

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

**W.P.(L) No. 5718 of 2001**

M/s. Bharat Coking Coal Limited, through its General Manager, Bhalgora Area (Now re-named as Kustore Area), P.O. Jharia, district-Dhanbad

**... .. Petitioner(s)**

**Versus**

1. The workmen represented by the Secretary, Bihar Colliery Kamgar Union, Temple Road, Purana Bazar, district-Dhanbad

2. The Presiding Officer, Central Government Industrial Tribunal No. 1, Dhanbad.

**... .. Respondent(s)**

**CORAM: HON'BLE MR. JUSTICE DEEPAK ROSHAN**

For the Petitioner(s) : Mr. Anoop Kumar Mehta, Advocates

For the Respondent(s) : Mrs. Jasvinder Mazumdar, Advocate

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**JUDGMENT**

**C.A.V On 02/07/2025**

**Pronounced on 17/09/2025**

The instant writ application has been filed by the petitioner for the following relief:

*"1.The petitioner prays for quashing the award dated 25.1.2001 passed by the Central Government Industrial Tribunal No.1, Dhanbad hereinafter referred to as the Tribunal) in Ref.No.102/1994 (Annexure-6)*

*The dispute referred for adjudication to the Tribunal was as follows:-*

*"Whether the demand of the Union from the management of Hurriladih colliery under Bhalgora Area of B.C.C.L., P.O. Jharia, District-Dhanbad for regularization of 23 workers (vide Annexure-A) is justified ? If so, to what relief the workers are entitled ?"*

*By reasons of the award impugned the Tribunal answered the said reference holding that the demand of the Union for regularisation is justified and accordingly the management is directed to regularise all the concerned workmen mentioned in Annexure-A to the schedule of reference within 30 days from the date of publication of the award failing which they shall be entitled wages of Mazdoor Category-I after expiry of 30 days."*

2. The brief fact of the case as it appears from the record is that a work order was issued by the Petitioner-Management in favour a registered Co-operative Society, namely, *Kustore Shramik Sahyog Samiti Limited* with registration no.30/Dhanbad, Anchal 1988. The members of

the Co-operative society were labourers which used to obtain contract etc. under one Kali Singh being, member of the co-operative society. The Co-operative Society was registered under the provisions of Bihar and Orissa Co-operative Society Act and the concerned persons demanding regularization are members of the said Co-operative Society who has been allotted the work order by the Management of Hurriladih colliery. Nevertheless, an industrial dispute was raised making demand for regularizing the concerned persons who were the members of the said Co-operative Society who has been allotted the work order by the Management.

On the demand made by the Respondent no.2, conciliation proceedings were held which ended in failure and the appropriate Government referred the dispute for adjudication to the Tribunal. The reference was registered as *Ref. No. 102/94* and notices were issued to the parties to submit their written statements.

3. The Respondent no.1 appeared and submitted its written statement contending therein that Kali Singh and other concerned persons have been working in the colliery since long as per direction of the Management on permanent and perennial nature of job continuously under the direct control and supervision of the Management.

4. The Petitioner also appeared and filed written statement contending therein that the persons named in the Award are strangers. There is no employer-employee relationship existing between them, as such, question of regularization of the said 23 persons does not and cannot arise.

The stand of the Management was that the work order was issued to a Co-operative Society registered in the name of *Kustore Shramik Sahyog Samiti Limited* bearing registration no.30/Dhanbad Anchal, 1988. Kali Singh was a member of the said Co-operative Society and as such the concerned person by no stretch of imagination can be treated as employees of Hurriladih colliery.

It was also contended that the Co-operative society was also registered under the provisions of Bihar and Orissa Co-operative Society and as such being member of registered Co-operative Society, the concerned persons cannot claim themselves to be the employees of Hurriladih colliery.

Even the order of reference was questioned by the Management as not valid in absence of employer-employee relationship.

5. After pleadings were complete, the Respondent no.1 was allowed to lead oral and documentary evidence. One Awadhesh Singh, who was one of the concerned persons was examined as WW-1 on 13.11.1995. This witness deposed that since 1991, he has been working on various nature of jobs, both in the surface and underground, like fetching articles from the store. He further deposed that other persons also used to get their attendance marked by officials of the Management. It was also stated that wages were paid by the Management.

It was further stated by him that they were not engaged by *Kustore Shramik Sahyog Samiti Limited*. This witness proved 335 slips which were marked as Ext.W-1 containing 335 slips as also 52 note sheets marked as Ext. W-2 and also attendance marked in loose sheets as Exts.

W-3 to W-3/17.

