

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P. No. 6033 of 2006****Reserved on 29.01.2019****Pronounced on 11.02.2019**

1. Sindhulal Prasad, aged about 44 years, S/o Shri R.S. Prasad, resident at Sonadih (Rasedi), PO Raseda, PS Baloda, Dist. Raipur.
2. Mahesh Mahato, aged about 43 years, S/o Shri Birsai Mahato, resident of at Sonadih (Rasedi) PO Raseda, PS Baloda Bazar, Dist. Raipur (CG).
3. Deepak Naidu, aged about 43 years, S/o Shri Shankar Naidu, resident of at Sonadih (Rasedi) PO Raseda PS Baloda Bazar, District Raipur (CG)
4. Pitambar Sahu, aged about 46 years, S/o B. Sahu, resident of at Sonadih (Rasedi) PO Raseda PS Baloda Bazar, District Raipur (CG)
5. Premlal Verma, aged about 50 years, S/o Shri S. L. Verma, resident of at Sonadih (Rasedi) PO Raseda PS Baloda Bazar, District Raipur (CG)
6. Govindram Agarwar, aged about 50 years, S/o Shri Late Bechulal, resident of at Sonadih (Rasedi) PO Raseda PS Baloda Bazar, District Raipur (CG)

Authorized representatives of the Workmen of M/s Tata Iron & Steel Company Limited, Sonadih, Cement Wing, Sonadih, Raipur (C.G.)

---- Petitioners**Versus**

1. Union Of India, through Secretary, Labour Department, Shram Mantralay, Sramasakti Bhawan, Rafi Marg, New Delhi.
2. The Regional Labour Commissioner(C), Ministry of Labour behind Balaji Mandir, Anand Nagar, Raipur (CG).
3. M/s Tata Iron & Steel Co. Ltd. Represented through its Managing Director, 24, Homi Modi Street, Fort, Mumbai at present Tata Nagar, Jamshedpur, District Singhbhum East, Jharkhand.

---- Respondents

For Petitioners:	Shri Vinod Deshmukh, Advocate.
For Respondents No. 1 & 2:	None.
For Respondent No. 3:	Shri Ashish Shrivastava, Advocate.

Single Bench: Hon'ble Shri Sanjay Agrawal, J**CAV Order/Judgment**

1. While questioning the legality and propriety of the order dated 14.09.2006(Annexure-P12) passed by the Union of India (Respondent No.1), the Petitioners and the concerned workmen are praying for issuance of writ of mandamus commanding the said Respondent to refer their dispute to the Adjudicating Authority under the provisions prescribed under Sections 10(1) read with Section 12(5) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act, 1947').

2. Briefly stated the facts of the case are that the concerned workmen (Petitioners herein), as listed their names in the list (Annexure-P1), were initially appointed by the M/s Tata Iron & Steel Company Limited (hereinafter referred to as 'M/s TISCO'), Respondent No. 3 herein. After appointment, they were posted in different branches of the said Respondent in order to discharge their duties. Their services were needed at Cement Wing of the said Respondent for which they were brought to the said Wing on transfer and were instructed to discharge their duties. It is stated in the Petition that earlier the Cement Wing was the internal part of M/s TISCO, however, they came to know that the Cement Wing of M/s TISCO has been brought to the management of M/s Lafarge India Private Limited, a foreign based company. The Petitioners have, therefore, brought to the notice of Respondent No. 3 to clarify their positions with request to return them to their parent department and places.

3. Further contention of the Petitioners is that as per the instructions of Respondent No. 3, they have been discharging their duties continuously in the Cement Wing with the condition that they will return to their parent place of posting whenever they desire and, some of the employees have been sent back as per the understanding. That, on 17.01.2005 and

12.03.2005, the Petitioners requested Respondent No. 3 to send them back to their parent department and when they did not take any action, the Conciliation Officer-cum-Regional Labour Commissioner(C), Raipur, Respondent No. 2 herein, was requested to intervene the matter for settlement of their grievances. The said Conciliation Officer, in turn, has invited Respondent No. 3 as well as the Petitioners including the said M/s Lafarge India Private Limited for the amicable settlement of their disputes, but Respondent No. 3 did not cooperate with the said Officer. As such, the Conciliation Officer-cum-Regional Labour Commissioner(C) initiated conciliation proceedings as per the provision prescribed under Section 12 of the Act, 1947 and rules made thereunder and directed Respondent No.3 to participate in the said proceedings for an effective settlement.

4. In the said conciliation proceeding, it was stated by Respondent No.3 that the Petitioners including the concerned workmen are no longer continuing in their employment since 01.11.1999 as the Cement Wing of the establishment has been transferred to M/s Lafarge India Private Limited under Section 25 FF of the Act, 1947. Conciliation proceedings so initiated was ultimately failed and, accordingly the Regional Labour Commissioner (C), Raipur has submitted its report vide its letter dated 12.03.2005 (Annexure-P10) to the Union of India intimating the failure of the said conciliation proceedings, who, in turn, vide its order impugned intimated the Petitioners that the dispute cannot be referred to the Adjudicating Authority as the Petitioners could not substantiate their claims.

