

WRIT PETITION NO. 63 / 2000

Pragatisheel Engineering Shramik Sangh . PETITIONER

Vs

Simplex Engineering & Foundry Works Limited . RESPONDENTS
Unit -3, Tedesara
& Another

SUBMISSION ON BEHALF OF THE RESPONDENT NO.1

The respondent No.1 named above beg to apply as under :-

1. At the outset and with due respect it is submitted that the petition is not all maintainable in the eyes of law. There is absolutely no substance in the contention of the petitioner. It is most respectfully submitted that the instant petition is nothing else but a counter blast to the Writ Petition No. WP/4977/1999 filed by this respondent against the petitioner. Be that as it may, to enable the Hon'ble Court to properly appreciate the dispute involved in the present matter, it is necessary to bring to the kind notice of the Hon'ble Court the facts and circumstances leading to the passing of the order by the Learned Industrial Judge as under:
2. The respondent No.1 are a public limited company and is in the business of engineering and foundry works. Of the many units, which the respondent No.1 runs for its business, one unit is located at Tedesara. The respondent No.1 had obtained registration as principal employer under the Contract Labour (Regulation) Act, 1970 and the said registration is in force till this day.
3. The contract labour is permissible for engineering industry as a result of which the respondent No.1 used to and does engage contractors for doing job work. These contractors obtain the contractors' licence under the Contract Labour (Regulation) Act, 1970. The appointment of the contractor is qua a job of the respondent No.1 and the workers employed by the contractor are under the control of the contractor. The respondent No.1 only receives the end product from the contractor and is not concerned about the work and the conduct of the workers employed by the contractor.

4. It is submitted that it is the case of the respondent No.1 that consequent to the notice of change received in the year 1990, respondent No.1 had negotiations with the union of workers, which did not result in any settlement. The matter was, thereon, taken up in conciliation and during the conciliation proceedings the settlement was arrived at between the respondent No.1 on one hand and the workers on the other in presence of the Assistant Labour Commissioner, Raipur. Under this settlement dated 14.3.1991 substantial financial benefits were made available to the workers. After the expiry of said settlement, which was for a period of four years, a fresh notice of change was received by the respondent No.1 through the union of workers. By the agreement dated 30.7.1995, the respondent No.1 and the union arrived at a settlement under which wages and financial benefits to the workers were again revised. The said agreement dated 30.7.1995 was for a period of 4 years and expired in June 1999.
5. In or about December 1990 one Chattisgarh Mukti Morcha claiming to have members working in engineering industry in and around Raipur and the region nearby posed a serious threat to the industrial peace by various violent acts which it authored during that period. The said Chattisgarh Mukti Morcha, essentially a political outfit, started operating through the mechanism of trade unions and unleashed reign of terror. It is submitted that this well calculated efforts to de-establish the industrial units, was in-fact a step towards causing disturbances and affecting the working and productivity of the said Industrial units. To achieve this nefarious goal, Chhatisgarh Mukti Morcha, floated a Trade Union by the name of the Petitioner herein i.e. "Pragatisheel Engineering Shramik Sangh" and made out all efforts to exploit them to cause adverse effects on industrial peace and harmony as well as on the production and respective field of the units. It is most respectfully submitted that reckless and baseless demands were being raised as regards service conditions of the employees, despite the fact that in almost all engineering units of Tedesara / Bhilai, there were duly registered statutory agreements with the registered, recognized representative unions of the units in respect of wages as well as other service conditions of different category of employees. It forced workers of the respondent No.1 as well as those employed by the contractors to go on strike. It is submitted that the respondent No.1 initially sent personal notices to its employees. The contractor employed by the respondent No.1, whose workers had also proceeded on strike also issued notice to their respective workers. Since these notices failed to evoke any response from the workers, public notices in newspapers were published calling upon the workers to resume their work. It is submitted that while two workers Mr. Madan Rai & Shiv Shankar joined duty in response to these notices, other employees of the respondent No.1 did not respond to these public notices. It will be needless to submit the said Shri Madan Rai & Shiv Shankar, still continues to work with the respondent No.1 even as on today.

