and Labour Union known as Food Corporation of India Workers Union conducted on 26.09.1989. In the said meeting Mate system was introduced in various depots of petitioner including Vidisha depot.

6. In the Mate system, the Worker Unions were required to nominate mate in each godown/depot, who will in turn execute an agreement with the District Manager under whose jurisdiction the depot falls. Under such a system, the nomination of the labourers made by the Worker Unions authorized by the petitioner and as such the said labour (Mate) was responsible to work in the said depot. The Mate used to be paid wages by the contractor. According to the petitioner, the Mate steps into the shoes of the contractor because the amount for handling bags used to be paid to the contractor considering the number of bags but not per labourer engaged, but Mate was also under obligation to comply the requirement of relevant Labour Law like contract labour.

7. As per the claim raised by the respondents, they were employed with the contractor Ashok Kumar Jain for 2-3 years and the said contract was thereafter awarded to M/s V.R. Enterprises under whom the workers were working, but in view of the notification issued by the Government of India on 01.11.1990 the contract system was abolished in the petitioner-Corporation. Resultantly, the services of the labourer were terminated by the contractor. The petitioner-Corporation had its

representative Union i.e. Food Corporation of India Workers Union, but that union was not happy with the contract system in the petitioner-Corporation and made representations demanding Mate system in several depots including the Vidisha Depot of the petitioner-Corporation in place of the previous system. Finally the Mate system was introduced even in Vidisha Depot. A letter dated 24.10.1989 was issued in this regard but after terminating the contract, the labourers working under the said contractor started claiming regularization.

8. According to the petitioner, in the claim raised by the respondents they nowhere stated that they were working under the petitioner-Corporation and their services have been terminated by the petitioner, but by making back door entry they are claiming regularization and raised industrial dispute and as such they prefer some claim before the Tribunal. According to the petitioner, although Reference could not have been made under the Industrial Disputes Act, 1947 (for short 'Act, 1947') but exercising power conferred under Section 10 of the Act, 1947 the dispute was referred to the Tribunal at Jabalpur on the following terms:

> "Whether the action of the management of Food Corporation of India bynot following the due process of law while regularizing the contract workers and terminating the services of Shri Preetam Singh Kirar, Gajraj Singh, Nandkishore Sharma, Lokesh Sharma, Deewan Singh Kirar and Balaram w.e.f. June 1991 is legal and justified? If not, to what relief the workmen are entitled?"

9. As per the petitioner, the Reference was very specific not asking to decide the question of absorption of the workers and as per their own showing in the claim petition, it was stated that the workers were working with M/s V. R. Enterprises at the time of terminating their

services, although the Tribunal held that the labourers were working with the petitioner-Corporation and their services were also terminated by them. According to the petitioner, this observation is purely illegal and beyond the terms of Reference and as such they filed this petition saying that the award passed by the Tribunal on 21.10.2013 is liable to be set aside.

10. The respondents filed caveat and after granting them opportunity, the Court on 07.07.2014 admitted the petition and stayed the operation of the award dated 21.10.2013 subject to compliance of the provision of Section 17-B of the Act, 1947. However, an application for vacating the stay order was filed but that was rejected by the Court on 06.01.2015.

11. Reply has also been filed by the respondents-workmen saying that the Tribunal has not exceeded its jurisdiction and the Reference has been decided by the Tribunal as per the agreement arrived between the Union and Management which is reproduced in paragraph-5 of the claim. The respondents have stated that as per the provision of Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as 'CLRA Act, 1970'), which came into force when respondents/workmen were in service and as per the said provision the workmen working under the contractor would be deemed to be the workmen of employer (present petitioner) and relationship of workmen and employer therefore came into existence as per the provisions of CLRA Act, 1970. The respondents-workmen therefore supported the award passed by the Tribunal and placed reliance upon several decisions saying that the petition is misconceived and deserves to be dismissed. Not only this but the workmen also filed a petition i.e. WP No. 2014/2016 connected with the present petition in which they have also challenged the impugned award to the extent that the workmen are entitled to get the back wages

and also all consequential benefits as they have been illegally terminated. The said petition is also analogously heard by this Court.

12. Heard the rival submission of counsel for the petitioner and also perused the record.

13. As per the submission made by the learned counsel for the petitioner, his contention is in two fold- (1) that the Tribunal exceeded its jurisdiction and passed the award beyond the scope of reference; and (2) the respondents cannot be treated to be the employees of the petitioner because after abolition of the contract labour system, the respondents were terminated by the contractor and there was no direct relation between the petitioner and respondents. The petitioner never paid wages to the respondents and as such direction given by the Tribunal for absorbing the services of the respondents/workmen in the petitioner Corporation is absolutely illegal and contrary to law.

