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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 24th September 2007

No. 11027-1i/1-(BH)-2/2006/LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award dated the 9th August, 2007 in I.D. Case No. 7 of 2006 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of M/s. Rail Road Construction Company Pvt. Ltd. of M/s. NALCO Ltd., Angul, District- Angul and their workmen Shri Sikandar Bal and Shri Surendra Purty represented by NALCO Thika Mazdoor Sangh, Angul was referred for adjudication is hereby published as in the schedule below :—

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT , SAMBALPUR

INDUSTRIAL DISPUTE CASE No. 7 OF 2006

Dated the 9th August, 2007

Present:

Shri P. K. Mahapatro, LL.B.,
Presiding Officer,
Labour Court,
Sambalpur.

Between:

The Management of M/s. Rail Road
Construction Company Pvt. Ltd. of
M/s. Nalco Ltd., Angul,
Dist : Angul.

... First-Party — Management.

And

Their Workmen
 Shri Sikandar Bal &
 Shri Surendra Purty represented
 By Nalco Thika Mazdoor Sangh,
 Angul.

... Second-Party — Workmen.

Appearances :

Shri K. Bej, Consultant. ... For the First-Party — Management.

Self. ... For the Second-Party — Workmen.

AWARD

1. This case arises out of the reference made by the Government of Orissa, Labour & Employment Department U/s. 10 and 12 of the Industrial Disputes Act, 1947 vide Memo No. 4002(5), dated the 23rd May, 2006 for adjudication scheduled bellow :—

“ Whether the termination of services of the Contract Labour’s Shri Sikandar Bal, Painter and Surendra Purty, Helper by the Management/ Contractor of M/s. Rail Road Construction Company (P) Ltd. of M/s. Nalco Ltd. Angul is legal and/or justified ? If not, to what relief they are entitled ?”

2. The two workmen namely Sikandar Bal and Surendra Purty have filed a claim statement and in the body of the same they have averred that they along with other contract laborers numbering 72 into of M/s. V.C.C. Pvt. Ltd. (the previous Contractor of NALCO) were allowed to continue under the Management as they (Management) on 1st March, 2000 entered as a new contractor to the repair and maintenance of locus and wagon in Captive Power Plant, Nalco, Angul and accordingly Gate Passes were arranged, but subsequently from 29th August, 2000 the present Management had placed their (workmen) service along with 5 others under the disposal of a Sub-Contractor namely M/s. Amira Arts & Spray Painters in pen and paper though in reality all the payments are being made by the present Management and as per law, the present Management is not legally authorized to change their service conditions and as such the change was affected at the whims and fancies of the Management and the same cannot be taken up in the scale of law. According to them it is purely the creation of the Management in connivance with M/s. Amira Arts & Spray Painters in order to satisfy their (Management) ulterior motive. It is also

the case of the workmen that on 1st June, 2005 when the present Management was given the contract work of NALCO for a further period of five years, the Management retrenched them (workmen) from their service though the other employees were allowed to continue and they (workmen) have been treated in such manner as because they failed to comply the illegal desire of the Managing Director of the Management Company. It is also their case that at the time of retrenchment, the benefits visualized under Section 25-F of the Act were not complied and they have been thrown out from the job without any rhymes and reason. To sum up, the workmen have prayed for reinstatement in service with full back wages.

3. The Management being represented by the Managing Director has contested the above claim by stating that the two workmen were no way related to them as they were workers under M/s. Amira Arts & Spray Painters. It is the specific case of the Management that the workman No.1 was a painter and the other workman was Helper under M/s. Amira Arts & Spray Painters and they had no link with the Management. It is also their case that as per the terms of the contract agreement, the sub-contractor M/s. Amira Arts and Spray Painters was required to arrange gate passes for his laborers, should have valid insurance to recover the risk under the workmen's compensation Act, pay P.P.I and S.S.I. contributions and meet the other requirements such as payment of wages in presence of the representative of the Management and execute to the workmen under the direct and personal supervision of the representative of the Management. To sum up, it is the specific case of the Management that the workmen are no way related to them as they are employees of sub-contractor M/s. Amira Arts & Spray Painters and their termination from service have no bearing with them. The Managing Director of the Management Company has also stated that at no point of time the two workmen were taken in the roll of the Company and he has also denied the other stand of the workmen available in the claim statement. Regarding issuing of gate passes which the workmen have given emphasis in their claim statement it is the specific stand of the Management that those were issued by NALCO to the contract laborers of the sub-contractor for the limited purpose of allowing them to enter inside the factory premises and as per the system prevailing by then, the gate passes of the employees were also to be signed by the main Contractor (the present Management) and the gate passes produced by the workmen at the time of hearing of this case have no greater bearing to conclude that they were the employees of the Management. By mentioning the above facts and circumstances they have prayed for answering the reference against the workmen.