6. Mr. Anoop Kumar Mehta, Ld. Counsel representing the Petitioner-Management submits that the finding recorded by the Ld. Tribunal that the concerned persons are direct employees of the Petitioner-Management is based on no evidence. It was also submitted that in view of the fact that the alleged job being performed by the concerned persons were neither permanent nor prohibited under the Contract Labour (Regulation & Abolition) Act, 1970; as such, the concerned persons could not have been regularized.

It was also submitted that the Ld. Tribunal has committed an illegality in drawing adverse inference against the Petitioner for non-production of attendance register which were neither maintained nor kept by the Management. Ld. Counsel contended that the evidence of WW-1, Awadhesh Singh is not sufficient for arriving at a finding of fact that the concerned persons were performing permanent and perennial nature of jobs for more than 240 days in a calendar year.

It has been vehemently contended that the Ld. Tribunal has ignored Exhibit-W-3 to W-3/7 which is said to be the attendance register maintained by *Kustore Shramik Sahyog Samiti Limited* of Hurriladih Colliery and in absence of any employer-employee relationship existing between the Petitioner-Company and the concerned persons, the Tribunal is not justified in law in directing regularization.

7. Thus, the crux of the argument on behalf of the Petitioner is that the Award has been passed without any evidence and the finding is based on presumption. As a matter of fact, it is the concerned workmen

who have to prove that they were employees of Petitioner-Company and the Ld. Tribunal has given a perverse finding ignoring the basic fact that there was no relationship between the employer and employee as there is no direct evidence with regard to their relation and there was no chit of paper regarding payment of salary/wages by the Management.

8. Mrs. Jasvinder Mazumdar, Ld. Counsel for the Respondents supported the Award and submits that the same may be implemented and the writ petition be dismissed. Ld. Counsel, reiterating the stand taken in its written statement filed before the Tribunal and the finding of the Tribunal, contends that the Petitioner-Company failed to produce any chit of paper when the attendance register was called for by the Ld. Tribunal.

9. Having heard Ld. Counsels for the Management and the Workmen and after going through the Award and the LCR it transpires that from a bare perusal of Ext. W-3, it is evident that attendance marked is of *Kustore Shramik Sahyog Samiti Limited*. Further, the attendance marked is not in *Form-C* of the Mines Act, 1952.

It further appears that Ext. W-1, which are the slips, are also of *Kustore Shramik Sahyog Samiti Limited* numbering about 335. Even Ext.-2 which are note sheets do not make out a case in favour of the Respondent no. 1. It further transpires that several documents find mention of *Kustore Shramik Sahyog Samiti Limited*.

10. From perusal of the records it appears that during course of hearing, the Respondent no. 1 called for certain documents namely the attendance register. The Petitioner filed its rejoinder to the petition dated 02.03.1995 contending therein that the documents called for are not

available with the employer as the concerned persons never worked in the Company. It was stated that they might have been working under the *Kustore Shramik Sahyog Samiti Ltd.* to whom work was allotted as and when required in the exigency of work. It was also stated that as the documents were not maintained by the employer Company, the same cannot be produced.

Nevertheless, although there was nothing on record to conclusively establish the fact that the concerned persons were engaged by the Petitioner-Management, either on permanent/perennial/prohibited nature of job, yet by an Award dated 25.01.2001, the Ld. Tribunal answered the reference directing the Petitioner-Management to regularize all the concerned persons in terms as detailed in paragraph-9 of the Award.

11. The Award passed by the Ld. Tribunal appears to be on presumption, inasmuch as, on the petition filed by the 1<sup>st</sup> Respondent w.r.t. production of “*Attendance Register*”, and when the Management did not file the same; the learned Tribunal held as under:

*“6. The sponsoring Union has also filed 18 number of loose attendance-sheets which have been marked as Exhibits-W3 to W 3/17 to show that the concerned persons have been working regularly on permanent basis. Apart from that the sponsoring Union has filed an application to direct the management of Hurriladih Colliery to file the attendance slips for the period 1991 to date, note-sheet for the year 1991 to date and job description loose sheets and register, but the management did not file the same nor they have offered any explanation for not filing the same.....”*

The learned Tribunal further held as under:

*“..... Therefore presumption will be that the Management has suppressed the Attendance register only because it could have proved the case of the sponsoring union that the concerned persons have worked in permanent and perennial nature of job and their attendance was for more than 240 days in a calendar year. ...”*

This presumption of the Ld. Tribunal is on the basis of no

evidence, inasmuch as, it has failed to appreciate that if any person is not an employee, then how the Management could file an attendance register. This negative presumption is of no basis in the background that it is an admitted case that the workmen were working through Contractor.

