M/S. Hochtief Gammon

Vs

State of Orissa and Others

Civil Appeal No. 1827 of 1969

(A. Alagiriswami,P.K. Goswami, N.L. Untwalia JJ)

04.09.1975

JUDGMENT

ALAGIRISWAMI, J. -

1. The question of bonus for 16,000 workmen for the years 1958-59 and 1959-60 is still being fought out on preliminary points and this is the second time the matter has come to this Court. The earlier decision is reported in (1964) 7 SCR 596 (Hochtief Gammon v. Industrial Tribunal, Bhubaneshwar, Orissa (AIR 1964 SC 1746 : (1964) 2 LLJ 460)).

2. In August, 1957 the Hindustan Steel Ltd., the fourth respondent in the appeal, hereinafter called the company, and the appellant, a partnership of a West German company and an Indian company, hereinafter called the contractor, entered into a contract for execution of the foundation and civil engineering work of the Hot and Cold Rolling Mills at Rourkela including the purification and other civil engineering work connected with the water supply to the rolling mills. The contract was a cost contract with a target sum plus fixed overheads and fee, that is, the company was to pay to the contractor all costs of construction and in addition pay fixed overhead for the head office, general expenses of the contractor plus a fixed fee. The target sum for the work was Rs. 66,294,000. The overheads were D. M. 2,800,000 plus Rs. 2,120,000 and the fee of Rs. 6,200,000. The work was to be carried out as detailed in the drawings, bills of quantities, specifications and other written orders issued or to be issued by the company. All payments in respect of wages and salaries and connected payments made to persons engaged upon the work as may be approved by the company, comprising wages of all operatives as well as all other payments connected with wages were to be paid by the company. Any increase beyond the initial rates specified in Enclosure III to the contract was to be subject to the approval of the company and such approval was to be taken in respect of categories and not individuals. Emoluments of site supervisory staff as well as all other payments connected therewith were also to be paid by the company. Payments made to statutory schemes in connected with sickness or accident or provident fund or pension or other like schemes to the above categories, payments of overtime and additional remuneration for Sunday, holiday or night work, etc., and payments for leave and travelling cost were all to be made by the company. It was also provided that the cost of any other expenditure was to be admitted only on satisfactory proof being given by the contractor that such expenditure was necessary in connection with the preparation and execution of the work. The company was to open an imprest account of Rs. 30,00,000 and the contractor was to draw on the account to cover his day-to-day requirements for the work. The imprest was to be increased or decreased from time to time depending on the amount required by the contractor to do the work. The contractor was to submit fortnightly cash account covering the expenditure incurred from the imprest account and the company was to recoup the amounts covered by such account within seven working days. Once in three months the contractor was to be paid a part of the fixed

amount of overheads pro rata to the target cost of work done during the proceeding three months. Once in six months he was to be paid three-fourths of the fee proportionate to the target cost of the work done in the proceeding half year. Enclosure III also set out the rate of wages for unskilled labourers, khalasi, mason, fitter or carpenter. If the contractor completed the work prior to September 30, 1960 he was to be paid, exclusive of such sums as may be due to, or from, him a bonus equivalent to Rs. 2,00,000 for every complete month by which the actual completion of the work precedes September 30, 1960. The terms of the contract have been set out at some length as they have a relevance to the question payable to the workers because the question now agitated before this Court is that the Industrial Tribunal should be asked to decide who is to pay the bonus, if bonus is payable to the workmen, the contractor or the company.

3. It would be noticed from the provisions of the contract set out above that all payments to labour were to be made by the company. The contract contemplates payment of travelling allowance, payments in respect of sickness, accident, provident fund, pension, overtime, additional remuneration for Sunday, holiday or night work etc. It has even mentioned the rate of wages and is thus fairly comprehensive. There is, of course, no mention about bonus. Now if the contractor has to pay a higher rate of wages than that found in Enclosure III because of the conditions in the labour market naturally the contractor cannot be expected to pay it from out of his funds or the payments he was to receive in pursuance of the contract. This being a contract in which the company is to pay for labour as well as for materials any increase in the cost of those items cannot be borne by the contractor, who was to be paid only a fixed sum towards its remuneration. As the question of bonus is not mentioned in the contract the question arises as to who is to pay the bonus in case bonus is found payable to the workmen. We express no opinion on that point. But it appears to us that the company is adopting an ostrich like policy in trying to avoid being made a party to the reference before the Industrial Tribunal. If it should ultimately be held that bonus is payable and the company is liable to pay it, it should do its best even from this stage to fight the question of liability to pay bonus as well as the quantum.