4. After receiving copy of the written statement filed by the Managing Director of the Management Company, the workmen have filed a rejoinder. In it they have reiterated their stand available in the claim statement and further added that they have been allowed to continue as Contract Laborers till August, 2006 and this aspect was also admitted by the Management during the conciliation proceeding taken up by Labour Officer. According to them the owner of Amira Arts & Spray Painters named Shri R. K. Martha entered in the field as a sub-contractor in August, 2006 and in pen and paper both of them along with two others were placed at his disposal with the sole intention to harass them. In the body of the rejoinder it is also stated by the Workmen that Shri R. K. Martha who is the Proprietor of M/s. Amira Arts & Spray Painters is not a licensed contractor and as he had engaged less than 20 contract labourers, the rigidities available under the contract Labour Regulation & Abolition Act could not apply to him and further that at no point of time he had executed an agreement with the principal employer M/s. NALCO as a Contractor. By mentioning the above facts and circumstances the workmen have prayed for rejection of the written statement.

5. By keeping the note of the pleadings of the parties, the following issues are settled in this case.

ISSUES

- (i) “ Whether the termination of services of the contract Labour’s Shri Sikandar Bal, painter and Shri Surendra Purty, Helper by the Management contractor of M/s. Rail Road Construction Company Pvt. Ltd., of M/s. Nalco Ltd., Angul is legal and/or justified ?
- (ii) If not, to what relief they are entitled ?”

6. In order to buttress their claim the workmen have been examined as W.W.1 and 2 respectively from their side. They (workmen) have also examined Shri B. K. Mahanty, Sr. Machinist under the Management as their 3rd witness. From the side of the Management, the proprietor of M/s. Amira Arts and Spray Painters is examined as Management Witness No.1. To add to this Arun Kumar Behera who was an employee under the Management witness No.1 is examined as M.W.2 and the Joint Managing Director of the Management namely Shri Surindar Kumar Ansal is examined as M. W.3. In addition to it, the workmen have exhibited some documents which are marked as Ext. A to Q and the Management side have proved some documents from their side which are

marked as Ext. 1 to 10. I will deal with the above referred documents as and when necessary.

FINDINGS

7. Issue No.i and ii :— Both the issues are taken up together as those are interlinked. According to the Management, the workmen are no way related to it, but the workman have claimed that they are the employees of the Management. The general principle of the law of evidence is that he who asserts must prove. It is a well settled law that the burden of proving a fact rests on the party who substantially asserts the affirmative of the issue and not upon the party who denies it. Normally it is for the person putting forward the claim to establish the facts and circumstances supporting his claim. In this case primarily the workmen have to prove that they were the employees under the Management during the relevant period. In their pleading they have stated that they were the employees under the previous contractor namely M/s. V.C.C. Pvt. Ltd. and on 1st March, 2000 the present Management entered as a new contractor of NALCO and allowed all the 72 contract laborers including them (workmen) to work under it (Management). Even if this plea is believed then the workmen have to suffice that they were working under the previous contractor M/s. V.C.C. Pvt. Ltd. and then from 1st March, 2000 they continued under the present Management. No document is filed to suffice this aspect. But as the workmen were contract laborers, so possibility of written document cannot be expected. As such, the oral evidence adduced by the parties and the supporting documents filled by them are to be scrutinized.

8. In order to arrive in a just decision on the above aspect, I have carefully rammed through the entire evidence and the documents filed by the parties. In the claim statement it is admitted by the workmen that their services have been placed under the Sub-Contractor M/s. Amira Arts and Spray Painters with effect from 29th August, 2000. They have also claimed that it is simply a paper transaction, but actually all the payments are being made by the present Management. They have also claimed that as per law the present Management cannot do it. According to the Management they were the employees of the sub-contractor namely M/s. Amira Arts & Spray Painters and they have no link with the Management. During course of evidence challenge was thrown by the workmen that M/s. Amira Arts and Spray Painters has no license and is not the sub-contractor under the Management. To suffice it, the Management has filled some documents. The M.Ws. have also adduced oral evidence to give strength to their above claim. By taking notes of the evidence on record and by looking to the admission of the

workmen in their claim statement that M/s. Amira Arts & Spray Painters was a sub-contractor of the Management, the denial plea taken by the workmen during the course of evidence pertaining to this aspect cannot be accepted. So the fact that M/s. Amira Arts & Spray Printers was engaged a sub-contractor under the Management can be believed. As to whether the Management has authority to engage a sub-contractor and whether the principal employer NALCO has given any authority or permission in this regard is not to be scrutinized by this Court as in a summary proceeding like the present one such intricacies relating to a fact cannot be adjudicated. So my conclusion is that M/s. Amira Arts & Spray Painters was engaged as a sub-contractor by the Management and as per the specific pleading of the workmen their services were placed under the sub-contractor with effect from 29th August, 2000.