14. The Tribunal in its award, which is impugned in this petition, has considered the aspect of abolition of contract labour system. The tribunal has observed that there was an agreement between petitioner and the workers union of the petitioner Corporation. The workmen in their case have claimed that the claim of the senior labours working in the petitioner-Corporation has been denied and some junior labours have been absorbed. It is also observed by the Tribunal that all the workmen were working for last 10 to 12 years till 1991 and they also completed 240 days continuous service during each of the year. As per the Tribunal, the labours were retrenched at the time of regularizing services, they were not considered. All the workmen were retrenched without notice, no retrenchment compensation was paid to them and as such their services were terminated violating the provisions of Section 25 of the Act, 1947. The Tribunal has also considered the statement of

workmen and also the evidence of management. The statement of management witness Shri W. Ekka also discussed by the Tribunal and after scrutiny of statement of the witness, the Tribunal was of the opinion that the management did not produce any document regarding absorption/regularization of services of the labours working through contractor. The Tribunal has observed that after abolishing the contract labour system, the workmen were entitled to be regularized but they were not regularized got discontinued. The Tribunal has observed that retrenchment of workmen from service was illegal. The Tribunal has observed that in view of the available material produced by the parties it was clear that the respondents/workmen were engaged by the private contractor of FCI from 1983 to 1991 and after abolishing the contract labour system in FCI in 1991, the workmen should have been absorbed but that was not done and therefore the action of the petitioner was found illegal and award was passed holding that the termination of respondents/workmen was illegal directing petitioner to absorb the services of workmen/respondents in service without any back wages.

15. Considering the ground of challenge on the basis of which the award is being criticized by the petitioner and submission made by the learned counsel for the petitioner, this Court has to see whether the Tribunal exceeded its jurisdiction and passed the award beyond the scope of Reference.

16. From perusal of the Reference, it is clear that the Tribunal had to consider that the proper procedure has not been followed by the management for regularizing the services of contract labours but terminated their services.

17. The Tribunal observed that despite raising objection by the workmen in their claim that number of persons regularized by the

petitioner/management but for the respondents/workmen that procedure was not followed and instead of regularizing them, their services were discontinued and therefore directed that not only the termination is illegal but the workmen are entitled to be regularized. In my opinion, the Tribunal in any manner has not exceeded its jurisdiction and not decided anything beyond the reference made to it. Therefore, the first contention of the petitioner that the Tribunal exceeded its jurisdiction and passed award beyond the scope of reference has no substance and therefore the award on the said submission and ground raised by the petitioner cannot be set aside as it is within the scope of reference.

18. However, the second contention and ground raised by the petitioner that the relationship between the petitioner and respondents was not of the employee and employer and their services were not terminated by the petitioner, but after abolishing the contract labour system, it was the contractor under whom the respondents/workmen were working removed them and as such direction issued by the Tribunal for regularizing their service is illegal and contrary to law laid down by the Supreme Court of India in case of **Steel Authority of India Limited (supra).** Although the Tribunal has considered this aspect and also appreciated the evidence adduced by the parties, but has not considered the law laid down by the Supreme Court in case of **Steel Authority of India Limited (supra)** and also in case of **The Workmen of the Food Corporation of India vs. M/s Food Corporation of India** reported in **AIR 1985 SC 670**.

19. Shri Rao appearing on behalf of the petitioner has contended that the respondents have not worked for the petitioner and they have not been engaged directly by the petitioner and no wages ever paid to them by the petitioner. The respondents were working as contract labours

under the then prevailing contract labour system and their services were taken by the petitioner through the contractor, who engaged the respondents/workmen. He has also submitted that the Tribunal has committed mistake in not considering the facts and legal position that there was no relation of the employee and employer between the petitioner and respondents.