4. What is called a tripartite agreement seems to have been entered into between the workmen and the appellant in the presence of the Labour Commissioner on June 12, 1960 That was natural as the appellant it was that employed labour. But that by itself does not decide the question who is to pay the bonus. Under the agreement the appellant agreed to the payment of bonus in principle subject to the condition that they get the bonus from the company. The quantum of bonus and exact date from which the bonus was payable was not, however, indicated. It was also stated that when bonus was received by the management it shall notify the fact to the workers and that the union may raise this as a point of dispute when it would deem it appropriate.

5. On June 15, 1960 the labour union appears to have written a letter to the Labour Commissioner of Orissa raising a dispute for adjudication regarding bonus. The union mentioned that they had also written a number of letters to the appellant as well as the company but neither of them had decided the issue. They, therefore, served a notice of strike. The Labour Commissioner wrote to the Government on October 17, 1960 about the dispute and mentioned that the appellant had agreed to pay bonus if the company paid it. He also mentioned the fact that the appellant in reply to the letters from the workmen had stated that they had not come to any final decision in the matter. On the ground that unless something was done there will be a strike causing complete dislocation of work of the company he suggested that the following issue may be considered for reference to the Industrial Tribunal :

> Whether the workers of Hochtief Gammon are entitled to any bonus ? If so, what should be

the quantum ?

He proceeded to say that if this question was finally decided it would also serve as a guiding principle for other contractors as similar demands for payment of bonus from workers were being received. It would be noticed that though the appellants stand was that they would pay the bonus if it were given by the company the Labour Commissioner did not suggest that the questions to the party liable to pay the bonus, whether it was the appellant or the company, be referred for adjudication. His anxiety was that the work of the company should not be dislocated. He did not apply his mind to the question of the party liable to pay the bonus. Naturally the Government also did not. The Government therefore referred the following issue for adjudication :

Whether the workers of M/s. Hochtief Gammon, Civil Engineers and Contractors, Rourkela are entitled to any bonus and if so, what should be the quantum ?

On this a notice seems to have been served on the company and curiously enough the company said that the appellant did not complete the work as set out in the memorandum of agreement and hence no bonus was due to the contractors and that therefore they were not a necessary party. This bonus, as the terms of the contract set out earlier would show, has nothing to do with the bonus payable to the workmen. The appellant in their written statement pointed out that under the terms of the contract the company had to bear all expenditure with reference to labour, all payments in respect of wages, salaries and other connected payments made to persons engaged in the works, that it was also responsible to make payments to statutory schemes in respect of all workmen and that they themselves were only paid a stated fee for professional services rendered to them and therefore no demand can be raised by the workmen who are engaged by the contractor against the contractor and such a demand is unsustainable in law. They then gave reasons why the workmen were not entitled to any bonus from them. It is not necessary to set out those reasons at length. We have already referred to the stand of the company. As would be apparent from the decision of this Court on the earlier occasion, which we shall set out later, the Tribunal could not decided this question in view of the terms of reference made to it.

6. Thereafter the appellant filed an application under Section 18(3)(b) of the Industrial Disputes Act praying that for a proper adjudication of the issue referred to the Tribunal it was necessary to bring on record the company as a party to the proceeding. They pointed out that any amount payable to the labourers engaged by the contractors for whatsoever reason was a contract expenditure within the meaning of the term contract and payable by the company as it was entirely responsible for payment of all remuneration to the workmen and all expenditure incurred by reason of any demand put forward by the workmen in connection with the works, was debitable to the contract and payable by the company. This application was rejected. Thus the stand of the appellant as to the party liable to pay the bonus was never in doubt.