12. The Ld. Tribunal has further failed to hold that “*furthermore, as per the ruling of the Hon’ble Apex Court in the case of “Air India Statutory Corporation v. United Labour Union”,<sup>1</sup> it has been held that if the Management’s establishment is not registered under the Contract Labour (Regulation and Abolition) Act, 1970 and the so-called contractor has got no license then the person engaged by such contractor shall be deemed to be employees of the principal employer. If we apply the ratio of aforesaid case then we find that in the present case the Management has neither pleaded nor proved that their establishment was registered under the Contract (Labour and Abolition) Act, 1970 for engagement of contractor nor they have pleaded or proved that the so-called contractor, Kustore Shramik Sahyog Samiti was a licensee under the Contract Labour (Regulation and Abolition) Act, 1970. Therefore, even if for a moment it is presumed that the concerned persons were engaged by Kustore Shramik Sahyog Samiti then also in absence of registration certificate and license of the contractor the concerned persons must be deemed to be employees of the principal employer.....*”

This finding of the Tribunal is in the teeth of the judgment passed in the case of “*International Airport Authority of India v.*

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<sup>1</sup> AIR 1997 (SC) 645

***International Air Cargo Workers' Union and Anr.***<sup>2</sup> wherein the Hon'ble

Apex Court at para 37 has held as under:

*“37. The industrial adjudicator can grant the relief sought if it finds that contract between the principal employer and the contractor is sham, nominal and merely a camouflage to deny employment benefits to the employer and that there is in fact a direct employment, by applying tests like: who pays the salary; who has the power to remove/dismiss from service or initiate disciplinary action; who can tell the employee the way in which the work should be done, in short, who has direction and control over the employee. But where there is no notification under Section 10 of the CLRA Act and where it is not proved in the industrial adjudication that the contract was a sham/nominal and camouflage, then the question of directing the principal employer to absorb or regularise the services of the contract labour does not arise.”*

13. As a matter of fact, similar issue came for consideration before the Division Bench of this Court in the case of ***“Their Workmen, Bihar Colliery Kamgar Union v. M/s. Bharat Coking Coal Ltd. & Anr.”***<sup>3</sup>.

The Division Bench after referring several judgments including the judgement passed in ***“Dena Nath & Ors. v. National Fertilizer Ltd.”***<sup>4</sup> has held in paragraph nos. 12 to 16 as under:

*“12. Learned counsel for the respondent-management submitted that in the case of Dena Nath & Ors. [(1992) 1 SCC 695], Hon'ble Supreme Court held that the effect of non-compliance of the provisions of CLRA Act of 1970, i.e. non-registration of the establishment under Section 7 of the Act and non-possession of licence under Section 12 of the Act would not result in regularization of the concerned workmen, rather it would result in penal consequences – that is, prosecution under Section 23/24 of the CLRA Act, 1970 and therefore, the finding of the Tribunal that the contract labour system is sham or camouflage was an erroneous finding and referring to the findings of the Tribunal that the arrangement of the management is camouflage, learned Single Judge held that the said finding is in clear teeth of the decision rendered by Hon'ble Supreme Court in the case of Dena Nath & Ors. v. National Fertilizer Ltd. [(1992) 1 SCC 695] and para 22 thereof reads as under:-*

*“22. It is not for the High Court to inquire into the question and decide whether the employment of contract labour in any process, operation or in any other work in any establishment should be abolished or not. It is a matter for the decision of the government after considering the matter, as required to be considered under Section 10 of the Act. The only consequences provided in the Act*

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<sup>2</sup> (2009) 13 SCC 374

<sup>3</sup> 2014 (4) JCR 477 (Jhr)

<sup>4</sup> (1992) 1 SCC 695

where either the principal employer or the labour contractor violates the provision of Sections 9 (sic 7) and 12 respectively is the penal provision, as envisaged under the Act for which reference may be made to Sections 23 and 25 of the Act. We are thus of the firm view that in proceedings under Article 226 of the Constitution merely because contractor or the employer had violated any provision of the Act or the rules, the Court could not issue any mandamus for deeming the contract labour as having become the employees of the principal employer. We would not like to express any view on the decision of the Karnataka High Court or of the Gujarat High Court (supra) since these decisions are under challenge in this Court, but we would place on record that we do not agree with the aforequoted observations of the Madras High Court about the effect of non registration of the principal employer or the non-licensing of the labour contractor nor with the view of Bombay High Court in the aforesaid case. We are of the view that the decisions of the Kerala High Court and Delhi High Court are correct and we approve the same.”