6. It is submitted that the said Chhatisgarh Mukti Morcha, even resorted to violent activities, creating law and order problem. It is submitted that even some engineering units were forced to close down by the said organization. It is submitted that earlier there was absolutely no justification for such hostile and violent conduct of Chhatisgarh Mukti Morcha through its sponsored union i.e. the Petitioner herein, since much more beneficial service conditions prevailed in the respective units. However, apparently to avoid any law and order problem or to please the said organization to gain political gain, it appears, at the instance of the local administration, the respondent No.2- State Government tried to mediate the matter. It is submitted that no serious efforts were made by either the Petitioner or the respondent No.2- the State Government in its statutory duty of conciliation. It is submitted that apparently abruptly the State Government by its order dated 26.2.1993 bearing NO. 6-1/93/16-9, was pleased to make a reference vide order dated 25.02.1993 containing three terms of reference, under the Madhya Pradesh Industries Relations Act, 1960, Act No. 27 of 1960 vide Section 51(A) to the Industrial Court, Madhya Pradesh, Raipur Bench, Raipur. The first reference related to wages, Dearness Allowance, second related to leave benefits and the third reference related to alleged termination of employees.
7. It is submitted that by a subsequent order dated 31.07.1995, the respondent No. 2- State Government added a fourth term of reference as regards Interim Relief to persons shown in the schedule appended to the reference to term No 3. It is relevant to mention at this juncture that identically worded reference orders were passed by the State Government in respect of the Respondent No.1 and other 12 engineering units of Tedesara / Bhilai Industrial Estate, though schedule appended to term No.3, containing the list of persons, varied from unit to unit. It is really not necessary to state about these things in detail. Suffice it to say that, arising out of the interim orders passed by the learned Industrial Court during the pendency of the said reference, ultimately the matter reached to this Hon'ble Court and this Hon'ble Court while ordering for maintaining status quo, was pleased to direct, Industrial Court by its order dated 31.5.1995 to proceed to decide the reference on merits as per law on hearing the parties. In pursuance of the said direction given by the Hon'ble Court, the parties appeared before the Industrial Court, Madhya Pradesh, Raipur Bench, Raipur. It is submitted that the Petitioner herein filed its statement of claim, claiming various relief, which said statement of claim was signed and verified by one Shri Sheikh Ansar claiming to be the Secretary of the Union, who has eventually signed the petition filed before this Hon'ble Court also.
8. The respondent No.1 filed its written statement to the said statement of claim. The respondent No.1 would crave leave of this Hon'ble Court to refer to and rely upon the averments made in the said written statement filed by the respondent No.1 to oppose the claim made by the petitioner before the Honourable Court. It is submitted that it will be worth to bring to the kind notice of the Hon'ble Court that the petitioner herein examined only one witness viz. Shri Koushal Ram Sahu. The respondent No 1 examined six witnesses on its behalf.

It will be needless to bring to the kind notice of the Hon'ble Court that various documents were filed by the respondent No.1 before the Industrial Court to prove its claim that only three labourers were the employees of the respondent No.1 and that the respondent No.1 did not know about the persons, who were named in the Annexure to the statement of claim filed by the Petitioner.

9. It is submitted that after hearing the parties, the learned Raipur Bench of the Industrial Court of Madhya Pradesh by its Award dated 16.10.1999 was pleased to decline relief of reinstatement to persons named in the Annexure but directed that they be paid Rs. 20,000/- per worker by way of compensation. It is submitted that the learned Industrial Court also recorded a finding that it was not possible to answer the first and the second term of reference in favour of the Petitioner herein. It is submitted that in the humble submission of the Respondent No.1, the said order passed by the learned Industrial Court is erroneous and therefore the same has been challenged by filing a Writ Petition before the Hon'ble Court. It is submitted that the Petitioner has also challenged the said order by filing the present counter petition. In the back drop of the aforesaid facts and circumstances the respondent No.1 is replying Para wise allegation made in the petition as under :