7. The appellant thereupon filed a petition before the High Court of Orissa praying that the order of the Tribunal should be set aside. That petition also having been dismissed an appeal was filed before this Court by special leave. The relevant portion of the judgment of this Court is found at page 605, (1964) 7 SCR :

The next contention raised by Mr. Chatterjee is that M/s. Hindustan Steel Ltd. is a necessary party because it is the said concern which is the employer of the respondents and not the

> appellant. In other words, this contention is that though in form the appellant engaged the workmen whom the respondent union represents, the appellant was acting as the agent of its principal and for adjudicating upon the industrial dispute referred to the Tribunal by the State of Orissa, it is necessary that the principal, viz., M/s. Hindustan Steel Ltd. ought to be added as a party. In dealing with this agreement, it is necessary to bear in mind the fact that the appellant does not dispute the respondent union's case that the workmen were employed by the appellant. It would have been open to the State Government to ask the Tribunal to consider who was the employer of these workmen and in that case, the terms of reference might have been suitably framed. Where the appropriate Government desires that the question as to who the employer is should be determined, it generally makes a reference in wide enough terms and includes as parties to the reference different persons who are alleged to be the employers. Such a course has not been adopted in the present proceedings, and so, it would not be possible to hold that the question as to who is the employer as between the appellant and M/s. Hindustan Steel Ltd. is a question incidental to the industrial dispute which has been referred under Section 10(1)(d). This dispute is a substantial dispute between the appellant and M/s. Hindustan Steel Ltd. and cannot be regarded as incidential in any sense, and so, we think that even this ground is not sufficient to justify the contention that M/s. Hindustan Steel Ltd. is a necessary party which can be added and summoned under the implied powers of the Tribunal under Section 18(3)(b).
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> It would be noticed that before this Court what was admitted was that the appellant had employed the workmen but the question as to who was the employer in relation to those workmen was the main question at issue. That was why this Court pointed out that it would have been open to the State Government to ask the Tribunal to consider who was the employer of these workmen and in that case the terms of reference might have been suitably framed. As that had not been done this Court pointed out that it would not be possible to hold that the question as to who was the employer as between the appellant and the company was a question incidental to the industrial dispute which had been referred under Section 10(1)(d), as it was a substantial dispute between the appellant and the company.

8. Apparently taking the cue from the observations of this Court the appellant filed a writ petition out of which this appeal arises. But before doing so the respondent had filed an application before the State Government asking them to modify the earlier reference to the Industrial Tribunal by adding the company as a party to the reference and an additional clause as under :

> If bonus is payable, who is the employer and who is responsible for payment of the bonus to the workmen ?

They pointed out in that application that the company was entirely responsible for payment of wages and connected payments and all other remuneration of any kind of the workmen, that for enabling the appellant to make payments to the labourers engaged for such work on behalf of the company an imprest of Rs. 30,00,000 was given to them out of which the payments were made, that the appellant got only a fee, that if any bonus becomes payable it was the person who pays wages that has to pay the bonus. Thereafter they also asked for a personal hearing. To this the reply of the Government was as follows :

> With reference to their petition dated May 20, 1964 on the above subject, the undersigned is directed to say that after due consideration of the matter the Government do not find any materials on the basis of the petition to include Hindustan Steel Ltd., Rourkela as a party in

the above case.

It would be noticed that in the petition the appellant wanted not only that the company should be made a party but also that another issue must be referred to the Tribunal for adjudication. They had given reasons as to why the company should be included as a party. They had in their petition included the paragraph which we have extracted above from this Court's judgment. It is apparent from their reply that the Government had not applied their mind to the facts placed before them. There was at least an arguable case on the point as to who was liable to pay the bonus and in that case the company would have been a necessary and appropriate party. Even if the Government though that the company was not a necessary party the question as to who was liable to pay the bonus was a very relevant question and that made the company a necessary or at least a proper party. The attitude of the appellant had throughout been that their contract was a cost contract, that the company had to pay labour and while they had employed the workmen the employer was really the company. That contention may or may not be upheld by the Tribunal. Ultimately if the Tribunal should hold that the appellant is the party responsible for payment of bonus the question as between the company on the one hand and appellant on the other may have to be decided by arbitration as provided in the contract between them or otherwise. It appears to us, therefore, that not only was this an appropriate question to be referred to the Industrial Tribunal for adjudication but even the company should be interested in getting itself impleaded as a party so as to put forward any contention which it may decide to put forward as regards the question whether bonus was payable and if so the quantum thereof, as also the question as to who would be liable to pay the bonus instead of adopting, as we have said earlier, as ostrich like policy.

