

Bharat Coking Coal Ltd.

Vs

Raghunath Balmiki and Others

IAs Nos. 6 of 1996, 7 and 8 of 1997 in Civil Appeal No. 1249 of 1993

(K. Venkataswami, S. R. Mishra JJ)

08.09.1998

ORDER

1. Civil Appeal No. 1249 of 1993 was filed by the Bharat Coking Coal Limited (for short "BCCL") against an award dated 20-7-1992 passed by the Central Government Industrial Tribunal No. II, Dhanbad, in Reference Case No. 48 of 1991. That appeal was dismissed by this Court on 18-7-1996. Thereafter, the BCCL have filed a Review Petition No. 209 of 1995 and IA No. 6 of 1996 for directions that the workmen concerned should furnish full particulars, namely, their father's name, age, address, etc. and further to direct the Tribunal to carry out proper identification of the said workmen. While dismissing the review petition, this Court passed an interim order in IA No. 6 of 1996 on 3-2-1997 directing the workmen to furnish a list of the workmen concerned to the learned Additional Solicitor General representing the management of BCCL in order to verify and finalise the list of workmen who were connected with Reference Case No. 48 of 1991. Pursuant to that order, the workmen furnished the list as directed and also filed a list in this Court for perusal. While so, one Sanjay Kumar, for himself and for other workmen, filed certain certificates along with the counter-affidavit in IA No. 6 of 1996 claiming that they are the real workmen to be regularised as per the award of the Tribunal. Taking exception to those certificates filed by Sanjay Kumar and others, the respondent-workmen in the civil appeal filed an IA No. 7 of 1997 under Section 340 CrPC read with Order 47 of the Supreme Court Rules, 1966 for a direction to order an enquiry regarding the correctness or otherwise of the documents filed by Sanjay Kumar along with his counter-affidavit in IA No. 6 of 1996. This Court considered IAs Nos. 6 & 7 and passed an order on 11-4-1997 in the following terms :

"IA No. 6

The applicant/management has filed this application on account of the difficulty expressed by it in proper identification of the workmen concerned. It does appear even from the fact that the workmen are sought to be represented by more than one person who apparently are not speaking in one voice; that there is a genuine difficulty faced by the management in making the correct identification of the workmen concerned. In such a situation, the proper direction to make is that it will ensure that the benefit goes to the correct persons identified correctly as workmen concerned and not to any one else.

We, therefore, direct that in case the management faces any difficulty in identification of any workman concerned, this question relating to that workman would be decided by the Tribunal to which reference may be made by the management for this purpose. The management is, however, required to discharge this obligation in respect of those workmen whose identity is proved to its satisfaction. It is made clear that the payment made by the management to the workmen concerned

about whose identity it is satisfied would be at its own risk, in case any dispute arises thereafter about the correct identification of the workmen concerned.

The application is disposed of.

Reply be filed by Mr Sinha within four weeks. Rejoinder within two weeks. List after six weeks."

2. Pursuant to the above order, the Chief Judicial Magistrate, Dhanbad, has submitted a detailed report. In the concluding portion of the report, the learned Chief Judicial Magistrate has stated as follows :

"In the facts and circumstances, evidence on record and on consideration of the documents filed by the parties, I am of the view that the certificates issued to the individuals do not appear to have been issued on the date mentioned on it; rather it might have been issued after the transfer of the said Capt. O. P. Shrivastava and that too not to the genuine workmen and the same might have been issued to some different persons after adding alias names to the original names as also by changing the address and giving some imaginary name of the contractor.

In the result, I find and hold that the individual certificates filed before this Court in the enquiry are not issued to the actual workmen, rather these have been issued to some other persons after restoring the name by adding some alias name and no reliance is to be placed on such certificates. In my view, these certificates have been granted with malicious attitude in connivance with respective persons only with a purpose to deprive the actual workmen from getting a job."

3. The applicants in IA No. 7 of 1997 again filed IA No. 8 of 1997 with a prayer to direct the management to implement the order dated 11-4-1997 of this Court and in case of dispute of identity, to direct the Presiding Officer of the Central Government Industrial Tribunal No. II, Dhanbad, to complete the process of identification on the basis of the records available in Reference Case No. 48 of 1991 within a reasonable period.

4. Heard Mr Altaf Ahmed, learned ASG for the BCCL; Mr M. L. Verma, learned Senior Counsel for the applicants in IAs Nos. 7 & 8 of 1997, and Mr S. K. Sinha, Advocate, appearing for Mr Sanjay Kumar and others.

