REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5846 OF 2008
(Arising out of SLP (C) No.4578 of 2007)

Steel Authority of India Ltd. and Anr. ...Appellants

Versus

State of West Bengal and Ors. ...Respondents

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of a Division Bench of the Calcutta High Court dismissing the writ petition

filed by the appellants. Challenge was to the reference made by the Government of West Bengal of a purported industrial dispute under Section 7-A of the Industrial Disputes Act, 1947 (in short the 'Act'). According to the appellants, the reference was incompetent in view of what has been stated by this Court in Steel Authority of India Ltd. v. National Union Waterfront Workers (2001 (7) SCC 1).

3. Factual scenario as projected by the appellants in the present appeal and the writ petition is as follows:

Respondent No.4 i.e. National Union of Water Front Worker (in short the 'Union') made a representation to Regional Labour Commissioner (Central) on 21.4.1987 seeking conciliation of proceeding for regularization of services of members of its Union who were working as contract labours with M/s Bardhan and Co. under principal employers i.e. the present appellants. Another representation was made on 4.6.1987 to the Labour Commissioner claiming the status of the workers as contract labours of aforesaid

M/s Bardhan and Co. under present appellants and for regularization. The State of West Bengal issued Notification on 15.7.1989 prohibiting employment of contract labours in the 4 stockyards. The aforesaid notification was kept in abeyance from time to time and ultimately was extended till March 1994. Some workers belonging to the Union filed Writ Petition before the Calcutta High Court seeking absorption in view of Notification dated 15.7.1989. It was inter-alia stated that they were working as contract labours. Learned Single Judge of the Calcutta High Court by order dated 25.4.1994 held that the writ petitioners were entitled to absorption and regularisation from 15.7.1989 when the contract labour was abolished. The present appellants were directed to absorb and regularize the writ petitioners in any establishment under their control and the absorption was to be made according to suitability and experience for a particular job.

An appeal was filed by the present appellants which was dismissed by a Division Bench. Thereafter Special Leave Petitions Nos. 12657-58 of 1998 were filed before this Court.

The matter was referred to the Constitution Bench. The appeal was disposed of inter-alia with the following observations and directions given, in SAIL's case (supra):

> "127. The order of the High Court at Calcutta under challenged insofar as it relates to holding that the West Bengal Government is the appropriate Government within the meaning of the CLRA Act, is confirmed but the direction that the contract labour shall be absorbed and treated on par with the regular employees of the appellants, is set aside. The appeals are accordingly allowed in part".

Workers raised a dispute under Section 10(1) of the Act in October 2001 and January 2002. On 18.11.2003, as noted above, the reference was made to the Industrial Tribunal which was challenged before the High Court by filing a writ petition. The primary stand taken was that in view of the accepted position by the Union and the employees at different points of time that the workers were contract labours, and having at no point of time pleaded that the agreement with the contractors was sham and bogus, after long lapse of time it was impermissible to raise such a

dispute purportedly in view of certain observations in SAIL's case (supra). The High Court rejected the plea and as noted above dismissed the writ petition. The learned counsel for the appellants have submitted that in para 125 of SAIL's judgment it was categorically held that the direction to absorb as given by the High Court was not sustainable and there is no question of any fresh absorption. It is pointed out that at all points of time the Union and the workers categorically admitted that the workers were contract labours. Earlier a writ petition was filed under Article 32 of the Constitution of India, 1950 (in short the 'Constitution') which was disposed of on 14.11.1988. Even at that point of time there was no plea that the agreement with the contractors was bogus or sham. It is pointed out that on a representation made by the appellants, the Government issued a Notification dated 15.7.1989. Even earlier in the writ petition filed there was no plea regarding the agreement being sham or bogus. The prayer was only for absorption and to quash the Notification keeping in abeyance the Notification dated 15.7.1989. In the writ petition it was

categorically stated that the contractors were agents of the principal employer. The direction given in the earlier writ petition filed by the respondents regarding absorption and regularization from 15.7.1989 was set aside. Therefore, for the first time the belated plea with unsupportable material should not have been accepted by the High Court.

4. Learned counsel for the respondent No.4-Union on the other hand submitted that the Union always took a stand that their work was of perennial nature which should be placed on equal terms with regular employed and, therefore, by implication it was pleaded that the existing arrangement was sham. On 15.7.1989 the State of West Bengal prohibited contract labour because work was of a perennial nature and significant to employee full time workmen. This according to learned counsel for respondent No.4 shows implicit acceptance that the use of contract labour was of camouflage. The grievances of the Union and the workmen were essentially to the effect that the agreements are nothing but sham and bogus agreements. There has been no delay or

latches. Before SAIL's decision in 2001, decision in Air India Statutory Corporation and Ors. v. United Labour Union and Ors. (1997 (9) SCC 377) the cases cited was in force. In view of that decision, regularization was permissible following the Notification prohibiting contract labour. The absorption was ordered by a learned Single Judge on 25.4.1994, but the decision was stayed till the decision in SAIL was rendered on 30.8.2001.