9. The power of the courts in relation to the orders of the appropriate Government in the matter of referring industrial disputes for adjudication is no longer in doubt. In State of Bombay v. K. P. Krishnan ((1961) 1 SCR 227 : AIR 1960 SC 1223 : (1960) 2 LLJ 592) it was held :

It is common ground that a writ of mandamus would lie against the Government if the order passed by it under Section 10(1) is for instance contrary to the provisions of Section 10(1) (a) to (d) in the matter of selecting the appropriate authority; it is also common ground that in refusing to make a reference under Section 12(5) if Government does not record and communicate to the parties concerned its reasons therefore a writ of mandamus would lie. Similarly it is not disputed that if a party can show that the refusal to refer a dispute is not bona fide or is based on a consideration of wholly irrelevant facts and circumstances a writ of mandamus would lie. The order passed by the Government under Section 12(5) may be an administrative order and the reasons recorded by it may not be justiciable in the sense that their propriety, adequacy or satisfactory character may not be open to judicial scrutiny; in that sense it would be correct to say that the court hearing a petition for mandamus is not sitting in appeal over the decision of the Government; nevertheless if the court is satisfied that the reasons given by the Government for refusing to make a reference are extraneous and not germane then the court can issue, and would be justified in issuing, a writ of mandamus even in respect of such an administrative order.

In Bombay Union of Journalists v. State of Bombay ((1964) 6 SCR 22, 34 : AIR 1964 SC 1617 : (1964) 1 LLJ 351) it was observed :

> The breach of Section 25F is no doubt a serious matter and normally the appropriate Government would refer a dispute of this kind for industrial adjudication; but the provision contained in Section 10(1) read with Section 12(5) clearly shows that even where a breach of Section 25F is alleged, the appropriate Government may have to consider the expediency of

> making a reference and if after considering all the relevant facts the appropriate Government comes to the conclusion that it would be inexpedient to make the reference, it would be competent to it to refuse to make such a reference. If the appropriate Government refuses to make a reference for irrelevant considerations, or on extraneous grounds, or acts mala fide, that, of course, would be another matter; in such a case a party would be entitled to move the High Court for a writ of mandamus.

10. The above are not the only powers of the courts in relation to the orders of the Government or an officer of the Government who has been conferred any power under any statute, which apparently confer on them absolute discretionary powers, in this country as well as in England. In England in earlier days the courts usually refused to interfere where the Government or the concerned officer passed what was called a non-speaking order, that is, an order which on the face of it did not specify the reasons for the order. Where a speaking order was passed the courts proceeded to consider whether the reasons given for the order of decision were relevant reasons or considerations. Where there was a non-speaking order they used to say that it was like the face of the Sphinx in the sense that it was inscrutable and therefore hold that they could not consider the question of the validity of the order. Even in England the courts have travelled very far since those days. They no longer find the face of the Sphinx inscrutable. Needless to say that courts in India, which function under a written Constitution which confers fundamental rights on citizens, have exercised far greater powers than those exercised by courts in England, where there is no written Constitution and there are no fundamental rights. Therefore the decisions of courts in England as regards powers of the courts, 'surveillance', as Lord Pearce calls it, or the control which the Judiciary have over the Executive, as Lord Upjohn put it, indicate at least the minimum limit to which courts in this country would be prepared to go in considering the validity of orders of the Government or its officers. In that sense the decision of the House of Lords in Padfield v. Minister of Agriculture, fisheries and Food (1968 AC 997) is a landmark in the history of the exercise by courts of their power of surveillance.

11. That decision is well worth a close study but we will resist the temptation to quote more than is absolutely necessary. That was a case where under the provisions of the Agricultural Marketing Act, 1958 the minister had the power to appoint a committee to go into certain questions under Section 19 of that Act but when requested to appoint a committee he refused. In refusing to appoint the committee he had given elaborate reasons for his refusal. It was admitted that the question of referring the complaints to a committee was a matter within the minister's discretion. It was also argued that he was not bound to give any reasons for refusing to refer a complaint to a committee and that if he gives no reasons his refusal cannot be questioned, and his giving reasons could not put him in a worse position. It was held by the House of Lords that an order directing the minister to consider the complaint according to law should be made. It was also held that Parliament conferred a discretion on the minister so that it could be used to promote the policy and objects of the Act which were to be determined by the construction of the Act and that was a matter of law for the court. It was further held that though there might be reasons which would justify the Minister in refusing to refer a complaint, his discretion was not unlimited and, if it appeared that the effect of his refusal to appoint a committee of investigation was to frustrate the policy of the Act, the court was entitled to interfere. The extracts given below of certain portions of the speeches of the learned Lords can be appreciated in that background.