5. Based upon the aforesaid assertions, it has been requested by the Petitioners for issuance of direction to Respondent No. 1 (Union of India)

for the reference of their dispute to the Adjudicating Authority under the provision prescribed under Section 10(1) read with Section 12(5) of the Act, 1947.

6. Countering the aforesaid submission, it is pleaded by Respondent No. 3 that entire business including the liabilities and the assets of the cement division of the Company was sold to M/s Lafarge India Private Limited and Business Transfer Agreement (BTA) has been executed to this effect on 09.03.1999 which includes exclusive clause relating to the employees. It is pleaded further that since the date of execution of the said agreement, which came into force from 01.11.1999, the services of the Petitioners and the concerned employees were transferred to the said establishment and they, no longer, remained the employees of Respondent No. 3, as the relationship of the employer and employee has come to an end owing to the execution of the said agreement. It is submitted further that the cement division which was separately established under the Factories Act was severable from the main business of Respondent No. 3 and as such, the dispute as raised by the Petitioners cannot be held to be in accordance with the provisions prescribed under the Act, 1947 so as to be referred for its adjudication and the order impugned has, therefore, been rightly passed by Respondent No. 1 which does not required to be interfered. It is pleaded further in the reply that M/s Lafarge India Private Limited is also the necessary party and without impleading the said company, the Petition itself is not maintainable.

7. Shri Vinod Deshmukh, learned counsel for the Petitioners submits that while passing the order impugned, Respondent No. 1 has committed an illegality in deciding the dispute as raised by the Petitioners on its

merits by observing that the workmen could not point out that their service conditions under M/s Lafarge India Private Limited are in any way less favourable to them than those enjoyed by them under Respondent No. 3 (M/s TISCO). According to him, the alleged dispute ought not to have been adjudicated in such a manner as its role is confined only to discharge the administrative function of referring the matter to the Labour Court. The entire action of Respondent No. 1 as such is, therefore, vitiated. In support, he placed his reliance upon the decision rendered in the matter of **“Tata Iron and Steel Company Limited Vs. State of Jharkhand and others”** reported in **2014 (1) SCC 536**.

8. On the other hand, Shri Ashish Shrivastava, learned counsel for Respondent No. 3 while supporting the order impugned submits that the Petition as framed without impleading M/s Lafarge India Private Limited as a party respondent is not at all maintainable and the Petition is liable to be dismissed on this ground alone. According to his further submission, the alleged transfer of services of the Petitioners and the concerned workmen was made in accordance with Section 25 FF of the Act, 1947 and as such, they were not the employees of Respondent No. 3 on account of their transfer to M/s Lafarge India Private Limited with effect from 01.11.1999. He submits further that the question of taking back of their services into the employment by the transferor Company i.e. Respondent No. 3 does not arise under such circumstances. According to him, the representation as submitted by the Petitioners in this regard before the Conciliation Officer-cum-Regional Labour Commissioner(C), Raipur was duly considered by the said authority who, in turn, arrived at a conclusion that the Petitioners and the concerned workmen are not the employees of Respondent No. 3

(M/s TISCO) and consequently, the said conciliation proceedings have been ended in failure. He submits further that the said Conciliation Officer has thereafter submitted the said failure report to the Secretary to the Government of India and after considering the said report, vis-a-vis, the entire facts of the case, Respondent No. 1 (Government of India) took a decision vide its order impugned that the dispute so raised by the Petitioners is not fit for adjudication on finding that the Petitioners and the concerned workmen could not substantiate their demand for their posting back to M/s TISCO as they ceased to be the employees of M/s TISCO with effect from 01.11.1999 and became the employees of M/s Lafarge India Private Limited and their services were no way less favourable. He, therefore, submits that the order impugned is not liable to be interfered.

9. I have heard learned Counsel for the parties and perused the entire record carefully.

10. As far as preliminary objection raised by Shri Shrivastava regarding the maintainability of this Petition for want of impleading M/s Lafarge India Private Limited is, however, noted to be rejected in view of the nature of issue involved herein. The Petitioners are just praying for reference of their dispute by way of this Petition to the Adjudicating Authority under Section 10 of the Act, 1947. Since no dispute is going to be adjudicated at this stage, therefore, M/s Lafarge India Private Limited cannot be held to be the necessary party and as such the Petition cannot be dismissed on this preliminary objection.