10. **As to Para 5.1 and 5.2** : The contents of these paragraphs are denied. It is submitted that no demand whatsoever was ever raised before the answering respondents by the self-styled petitioner union in 1990-91. In-fact the sponsors of this union, Chhatisgarh Mukli Morcha, in order to create industrial unrest and disturbance in the entire industrial estate of Tedesara / Bhilai, misguided and misdirected labourers and resorted to violent/anti-social activities for ulterior purposes. It is submitted that such subversive activities were against the labourers as well as industrial peace/harmony. The answering respondents have made submissions in respect to the persons enlisted in the schedule appended to the terms of reference in W.P. No. 4977 of 1999. Further details as regards the manner in which reference has been made to the Industrial Court has also been made viz. there was no raising of demand, no conciliation/conciliation report, no application of mind by the State Government and in-fact the Government made reference to the Industrial Court with political motivation and collateral purposes. It is incorrect to say no charge sheet was issued no order of termination was issued to the employees employed by the Second Party. There was no retrenchment and hence question of applicability of Section 25 (f) did not arise.

11. **As regards para 5.3 :** The contents of this para as far as terms of the references are concerned, are not disputed and in-fact the respondent No.1 has stated about the same in the paras here-in-before

12. **As regards para 5.4 :** The contents of this Para are in-fact contemptuous. It is submitted that laking of the legal actions and defending themselves properly can by no means be termed as delay in proceeding. Thus it is denied that with oblique motive, the answering respondent No 1 raised preliminary objection. Preliminary objections has legal orientation and touched the very premise of the order of reference. The Division Bench of the Industrial Court in Para 15 of the order has made a categorical observation that suspended employees shall not be covered within the ambit and scope of the order of reference which is for terminated employees.
13. **As regards para 5.5 :** The contents of this Para are concocted. It is submitted that the petitioner in this paragraph has only made reference to the part of the judgment, which suits to their convenience and have ignored the ratio of decision which in turn required the Industrial Court to look into and consider statutory lapses of the provisions of the M.P.I.R. Act in making of the reference. It is further submitted that the Hon'ble Court had only relegated the parties to the Industrial Court for adjudication on merits of the case and nothing else. The said judgment shall be referred to at the time of hearing.
14. **As regards para 5.6 :** The contents of this paragraph need no comments. The Full Bench order, Annexure P-2, is self contained and explanatory. The same shall be referred to at the time of hearing.
15. **As regards para 5.7 :** The award of the industrial Court dated 16.10.1999, Annexure P-3, clearly speaks of the fact that petitioner union by examining a solitary witness without any documentary proof has not been able to establish that all the enlisted 208 persons are the workers of the answering respondent No.1 establishment. The evidence so led is unnatural and insufficient, lacking in material particulars. It is incorrect to say that by the award the Industrial Court held that cessation of employment is illegal and they are entitled for normal reinstatement with full back wages as stated in this paragraph. As a matter of fact the petitioner union has miserably failed to establish facts of employment in respect of persons appearing at Serial Nos. 1-88,90-97,99-144,146-208 of the Schedule, with the answering respondent. As a matter of fact there is no employer-employee relationship between them and the answering respondent. Therefore, the award of payment of Rs. 20,000/- to each of them is wholly arbitrary, illegal and de-hors facts and material on record. Further, no substantial evidence, much less any evidence, was led in respect of reference terms Nos. 1 and 2 or proved before the learned Tribunal and therefore, the learned Tribunal rightly answered these two terms in negative.