Lord Reid :

> The respondent contends that his only duty is to consider a complaint fairly and that he is

given an unfettered discretion with regard to every complaint either to refer it or not to refer it to the committee as he may think fit. The appellant contends that it is his duty to refer every genuine and substantial complaint, or alternatively that his discretion is not unfettered and that in this case he failed to exercise his discretion according to law because his refusal was caused or influenced by his having misdirected himself in law or by his having taken into account extraneous or irrelevant considerations.

In my view, the appellants first contention goes too far. There are a number of reasons which would justify the minister in refusing to refer a complaint. For example, he might consider it more suitable for arbitration, or he might consider that in an earlier case the committee of investigation had already rejected a substantially similar complaint, or he might think the complaint to be frivolous or vexatious. So he must have at least some measure of discretion. But is it unfettered ?

It is implicit in the argument for the Minister that there are only two possible interpretations of this provision - either he must refer every complaint or he has an unfettered discretion to refuse to refer in any case. I do not think that is right.

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It was argued that the minister is not bound to give any reasons for refusing to refer a complaint to the committee, that if he gives no reasons his decision cannot be questioned, and that it would be very unfortunate if giving reasons were to put him in a worse position. But I do not agree that a decision cannot be questioned if no reasons are given.

Lord Hodson :

The reasons disclosed are not, in my opinion, good reasons for refusing to refer the complaint seeing that they leave out of account altogether the merits of the complaint itself. The complaint is as the Lord Chief Justice pointed out, made by persons affected by the scheme and is not one for the consumer committee as opposed to the committee of investigation and it was eligible for reference to the latter. It has never suggested that the complaint was not a genuine one. It is no objection to the exercise of the discretion to refer that wide issues will be raised and the interests of other regions and the regional price structure as a whole would be affected. It is likely that the removal of a grievance will, in any event, have a wide effect and the minister cannot lawfully say in advance that he will not refer the matter to the committee to ascertain the facts because, as he says in effect, although not in so many words, "I would not regard it as right to give effect to the report if it were favourable for the appellants".

Lord Pearce :

I do not regard a minister's failure or refusal to give any reasons as a sufficient exclusion of the court's surveillance.

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It was for the minister to use his discretion to promote Parliament's intention. If the court had doubt as to whether the appellants' complaint was frivolous or repetitive, or not genuine, or not substantial, or unsuitable for investigation or more apt for arbitration, it would not

interfere. But nothing which has been said in this case leads one to doubt that it is a complaint of some substance which should properly be investigated by the independent committee with a view to pronouncing on the weight of the complaint and the public interest involved.

The fact that the complaint raises wide issues and affects other regions was not a good ground for denying it an investigation by the committee. It is a matter which makes it very suitable for the committee of investigation, with its duty to report on the public interest, and its capacity to hear representatives of all the regions.

Lord Upjohn :

The minister in exercising his powers and duties, conferred upon him by statute, can only be controlled by a prerogative writ which will only issue if he acts unlawfully. Unlawful behaviour by the Minister may be stated with sufficient accuracy for the purposes of the present appeal (and here I adopt the classification of Lord Parker, C.J. in the Divisional Court) : (a) by an outright refusal to consider the relevant matter, or (b) by misdirecting himself in point of law, or (c) by taking into account some wholly irrelevant or extraneous consideration, or (d) by wholly omitting to take into account a relevant consideration.

There is ample authority for these propositions which were not challenged in argument. In practice they merge into one another and ultimately it becomes a question whether for one reason or another the minister has acted unlawfully in the sense of misdirecting himself in law, that is, not merely in respect of some point of law but by failing to observe the other headings I have mentioned.

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The minister's main duty is not to consider its suitability for investigation; he is putting the cart before the horse. He might reach that conclusion after weighing all the facts but not until he has done so.

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This introduces the idea, much pressed upon your Lordships in argument, that he had an "unfettered" discretion in this matter; this, it was argued, means that, provided the minister considered the complaint bona fide, that was an end of the matter. Here let it be said at once, he and his advisers have obviously given a bona fide and painstaking consideration to the complaints addressed to him; the question is whether the consideration given was sufficient in law.

My Lords, I believe that the introduction of the adjective "unfettered" and its reliance thereon as an answer to the appellants' claim is one of the fundamental matters confounding the minister's attitude bona fide though it be .... even if the section did contain that adjective I doubt if it would make any difference in law to his powers ..... But the use of that adjective, even in an Act of Parliament, can do nothing to unfetter the control which the Judiciary have over the Executive namely that in exercising their powers the latter must act lawfully and that is a matter to be determined by looking at the Act and its scope and object in conferring a discretion upon the minister rather than by the use of adjectives.