Hon'ble Supreme Court thus categorically held that the effect of non-compliance of the CLRA Act, 1970 and non-possession of licence under Section 12 of the Act would not result in regularization of the concerned workmen, rather it would result in prosecution under Section 23/24 of the CLRA Act. We are of the view that the learned Single Judge has rightly held that merely because of non-registration of the establishment under Section 7 of the CLRA Act and non-possession of licence under Section 12 of the Act, the Tribunal was not right in concluding that the contract labour system is a sham or camouflage.

**13.** It is now well settled that if the industrial adjudicator finds the contract between the principal employer and the contractor to be a sham, nominal and merely a camouflage to deny employment benefits to the employee and that there was in fact a direct employment, it can grant relief to the employee by holding that the workman is the direct employee of the principal employer. Two of the well-recognized tests to find out whether the contract labourers are the direct employees of the principal employer are: (i) whether the principal employer pays the salary instead of the contractor; and (ii) whether the principal employer controls and supervises the work of the employee. In this case, the Tribunal answered both the above questions in affirmative and held that the workmen are direct employees of the management. We are of the view that the Tribunal ought to have examined the matter in the light of the above well-settled principles. On careful consideration of the evidence and materials on record, we are of the view that the Industrial Tribunal committed a serious error in arriving at the finding that because of non-registration of establishment under Section 7 of the CLRA Act and non-possession of licence under Section 12 of the said Act, the contract labour system was a sham or camouflage.

**14.** In so far as the terms, “control and supervision” are concerned, the Tribunal misconstrued the meaning of the terms, “control and supervision”. As pointed out earlier, the work was awarded to the contractor for removal of sludge from settling tanks, which was supervised by the contractor. The work was awarded to the contractor, who used to raise bills and payments were made on the basis of the volume of work executed. The salary was paid to the workmen by the contractor and removal of sludge from the settling tanks was executed under the control and supervision of the contractor. The right to regulate the employment is

*with the contractor and the supervision and control lies with the contractor.*

**15.** *The expression “control and supervision” in the context of contract labour was explained by the Hon’ble Supreme Court in the case of International Airport Authority of India v. International Air Cargo Workers’ Union, [(2009) 13 SCC 374] in paras 38-39, which read as under:*

*“38. ... if the contract is for supply of labour; necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer; if the salary is paid by a contractor; if the right to regulate the employment is with the contractor; and the ultimate supervision and control lies with the contractor.*

*39. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor.”*

*Same principle was reiterated in (2011) 1 SCC 635 (General Manager, (OSD), Bengal Nagpur Cotton Mills, Rajnandgaon v. Bharat Lal & Anr.)*

**16.** *Since the work of removal of sludge from the settling tanks was supervised by the contractor and salary also disbursed by the contractor, the Tribunal ought not to have held that the contract labour system was sham or camouflage and learned Single Judge rightly held that the findings of the Tribunal that the engagement of the workmen through the contractor was a camouflage, was erroneous and the conclusion is clearly erroneous in view of the decisions rendered in the cases of Dena Nath & Ors. v. National Fertilizer Ltd. [(1992) 1 SCC 695] and General Manager, (OSD), Bengal Nagpur Cotton Mills, Rajnandgaon, v. Bharat Lal & Ano. [(2011) 1 SCC 635].”*

**14.** After going through the above referred judgments passed by the Hon’ble Apex Court and the Division Bench, this Court is having no hesitation in holding that the finding given by the Ld. Tribunal with regard to license under the Contract Labour (Regulation and Abolition) Act, 1970 is perverse and has no basis. At the cost of repetition, the presumption of holding that the Petitioner–Company is a principal employer on the ground that no attendance sheet has been submitted by them is also perverse finding because Management cannot file any document if the same is not

available with it for the reason that the attendance sheet of so-called workers are not their own.

In this case, admittedly; the documents which have been exhibited is neither in Form-C; nor there is any sort of stamp etc. of the Management, rather it is of the contractor. Therefore, the finding arrived at by the Ld. Tribunal is of no evidence and this Court holds that there was no employee-employer relationship between the Petitioner-Company and the Workmen involved in this case.

As a matter of fact, there is no direct evidence which can lead to an inference that there is any relationship between the Management and the concerned workmen as employee and employer.

**15.** Having regard to the aforesaid discussions and the settled proposition of law, the Award dated 25.01.2001 passed by the Central Government Industrial Tribunal No.1, Dhanbad in *Ref. No. 102 of 1994*, is quashed and set aside and the instant writ application stands allowed.

**16.** Pending I.As., if any, also stand disposed of.

**(Deepak Roshan, J.)**

Jharkhand High Court, Ranchi  
Dated: 17/09/2025  
Amit  
N.A.F.R