20. Record of the Tribunal is also available and I have perused the same.

21. From the statements of witnesses and affidavits filed by them i.e. Nand Kishore, Balaram Ahirwar. Preetam Singh Kirar, Diwan Singh Kiran and Gajraj Singh Sen, it is evident that every workman in his statement has stated that he has worked from 1983 to 1991 under the contractor. The contract labour system abolished then Thekedar removed him. No workman has stated in his statement that the petitioner ever paid any wages to him and also not stated that at any point of time the petitioner issued any sort of document in respect of their engagement but on the contrary they have very categorically admitted that they were working under the contractor and after abolition of contract labour system, it was the contractor who removed them. Some of the respondents have stated that it was their union which had not recommended their names to the management for regularizing their services and their grievance was against the union. The management has also produced the witness who has very categorically stated that after June, 1991 the contractor labour system was abolished and thereafter no work used to be taken from the contract labours. He has also stated that after abolition of contract labour system, only department labour were working in the petitioner organization and Identity Cards issued to them under the seal and signature of the department. The Tribunal has not

considered this aspect and also not appreciated the statements of witnesses in this manner. The Supreme Court in case of **The Workmen of the Food Corporation of India (supra)** has considered almost a similar issue and observed as to under what circumstances the relationship between Corporation and the Workmen would be continued after abolition of the contract system. It is also observed by the Supreme Court as to under what circumstances the contract labour would be treated to be a workman of the Corporation and according to the observation made by the Supreme Court, which strictly applies in the facts of the present case, the relationship of the petitioner and the respondents is not of employee and employer and in any manner the respondents could not have been considered to be the workmen of petitioner. The observation made by the Supreme Court is as under:-

> "**11.** Briefly stated, when Corporation engaged a contractor for handling foodgrains at Siliguri Depot, the Corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the Corporation and the workmen. "Workman" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean "any person (including an apprentice) employed in any industry to do ...". The expression "employed" has at least two known connotations but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that

> there should be a relationship between the employer and him as between employer and employee or master and servant. Unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act. (*Dhrangadhara Chemical Works Ltd*. v. *State of Saurashtra* [AIR 1957 SC 264 : 1957 SCR 152 : (1957) 1 LLJ 477 : 11 FJR 439] .) Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the contract system was in vogue, the workmen employed by the contractor were certainly not the workmen of the Corporation and no claim to that effect has been made by the Union."
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> *Emphasis supplied*

The Supreme Court further in the case of **Steel Authority of India Limited (supra)** has also considered this aspect and also answered the issue whether the concept of automatic absorption of contract labour in the establishment of principal employer on issuance of abolition notification, is implied in Section 10 of CLRA Act, 1970 and dealing with this issue the Supreme Court has answered as under:-

> " **89.** In the light of the above discussion we are unable to perceive in Section 10 any implicit requirement of automatic absorption of contract labour by the principal employer in the establishment concerned on issuance of notification by the appropriate Government under Section 10(1) prohibiting employment of contract labour in a given establishment.
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> **95.** There is nothing in that judgment to conclude that on abolition of the contract labour system under Section 10(1), automatic absorption of contract labour in the establishment of the principal employer in which they were working at that time, would follow.
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> **107.** An analysis of the cases, discussed above, shows that they fall in three classes: (*i*) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is

> prohibited either because the industrial adjudicator/court ordered abolition of contract labour or because the appropriate Government issued notification under Section 10(1) of the CLRA Act, no automatic absorption of the contract labour working in the establishment was ordered; (*ii*) where the contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer were held, in fact and in reality, the employees of the principal employer himself. Indeed, such cases do not relate to abolition of contract labour but present instances wherein the Court pierced the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited; (*iii*) where in discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer availed the services of a contractor the courts have held that the contract labour would indeed be the employees of the principal employer.

22. Thus, it is clear that the Tribunal has acted illegally in directing absorption of respondents/workmen in the establishment of the petitioner without considering the fact that there was no relationship of employee and employer and in the existing circumstances the respondents cannot be treated to be the workmen of the petitioner and as such directing their absorption in the establishment of the petitioner is absolutely contrary to law and as such that is not sustainable and that direction of the Tribunal in the impugned award is set aside. Not only this but the Tribunal has also failed to consider that the termination of the workmen/respondents was not by the petitioner but as per their own saying it was by the contractor under whom they were working and therefore applying the provision of the Act, 1947 treating their removal as a retrenchment by the petitioner violating the provision of Section 25-F of the Act, 1947 is also not proper and as such the award passed by the Tribunal on 21.10.2013 (Annexure P/1) in my opinion is not sustainable.

23. Accordingly, this petition is allowed. The award passed by the Tribunal on 21.10.2013 in Case No. CGIT/LC/R/144/03 is hereby set aside. However, considering the facts and circumstances of the case, there shall be no order as to costs.

(SANJAY DWIVEDI)
JUDGE

Raghvendra