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> ... a decision of the minister stands on quite a different basis; he is a public officer charged by Parliament with the discharge of a public discretion affecting Her Majesty's subjects; if he does not give any reason for his decision it may be, if circumstances warrant it that a court may be at liberty to come to the conclusion that he had no good reason for reaching that conclusion and order a prerogative writ to issue accordingly.
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> That was a case where the minister had given elaborate reasons and it was. Therefore, possible for their Lordships of the House of Lords to consider the reasons given by the minister in elaborate detail and show how he had misdirected himself. They also pointed out that by merely keeping silent the minister cannot avoid the Court considering the whole question.

12. The principles deducible from the decisions of this Court and the above decision of the House of Lords which, though not binding on us, appeals to us on principle may be set out as follows.

13. The Executive have to reach their decisions by taking into account relevant considerations. They should not refuse to consider relevant matter nor should they take into account wholly irrelevant or extraneous consideration. They should not misdirect themselves on a point of law. Only such a decision will be lawful. The courts have power to see that the Execution acts lawfully. It is no answer to the exercise of that power to say that the Executive acted bona fide nor that they have bestowed painstaking consideration. They cannot avoid scrutiny by courts by failing to give reasons. If they give reasons and they are not good reasons, the court can direct them to reconsider the matter in the light of relevant matters, though the propriety, adequacy or satisfactory character of those reasons may not be open to judicial scrutiny. Even of the Execution considers it inexpedient to exercise their powers they should state their reasons and there must be material to show that they have considered all the relevant facts. 14. Judged by these tests the order of the State Government is unsustainable. Here the Government did not say that it considered it inexpedient to refer the question for adjudication or that the considerations put forward by the appellant before it were irrelevant. Neither the Labour Commissioner nor the Government seem to have noticed that this contract is not one of the usual kind wherein a contractor undertakes to do a certain work for a certain sum. In that case the question of profit and loss or as between the contractor and the party for whom he is executing the work any question as to who was to pay labour would not arise whether it is with regard to wages or bonus. The contractor will have to bear the full cost of material as well as the full liability for paying the workmen on any head whatsoever. In this contract the company had to pay for the material as well as labour. The appellant got paid only for its professional services. There was in any case in the contract no provision that the appellant was to incur any item of expenditure or make any payment in relation to the workmen. In such a contract it would be unusual if it was to be considered that the appellant were expected to pay the bonus for the workmen. This however need not be taken as our final view on this point. But it is a relevant matter for consideration by the Government in deciding whether to refer the matter to the Tribunal or not. Furthermore, when the question of bonus in this case arose what is known as the Full Bench formula was holding the field in the matter of payment of bonus. If the bonus were to be paid by the appellant it would hardly be brought within that formula. As the company had certainly not begun production at that stage it would be difficult to calculate the bonus with reference to the business of the company either. The mistake that the Labour Commissioner committed was in not realising that the dispute concerned not merely two parties but these because from the beginning the appellant had made it clear that they would pay the bonus if the necessary amount was paid to them by the

company.

15. We have set out the facts of this case at considerable length and considered the whole question. We think that Government's order in this case really amounts to an outright refusal to consider relevant matters and the Government also misdirected itself in point of law in wholly omitting to take into account the relevant considerations which as held by the House of Lords is unlawful behaviour. It has failed to realise that in effect the contractor employed labour for the company who was the real paymaster. It had failed to take into account the fact that the workmen wanted the bonus from either the company or the appellant. Naturally the workmen were not interested who paid them as long as they were paid. It would bear repetition to say again that the original mistake arose out of the assumption by the Labour Commissioner that this was a case of an ordinary contract which would apply to other contractors also. He had apparently not seen the contract between the company and the appellant and that mistake was adopted by the State Government and they stuck to it in spite of the application made to them by the appellant after the disposal of the earlier appeal by this Court, giving all relevant facts. It does not appear from the communication of the Government to the appellant that they had applied their mind to any of the considerations set out in the appellant's application.

16. In the circumstances this appeal must be allowed and the Government of Orissa must be directed to reconsider this matter and take a decision in the matter of reference in the light of the relevant facts. There will be no order as to costs.

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