11. Undisputedly, the Petitioners and the concerned workmen were initially appointed by Respondent No. 3 (M/s TISCO). It is also not in dispute that the Cement division of the said company has been sold to M/s

Lafarge India Private Limited vide Business Transfer Agreement (BTA) dated 09.03.1999 which was to be effected from 01.11.1999. This agreement, *inter-alia*, provided that M/s Lafarge India Private Limited would take over the company personnel including, in terms of Section 25 FF of the Act, 1947 and owing to the execution of the alleged agreement, the services of the Petitioners and the concerned workmen have been transferred to the said transferee company i.e. M/s Lafarge India Private Limited. At this juncture, Clause 7.2 of the agreement is to be noted which provides continuity of the employment in the following terms:-

7.2 Continued Employment. With immediate effect from the Closing Date and simultaneously with the transfer of the Business, the Purchaser shall take over the Company Personnel and be responsible for the fulfilment and maintenance of the Personnel Plan. The Purchaser shall continue to employ the Company Personnel including, in the terms of Section 25 FF of the Industrial Dispute Act, 1947, *inter alia*, that

- (a) the services of the Company Personnel, shall not be or deemed to be interrupted by such transfer;
- (b) the terms and conditions of service applicable to the Company Personnel after such transfer are not in any way less favourable to the Company Personnel than those applicable to them immediately before the transfer; and
- (c) the Purchaser is, under the terms of the transfer herein, legally liable to pay to the Company Personnel, in the event of their retrenchment, compensation on the basis that the services have been continuous and have not been interrupted by the transfer of the Business.

12. After the execution of the alleged agreement as such, it was communicated to the Petitioners and the concerned workmen who have submitted their claims before Respondent No. 3 and demanded for reversion of their services. When it was not considered, they approached

the Regional Labour Commissioner(C), Raipur for conciliation proceedings. In the said reconciliation proceedings, Respondent No. 3 appeared and took a plea that with effect from 01.11.1999 the cement division was sold to M/s Lafarge India Private Limited and these workmen had become the employees of the said company and accordingly they ceased to be the employees of their company as the relationship of the employer and employee ceased to exist and the workmen have no right to be reverted as such.

13. The aforesaid conciliation proceedings so initiated was ultimately failed and accordingly, the Regional Labour Commissioner(C), Raipur has submitted its failure report vide its letter dated 12.03.2005 to the Secretary to the Government of India, Ministry of Labour and Employment, New Delhi. Based upon which, the order impugned has been passed by Respondent No. 1 intimating the Petitioners that their dispute cannot be referred to the Adjudicating Authority on finding that the Petitioners could not substantiate their claims as they have started working under the M/s Lafarge India Private Limited on their transfer with effect from 01.11.1999 and they are enjoying the benefit of continuity of their services from the date of their initial appointment under the management of Respondent No.3 (M/s TISCO) and failed as well to point out that their service conditions under the M/s Lafarge India Private Limited are in any way less favourable to them. Respondent No. 1 has thus decided the dispute on merits even in absence of evidence by observing as such.

14. The aforesaid observation of Respondent No. 1 declining to refer the dispute to the Adjudicating Authority while acting as an adjudicatory function is not sustainable in the eye of law as its role is confined only to

discharge the administrative function of referring the matter to the Labour Court and/or the Industrial Court as held in the matter of **“Tata Iron and Steel Company Limited Vs. State of Jharkhand and others”** (supra) wherein it has been observed at paragraphs 9 & 10 as under:-

9. At the outset, we would like to observe that the high Court is right in holding that industrial dispute has arisen between the parties inasmuch as the contention of the workers is that they are entitled to serve the appellant as they continued to be the workers of the appellant and were wrongly “transferred” to M/s Lafarge. On the other hand, the appellant contends that with the hiving off the cement division and transferring the same to M/s Lafarge along with the workers who gave their consent to become the employees of the transferee company, the relationship of employer and employee ceased to exist and, therefore, the workmen have no right to come back to the appellant. This obviously is the “dispute” within the meaning of Section 2(k) of the Industrial Disputes Act.

10. Section 2(k) of the Industrial Disputes Act which defines “industrial dispute” reads as under:-

“2.(k) 'industrial dispute' means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;”

No doubt, as per the aforesaid provision, industrial dispute has to be between the employer and its workmen. Here, the appellant is denying the respondents to be its workmen. On the other hand, the respondents are asserting that they continue to be the employees of the appellant Company. This itself would be a “dispute” which has to be determined by means of adjudication. Once these respective contentions were raised before the Labour Department, it was not within the powers of the Labour Department/appropriate Government to decide this dispute and assume the adjudicatory role as its role is confined to discharge administrative function of referring the matter to the Labour Court/Industrial Tribunal. Therefore, this facet of dispute also needs to be adjudicated upon by the Labour Court. It cannot, therefore, be said that no dispute exists between

the parties. Of course, in a dispute like this, M/s Lafarge also becomes a necessary party.

15. By applying the aforesaid principles to the case, in hand, the settlement of claim made by the Petitioners and the concerned workmen needs to be adjudicated as Respondent No. 3 (M/s TISCO) is denying that the Petitioners are no longer its workmen and as such, it is a dispute within the meaning of Section 2(k) of the Act, 1947 as held in the aforesaid decision. Consequently, the order impugned passed by Respondent No. 1 is liable to be and is hereby set aside.

16. The Petition is accordingly allowed and it is directed that Respondent No. 1(Union of India) shall refer the dispute of the Petitioners and the concerned workmen to the Adjudicating Authority under the provision prescribed under Section 10 of the Act, 1947 and the concerned Authority, in turn, shall decide the dispute in accordance with law. No order as to costs.

Sd/-

(Sanjay Agrawal)
JUDGE