5. The scope of judicial review in cases of reference under Section 10 of the Act is very limited. In SAIL's case (supra) it was, inter-alia, held that (a) The State Government has jurisdiction to deal with the matter and (b) automatic absorption is not permissible in law. The orders of a learned Single Judge and the Division Bench assailed in the appeals directing absorption were bad in law. It is inter party decision. For the first time in 2003 the plea about regularization and absorption was raised.

6. In Steel Authority of India Ltd. v. Union of India and Ors. (2006 (12) SCC 233), it was inter alia noted as follows:

> **"20.** The 1970 Act is a complete code by itself. It not only provides for regulation of contract labour but also abolition thereof. Relationship of employer and employee is essentially a question of fact. Determination of the said question would depend upon a large number of factors. Ordinarily, a writ court would not go into such a question.
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> **24.** When, however, a contention is raised that the contract entered into by and between the management and the contractor is a sham one, in view of the decision of this Court in *Steel Authority of India Ltd.* an industrial adjudicator would be entitled to determine the said issue. The industrial adjudicator would have jurisdiction to determine the said issue as in the event if it be held that the contract purportedly awarded by the management in favour of the contractor was really a camouflage or a sham one, the employees appointed by the contractor would, in effect and substance, be held to be direct employees of the management.
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> **25.** The view taken in *Steel Authority of India Ltd.* has been reiterated by this Court subsequently. (See e.g. *Nitinkumar Nathalal Joshi* v. *ONGC Ltd.* and *Municipal Corpn. of Greater Mumbai* v. *K.V. Shramik Sangh*.)

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28. The workmen whether before the Labour Court or in writ proceedings were represented by the same union. A trade union registered under the Trade Unions Act is entitled to espouse the cause of the workmen. A definite stand was taken by the employees that they had been working under the contractors. It would, thus, in our opinion, not lie in their mouth to take a contradictory and inconsistent plea that they were also the workmen of the principal employer. To raise such a mutually destructive plea is impermissible in law. Such mutually destructive plea, in our opinion, should 243 not be allowed to be raised even in an industrial adjudication. Common law principles of estoppel, waiver and acquiescence are applicable in an industrial adjudication.

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33. The effect of an admission in the context of Section 58 of the Evidence Act has been considered by this Court in *Sangramsinh P. Gaekwad* v. *Shantadevi P. Gaekwad* wherein it was categorically held that judicial admissions by themselves can be made the foundations of the rights of the parties and admissions in the pleadings are admissible proprio vigore against the maker thereof. (See also *Union of India* v. *Pramod Gupta*.)

34. Recently this Court in *Baldev Singh* v. *Manohar Singh* held: (SCC p.504, para 15)

> "*15*. Let us now take up the last ground on which the application for amendment of the written statement was rejected by the High Court as well as the trial court. The rejection was made on the ground that inconsistent plea cannot be allowed to be taken. We are unable to appreciate the ground of rejection made by the High Court as well as the trial court. After going through the pleadings and also the statements made in the application for amendment of the written statement, we fail to understand how inconsistent plea could be said to have been taken by the appellants in their application for amendment of the written statement, excepting the plea taken by the appellants in the application for amendment of written statement regarding the joint ownership of the suit property. Accordingly, on facts, we are not satisfied that the application for amendment of the written statement could be rejected also on this ground. That apart, it is now well settled that an amendment of a plaint and amendment of a written statement are not necessarily governed by exactly the same principle. It is true that some general principles are certainly common to both, but the rules that the plaintiff cannot be allowed to amend his pleadings so as to alter materially or substitute his cause of action or the nature of his claim has necessarily no counterpart in the law

> relating to amendment of the written statement. Adding a new ground of defence or substituting or altering a defence does not raise the same problem as adding, altering or substituting a new cause of action. Accordingly, in the case of amendment of written statement, the courts are inclined to be more liberal in allowing amendment of the written statement than of plaint and question of prejudice is less likely to operate with same rigour in the former than in the latter case."

While laying down the principle, this Court followed *Modi Spg. & Wvg. Mills Co.* and distinguished *Heeralal*.

35. It is, thus, evident that by taking recourse to an amendment made in the pleading, the party cannot be permitted to go beyond his admission. The principle would be applied in an industrial adjudication having regard to the nature of the reference made by the appropriate Government as also in view of the fact that an industrial adjudicator derives his jurisdiction from the reference only.

36. There is another aspect of the matter which should also not be lost sight of. For the purpose of exercising jurisdiction under Section 10 of the 1970 Act, the appropriate Government is required to apply its mind. Its order may be an administrative one but the same would not be beyond the pale of judicial review. It must, therefore, apply its mind before making a reference on the basis of the

> materials placed before it by the workmen and/or management, as the case may be. While doing so, it may be inappropriate for the same authority on the basis of the materials that a notification under Section 10(1)(*d*) of the 1947 Act be issued, although it stands judicially determined that the workmen were employed by the contractor. The State exercises administrative power both in relation to abolition of contract labour in terms of Section 10 of the 1970 Act as also in relation to making a reference for industrial adjudication to a Labour Court or a Tribunal under Section 10(1)(*d*) of the 1947 Act. While issuing a notification under the 1970 Act, the State would have to proceed on the basis that the principal employer had appointed contractors and such appointments are valid in law, but while referring a dispute for industrial adjudication, validity of appointment of the contractor would itself be an issue as the State must prima facie satisfy itself that there exists a dispute as to whether the workmen are in fact not employed by the contractor but by the management. We are, therefore, with respect, unable to agree with the opinion of the High Court."