16. As to Para 6.1 to 6.2 (Grounds urged in the matter) : The grounds urged in the matter are frivolous and concocted. It is most respectfully submitted that finding of the Learned industrial Court as far as the grant of compensation of Rs. 20,000/- to each labour is concerned is absolutely perverse and based on surmises and conjuncture. It is absolutely incorrect to allege that the Learned Industrial Court ought to have awarded the relief of re-intendments with full back wages, as claimed by the petitioner to be the "normal relief". It is absolutely incorrect to allege that the deviation from the same is arbitrary. It is most respectfully submitted that in the ground of the petition and in the pleading, the law cannot be pleaded and therefore the pleading made by the Petitioner on the basis of some of the judgments is absolutely uncalled for and unwarranted. It is most respectfully submitted that the facts of the judgments relied upon by the petitioner, are totally different and there cannot be any blanket ratio applicable to all the matters irrespective of the facts of the case. It is most respectfully submitted that in the nature and quality of the evidence produced by the petitioner, the relief of compensation of Rs. 20,000/- to each labour granted by the industrial Court is absolutely unwarranted and uncalled for. It is submitted that even the said finding exhibits the non-application of mind by the Learned Industrial Judge. The respondent No.1 has filed a writ petition bearing No. WP/497B/1999 challenging the said finding of the Learned industrial Judge. The respondent No.1 craves leave of the Honble Court to read and refer to the grounds urged in the said writ petition as well as the material relied upon in the said writ petition for the purposes of deciding the instant writ petition.
17. As to Para 6.4 to 6.6 : It is absolutely incorrect to allege that the reinstatement in the instant Case is the normal relief. It is absolutely incorrect to say that the respondent No.1 employer had not pleaded or argued for the moulding of relief. It is also incorrect to say that in absence of any such request of the respondent-employer, the Industrial Court cannot grant award of compensation in lieu of the re-instatement. It is also incorrect to say that the order passed by the industrial Court is without jurisdiction. It is most respectfully submitted that this submission of the respondent No.1 has to be read with his submission in the writ petition filed by this respondent.
18. As to Para 6.7 to 6.9 : As far as the grant of compensation in lieu of re-instatement is concerned, even the respondent No.1 is not supporting the order passed by the court below. It is most respectfully submitted that the Learned Industrial Judge failed to appreciate the contention of this respondent No.1 and erroneously came to the conclusion that this respondent No.1 is liable to pay the compensation to each of the worker at Rs. 20,000/-. It is most respectfully submitted that the said award passed by the Learned Industrial Court is not supported by any material on record and is contrary to the finding of the Learned Industrial Judge. It is most respectfully submitted that the reference made by the State of Madhya Pradesh itself is not in accordance with the provisions of Madhya Pradesh Industrial Relations Act 1960. It is most respectfully submitted that the Learned Industrial Court should have examined the validity of the order of reference and come to the conclusion that the same is without jurisdiction.

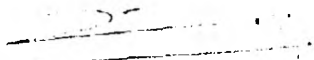
In this view of the matter the contention of the petitioner in the instant petition that the respondent No.1 has not pleaded and proved the case and therefore the relief of re-instatement should be granted is absolutely incorrect and unwarranted. It is incorrect to say that the Industrial Court relied upon a judgment of this Hon'ble Court which was in-fact no judgment

19

As to Para 6.10 to 6.12 : It is incorrect to allege that by the impugned award a premium has been paid to the respondent No.1 as alleged in these Para's. It is incorrect to further allege that the workers have been thrown on the street without following any legal proceedings and snatching their constitutional rights. The authorities relied upon by the petitioner are not helpful to the petitioner. It is most respectfully submitted that the state of Madhya Pradesh has not taken various mandatory steps preceding the making of the reference under Section 51 of the Madhya Pradesh Industrial Relations Act 1960. It is submitted that the Learned Industrial Court should recorded the said finding and further held that it has no jurisdiction to adjudicate upon the dispute. Consequently it is submitted that even the award of compensation by the Learned Industrial Court is apparently illegal. It is denied that the Learned Industrial Court has made any unjustified discrimination as alleged in this ground. It is further asserted that decisions of each case are given on facts and circumstances brought on record of the case. The petitioner cannot equate and compare the cases of Kedia Distillery and Chattisgarh Distillery with reference case against the Second Party.

For all the reasons stated here-in-above the petition preferred by the Petitioner needs to be dismissed.

Place: JABALPUR.
DATED



RESPONDENT NO.1

COUNSEL FOR THE RESPONDENT NO.1