9. According to the workmen, the above arrangement is a paper transaction and actually they were in employees under the present Management. The oral evidence of the parties in this regard is of equal weight. So In order to arrive in a just decision in this regard. I took judicial note of the documents filed by the parties. As per law, the workmen have to primarily establish that they were the employees under the Management. Once that aspect is proved, the onus will shift to the Management to suffice that they were not the employees under it. The workmen have filed identity cards which were issued by NALCO in their favour. Ext. A to E are those identify cards. I took the judicial note of the same. In it, there is clear cut mention that the workman Shri Sikandar Bal was a painter under the present Management. The other documents filed by the workman are also indicating this aspect. The Management witness No.3 in his evidence has stated that those were issued by NALCO by virtue of their intervention as the Sub-contractor has no direct link with the principal employer NALCO. The Xerox copy of application forms presented in this regard by the Management are filed to buttress their claim. They have also filled Ext.6 and 7 to suffice that both the workmen were attached to the sub-Contractor M/s. Amira Arts & Spray Painters. By taking note of the documents as referred above and by keeping in view the oral evidence adduced by them, a fluctuating situation is emerging. There is no clear cut document or oral evidence to say that the present workmen were the employees under the Management. It can be judicially noted that during the construction period or maintenance period the principal employer normally appoints contractors and the contractors usually employ sub-contractors for execution of the work. In this case M/s. Amira Arts and Spray Painters was engaged as a sub-contractor and subsequently the contract with him was quashed. The owner of the firm namely M/s. Amira Arts and

Spray Painters has stated that both the workmen were working under him. Another employees namely Arun Kumar Behera has also supported it. By taking note of the admission of the workmen in their pleading that their services were placed at the disposal of M/s. Amira Arts and Spray Painters and by looking to the supporting evidence adduced a by M.W.1 and 2 cloud of doubt arises in the mind of this Court to conclude that the workmen were the employees of the Management. The contribution deposited with the E.S.I. Corporation and Employees Provident Fund cannot be used in support of the workmen as under the statute the contractor has to deposit the contribution of his employees and also the employees of the sub-contractor for proper safety and future benefit. The explanation given by M.W.3 in this regard is satisfactory as because in the body of Exts. A to G the name of the present management is available. The same cannot be the basis to treat them as employees under it. As for the future benefit and insurance of the employees of sub-contractor, the Contractor has to deposit the required amount. So I am of firm view that the workmen are no way related to the present Management.

10. In the written argument the workmen have given importance to the evidence of M. W. 3 pertaining to the gate passes. I do not find any reason to give importance to it as the explanation given by him pertaining to this transaction is highly satisfactory. I have already assigned reasons that simple mention of the name of the present Management in the gate passes cannot be the basis to treat them as employees of the Management as because for all the commissions and commissions of the sub-contractor, the Management who is the registered contractor of NALCO has to take care. Their averment in Para-2 of the written argument that M/s. Amira Arts & Spray Painters is a self styled sub-contractor cannot be easily swallowed as in their pleading they have admitted this aspect with the further commitment that their services were placed under sub-contractor in pen and paper though in reality the present Management was taking care of them. The statement given by the Management representative before the D.L.C. and the subsequent clarification issued by the Management in this regard if taken up conjointly then a clear cut picture pertaining to their continuance under the Management cannot be gathered. So on a totality of facts and circumstances as mentioned above it is very difficult to conclude that the present workmen were the employees under the present Management. Rather it is forthcoming that they were the employees of M/s. Amira Arts & Spray Painters a sub-contractor who was working under the present Management. Since the reference relates to the present Management, their claim to the extent as available in the claim statement cannot be accepted. There is no need of scrutinize the other aspects as the

preliminary factor that the workmen were working under the Management is not proved to the satisfaction of this Court. In absence of the same the workmen are not entitled to get any relief from the present Management. Hence both the issues are answered against the workmen and in favour of the Management. Hence the following award.

AWARD

The reference is answered on contest against the workmen and in favour of the Management. The termination of services of the contract Labour's Shri Sikandar Bal, Painter and Shri Surendra Purty, Helper by the Management/contractor of M/s. Rail Road Construction Company Pvt. Ltd. of M/s. Nalco Ltd., Angul is held to be legal and justified and the workmen are not entitled to get any relief in this case.

Dictated and corrected by me.

P. K. Mahapatro
9-8-2007
Presiding Officer,
Labour Court,
Sambalpur.

P. K. Mahapatro
9-8-2007
Presiding Officer,
Labour Court,
Sambalpur.

By order of the Governor

N. C. RAY
Under-Secretary to Government