7. It is the stand of the appellants that admittedly the workmen were employed by the contractors. So far as the question of under payment as pleaded and categorizing it as unfair labour practice are concerned, obviously relate to the

contractors but it cannot by no stretch of imagination be categorized as sham or bogus.

8. Stand of respondent No.4-Union that somebody has to examine and see whether the agreement was genuine or sham or bogus. It has to be the industrial adjudicator. If it is found to be genuine the question of relaxation would arise. It is pointed out that the originally demands were for salary or perks. As observed by this Court in State of Haryana v. Charanjit Singh (2006 (9) SCC 321) the concept of equal pay for equal work is not applicable to the contract labour. In para 22 it was observed as follows:

> **"22.** One other fact which must be noted is that Civil Appeals Nos. 6648, 6647, 6572 and 6570 of 2002 do not deal with casual or daily-rated workers. These are cases of persons employed on contract. To such persons the principle of equal pay for equal work has no application. The Full Bench judgment dealt only with daily-rated and casual workers. Where a person is employed under a contract, it is the contract which will govern the terms and conditions of service. In *State of Haryana* v. *Surinder Kumar* persons employed on contract basis claimed equal pay as regular

> workers on the footing that their posts were interchangeable. It was held that these persons had no right to the regular posts until they are duly selected and appointed. It was held that they were not entitled to the same pay as regular employees by claiming that they are discharging the same duties. It was held that the very object of selection is to test the eligibility and then to make appointment in accordance with the rules. It was held that the respondents had not been recruited in accordance with the rules prescribed for recruitment."

9. In that sense the question of short payment is not relevant. There is no pleading about agreement being sham. This Court had on many occasions dealt with the question of delay in reference. In U.P. State Road Transport Corpn. V. Babu Ram (2006 (5) SCC 433) it was observed as follows:

> **"8.** However, certain observations made by this Court need to be noted. In *Nedungadi Bank Ltd.* v. *K.P. Madhavankutty* it was noted at para 6 as follows: (SCC pp. 459-60)
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> > "*6.* Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at

any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and  circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising an industrial dispute was ex facie bad and incompetent."

10. In S.M. Nilajkar v. Telecom District Manager (2003 (4) SCC 27), it was observed as follows:

> **"17.** It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree. It is true, as held in *Shalimar Works Ltd.* v. *Workmen* that merely because the Industrial Disputes Act does not provide for a limitation for raising the dispute, it does not mean that the dispute can be raised at any time and without regard to the delay and reasons therefor. There is no limitation prescribed for reference of disputes to an Industrial Tribunal; even so it is only reasonable that the disputes should be referred as soon as possible after they have arisen and after conciliation proceedings have failed, particularly so when disputes relate to discharge of workmen wholesale. A delay of 4 years in raising the dispute after even re-employment of most of the old workmen was held to be fatal in *Shalimar Works Ltd.* v. *Workmen*. In *Nedungadi Bank Ltd.* v. *K.P. Madhavankutty* a delay of 7 years was held to be fatal and disentitled the workmen to any relief. In *Ratan Chandra Sammanta* v. *Union of India* it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself; lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to

> adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants to any relief. Although the High Court has opined that there was a delay of 7 to 9 years in raising the dispute before the Tribunal but we find the High Court factually not correct. The employment of the appellants was terminated sometime in 1985-86 or 1986-87. Pursuant to the judgment in *Daily Rated Casual Labour* v. *Union of India* the Department was formulating a scheme to accommodate casual labourers and the appellants were justified in awaiting the outcome thereof. On 16-1-1990 they were refused to be accommodated in the Scheme. On 28-12-1990 they initiated the proceedings under the Industrial Disputes Act followed by conciliation proceedings and then the dispute was referred to the Industrial Tribunal-cum-Labour Court. We do not think that the appellants deserve to be non-suited on the ground of delay."

11. In Nedungadi Bank Ltd. v. K.P. Madhavankutty and Ors. (2000 (2) SCC 455) the delay of 7 years in seeking reference to disentitle the workmen to any relief has been dealt with. It is to be noted that all through respondent No.4 focused on several other aspects and not on the question of bogus or sham agreement.

12. Above being the position the decision of the Division Bench cannot be maintained and is set aside. The proceedings initiated pursuant to the reference made by the State Government in 2003 stand quashed.

13. The appeal is allowed.

.....J.
(Dr. ARIJIT PASAYAT)

.....J.
(Dr. MUKUNDAKAM SHARMA)

New Delhi,
September 25, 2008