5. We have noticed that IA No. 6 of 1996 has already been disposed of by this Court on 11-4-1997.

6. Mr Altaf Ahmed, learned ASG submitted that IA No. 8 of 1997 amounts to an application for review of the order passed in IA No. 6 of 1996 as the prayer in this IA runs counter to the order of this Court dated 11-4-1997. The workmen have not come forward to establish their identity pursuant to the order of this Court dated 11-4-1997. It is only in the event of the management finding it difficult to identify the workmen that it was directed by this Court to approach the Tribunal. Therefore, the stage for approaching the Tribunal has not come. According to the learned ASG, there was no justification for seeking directions as prayed for in IA No. 8 of 1997. It was further contended that the management has already prescribed a pro forma after the order of this Court for easy and sure identification of the workmen to be regularised. As and when the workmen come forward after filling up such pro forma, the management will proceed to identify the correctness of the same.

7. Mr M. L. Verma, learned Senior Counsel appearing for the applicants in IAs Nos. 7 & 8 of 1997, submitted that the alleged workmen, namely, Sanjay Kumar and others, whose certificates have been found to be not genuine by the Tribunal, must be excluded from consideration by the management for the purpose of regularisation pursuant to the award. The learned counsel pointed out that the pro forma now prescribed is too rigorous for compliance and the pro forma, which was used for identification of the legal representatives of the deceased workmen can be safely used to identify the workmen. It was his further case that all the workmen, numbering about 116, had filed such pro forma already before the Tribunal and also in this Court. Therefore, the management is not justified in complaining that the workmen concerned had not come forward with identification forms to enable BCCL to identify the workmen. It is common ground that after the order of this Court on 11-4-1997, the workmen had not produced any document to enable the management to identify the workmen. The pro forma now prescribed by the management finds a place at p. 82 of IA No. 8 of 1997.

8. After perusing the same, we find that Serial Nos. 10 and 12 in that pro forma are not necessary and have to be deleted. In the Notes of Explanation for Serial No. 3, the workman is directed to produce the certificate of birth from any one of the authorities named therein. To this list of authorities, "Mukhiya of the place from which the workman concerned hails" must also be added. In other words, a certificate from the Mukhiya of the place regarding date of birth must be taken as sufficient proof. At Serial No. 10, clause (a) is replaced by the following :

"by a permanent employee of the BCCL, who completed at least 20 years of service in the Company and who must have known the awardee working in the Company".

The rest of the portion in that clause must be deleted.

9. Clause (b) of Serial No. 10 is deleted.

10. With the modifications suggested above in the pro forma, the workman concerned shall fill up the same in support of his identification. As and when such pro forma is given by the workman, the management will proceed further to identify the workman and pass appropriate orders in accordance with the award of the Tribunal. In case of any difficulty in identifying the workman, it can follow the direction given by this Court on 11-4-1997.

11. It is stated by Mr Altaf Ahmed, learned ASG, that the management has come across certain instances where the birth certificates produced will lead to an inference that the workmen, who were working under the Contractor, were minors at the relevant time. Engaging a minor is an offence under the provisions of the Mines Act, 1952 and other allied provisions. In considering/accepting such workmen for regularisation, it may reflect on the management and the possibility of the management being prosecuted for such offence cannot be ruled out. In such instances the BCCL can approach the Tribunal for passing appropriate orders in accordance with law. It is also pointed out by Mr Altaf Ahmed that one Prasad, who was nowhere at the time of the proceedings before the Tribunal, has now projected himself as President of the Union while the references were by individual workmen and the presence of the former (Prasad) in settling the issue of identification may not be conducive and that he should be restrained from appearing before the management on behalf of the workmen. In this connection, he invited our attention to a letter/hartal notice issued by the said Prasad on 8-8-1998. In this notice, he has made certain unwarranted insinuations against the counsel and the courts. Taking into account all these factors, we direct that the workmen concerned should directly appear before the management and produce the evidence (pro forma) for

identification purposes. The said Prasad shall not represent the workmen before the management.

12. On production of necessary filled up pro form as prescribed by the management and modified in this order, the management shall complete the verification process within three months from the date of the receipt of such pro forma.

13. Mr S. K. Sinha, learned counsel appearing for Sanjay Kumar and others, except Respondent 111, submitted that the findings in the report of the learned Chief Judicial Magistrate, Dhanbad, are not correct and the conclusions had not been reached on a thorough appreciation of the evidence produced before him. We have carefully perused the report of the learned Chief Judicial Magistrate and we have no good ground to accept the contention of Mr Sinha, learned counsel, who has assailed the report of the learned Chief Judicial Magistrate. The conclusions of the learned Chief Judicial Magistrate are based on well-founded reasonings.

14. In the result, we hold that Sanjay Kumar and others, who came forward with the certificates as if they were the workmen to be regularised, are not entitled to raise such claim before the management.

15. In view of the above, the IAs will stand disposed of accordingly with no order as to costs.