

SUPREME COURT OF INDIA

Canteen Mazdoor Sabha

Vs.

Metallurgical Engg. Consultants (I) Ltd.

C.A.No.1587 of 2005

(A.K.Mathur and Markandey Katju JJ.)

21.08.2007

JUDGMENT

A.K. MATHUR, J.

1. This Appeal is directed against the order passed by the High Court of Jharkhand at Ranchi in Letters Patent Appeal No.

382/1997 whereby the Division Bench by order dated 23rd December, 2003 set aside the order passed by the learned Single Judge as well as the Award of the Industrial Tribunal holding that the workers of the canteen of Metallurgical and Engineering Consultant (India) Ltd. (hereinafter referred to as the Mecon) run by Mecon Welfare Committee be treated at par with the employees working in the VIP Guest House and Tea Club of Mecon and granting them all the benefits given to those employees and to treat them as employees of Mecon. The writ petition was filed by the Canteen Mazdoor Sabha in the Apex Court and this Court by order dated 23rd February, 1987 directed to list the matter after the judgment was pronounced in writ petition Nos. 12143-12214 of 1984. On 19.10.1992, the writ petition came up for final disposal and it was stated in the order that the parties agreed that a joint reference under Section 10(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) be made to the Industrial Tribunal for adjudication of the disputes between Sabha and Mecon. Following are disputes set out in the order :

"1. Whether the employees of canteen engaged and employed by MECON Welfare Committee consisting of the representatives of MECON (Non-executive) Employees' Union, MECON Executive Association and nominees of MECON are entitled to the same service conditions as are applicable to the employees of the VIP Guest House and of the Tea Club who are employed and engaged by MECON?

2. If so, from what date?

3. In view of the nature of work performed by the Canteen employees engaged and employed by MECON Welfare Committee, are they justified in law in asking for parity with the employees of MECON working in the VIP Guest House and the Tea Club keeping in view that the total number of the canteen employees are only 25 and the said Canteen run by Mecon Welfare Committee is a non- statutory and non-recognised canteen?"

Thereafter, the State Government was directed to refer the disputes to the Industrial Tribunal under

Section 10(2) of the Act for adjudication. The Tribunal raised the following points for consideration:

"(i) Whether the present reference is bad in law and on facts.? (ii) Whether the relationship of employer and employees exists in between the management of Mecon or the management of Mecon (SAIL) Welfare Committee and the employees of Mecon Canteen, and (iii) Whether the employees of Mecon Canteen are entitled to get pay scale and other benefits which pay scale and other benefits are made available to the employees of VIP Guest House as well as the employees of Tea Club of Mecon?

2. The Tribunal after recording necessary evidence and hearing both the parties held that neither the reference was bad in law nor on facts, relationship of employer and employees existed between the management of Mecon and the workmen of Mecon Canteen and that the workmen of Mecon Canteen are entitled to get pay scales and other benefits which were/are available to the workmen of Mecon VIP Guest House and Mecon Tea Club from the dates of appointments of the concerned workmen. This award was challenged by the MECON by filing writ petition in the High Court.

and submitted that the Tribunal had misdirected itself in framing the question. It was said that the question referred as directed by the Supreme Court clearly implied that the workers of the canteen were employed by the Mecon Welfare Committee, distinct from MECON and the question was whether those persons were liable to be treated as employees of the MECON. Since the question was wrongly framed, therefore, the wrong answer has been given by the Tribunal. This was opposed by the Canteen Sabha and a preliminary objection was raised to the effect that the writ petition was not maintainable. Learned single judge dismissed the preliminary objection of the canteen Sabha and upheld the order of the Tribunal and declined to interfere under Article 226 of the Constitution of India. Aggrieved against this order the MECON approached the division bench by filing the appeal, and the division bench after properly construing the matter came to the conclusion that the canteen was run by the Canteen Welfare Committee for the welfare of the staff and workmen of Mecon. Therefore, there was no Master and servant relationship between the employees of the Canteen and Mecon, and as such they are not entitled to the same service benefits as are admissible to the employees of the MECON serving for the VIP Guest House or for the Tea Club.

Consequently, the Division Bench set aside the order of the Tribunal as well as the order of the single Judge and dismissed the writ petition. Hence the present appeal by the Canteen Mazdoor Sabha.

3. We have heard learned counsel for the parties & perused the record.