

HIGH COURT OF CHHATTISGARH, BILASPUR

WPL No. 146 of 2015

- J. K. Lakshmi Cement Through Its Senior Vice President (Works),
D. K. Mehta, Malpurikhurd Khasdih, Ahiwara, Tahsil Dhamdha,
District Durg, (Chhattisgarh)

---- Petitioner

Versus

1. M/s Gannon Dunkerley & Co. Ltd. C/o M/s J. K. Laxmi Cement Ltd.,
Malpuri, Khurd Ahiwara, District Durg, (Chhattisgarh), 490036
2. The President, Cement And Khadan Shramik Union (A I T U C)
Junior M I G, 11/807, M P H B Industrial Estate, Bhilai, District
Durg, (Chhattisgarh)

---- Respondent

For Petitioner

Mr. Sunil Otwani, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

02 /12/2015

In the present writ petition under Article 226/227 of the Constitution India, the petitioner would assail the legality and validity of the notice dated 10.08.2015 issued by the Central Government Industrial Tribunal, Jabalpur (for short “the CGIT”) requiring the parties to the industrial dispute which has been referred for adjudication to the said CGIT for filing their respective statement of claims, documents, list of citations and witnesses, as required under Rule 10B of the Industrial Disputes (Central) Rules, 1957 (for short “the Rules 1957”).

(2) The dispute referred for adjudication pertains to illegal

retrenchment of workmen in violation of Section 25N of the Industrial Disputes Act, 1947 (for short “the I.D. Act”).

(3) The petitioner contends that the workmen in reference to which the industrial dispute has been referred for adjudication were contract labourers engaged by the contractor i.e. the respondent No.1, therefore, the petitioner not being the employer, issuance of notice to it is misconceived. Learned counsel would further submit that under the terms of agreement between the petitioner and the respondent No.1, the contract labourers engaged by the said respondent would be governed under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970, therefore, the impugned notice is wholly illegal as no cause of action arose against the present petitioner. To buttress the aforesaid contention, learned counsel would place reliance upon the decision rendered by the Supreme Court in **Balwant Rai Saluja and another vs. Air India Ltd. And others**¹.

(4) On an earlier occasion, the Government of India, Ministry of Labour and Employment, Office of the Deputy Chief Labour Commissioner (Central), Raipur had issued a notice to the petitioner on 04.02.2015 to show cause as to why legal action under Section 29 of the I.D. Act should not be taken against the management of the petitioner for violation of the provisions of Section 25N (1) (a) (b) of the I.D. Act. Challenging the said notice, the petitioner had preferred a writ petition before this Court bearing W.P.(L) No.46 of 2015, which was disposed of on 03.07.2015 by directing the petitioner to submit reply before the authority and, thereafter, the authority concerned shall proceed further in accordance with law.

¹ 2014 AIR SCW 6387

(5) Though there is nothing in the record that a legal action under Section 19 of the ID Act has been initiated against the petitioner yet by another communication dated 17.03.2015 Annexure P/12, the petitioner was invited for conciliation for resolving the dispute amicably by discussion with the concerned union/workmen, failing which, the dispute shall be referred for adjudication. Since the said notice was never assailed before any Court, the Central Government decided to refer the dispute for adjudication to the CGIT.

(6) Having heard learned counsel for the petitioner and having seen the papers annexed to the writ petition, it would appear that the Central Government has referred the industrial dispute for adjudication and the CGIT is in seisin of the matter. Ordinarily, a show cause notice issued by the judicial authority directing the parties to submit their reply or statement of claim is not assailable before the Court. In rare cases where the authority inherently lacks jurisdiction to take up the matter for adjudication, the writ Court may interfere in appropriate cases, however, in such cases, the concerned parties is always at liberty to raise the issue of jurisdiction before the concerned authority be it a quasi judicial authority or an administrative authority.

(7) In the case at hand, it is not the submission of the petitioner that the CGIT has no jurisdiction over the matter. The only argument of the petitioner is that the management of the petitioner company being not employer of the workmen, a proceeding against them may not lie.

(8) In the considered opinion of this Court, while replying to the statement of claim, the petitioner would have all the liberty to raise the issue of non-availability of any cause of action against it. In such eventuality, the CGIT shall consider and decide the objection before

proceeding to decide the reference on merits.

(9) The writ petition is disposed of with the observations as afore-stated.

Sd/-

Judge

(Prashant Kumar Mishra)

Gowri