

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 7060 of 2018

Durgapur Steel Plant (SAIL) Contractor's
Workers' Union & Anr.

Versus

The State of West Bengal & Ors.

Mr. Bikash Shaw

... For the petitioners.

1. The petitioner no.1 is a trade union, registered under the Trade Unions Act, 1926. It is the petitioners' case that the members of the petitioner no.1 are the workers of and worked at Durgapur Steel Plant (in short, DSP) at the unit of the Steel Authority of India (in short, SAIL) and were engaged through a contractor, being the respondent no.8 herein.

2. According to the petitioners, in the month of November, 2016, the management of the DSP had summarily dismissed 186 workers, being the members of the petitioner no.1 without complying with the relevant provision of the Industrial Disputes Act, 1947 (hereinafter referred to as the "said Act") and without following due process of law. Immediately thereafter, the workers had filed a complaint before the Assistant Labour Commissioner, Central Durgapur on 21st November, 2016, about the illegal act and conduct on the part of the DSP authority. Subsequently, however, by a letter dated 28th July, 2017, the management of DSP had informed the

petitioner no.1 that they had no role in engagement and/or termination of the contract workers and that the aforesaid workers had been terminated by the contractors. Although, the petitioners had not accepted such contention and held DSP, as the principal employer liable and had made several representations, since, such representations were not adhered to, the petitioners had invoked the State machinery and had made representations to the Deputy Chief Labour Commissioner seeking his intervention.

3. At the instance of the petitioners, by a letter dated 18th December, 2017, the Deputy Chief Labour Commissioner, Central, Kolkata forwarded the representations of the petitioner no.1 to the Deputy Chief Labour Commissioner, Central, Asansol with a request to look into the matter. Despite aforesaid, no steps have been taken by the authorities. From time to time the petitioner no.1 had made several representations. Despite the aforesaid representations, the authorities are sitting tight over the matter.

4. The instant writ petition, however, has been filed praying for a declaration that the act and conduct of the respondent no.7 being the DSP and the respondent no.8, being the contractor, in retrenching the members of the petitioner no.1 is illegal and unauthorized. A prayer has also been made to forthwith take appropriate action

against the respondent no.7 so that the members of the petitioner no.1 can resume their duties. Records reveal that when the aforesaid writ petition was earlier taken up for consideration, by an order dated 1st March, 2019 a Coordinate Bench of this Court had directed exchange of affidavits.

5. Mr. Shaw, learned advocate appearing in support of the aforesaid petition submits that the respondent no.7 has since, served the petitioners with a copy of the affidavit- in-opposition though the original copy thereof, is not on record.

6. Let a copy of the affidavit in opposition affirmed on behalf of the respondent no.7 as made over by Mr. Shaw in Court today, be retained with the record.

7. From the said affidavit in opposition it appears that DSP had awarded a work order dated 5th August, 2016 in favour of the respondent no.8 for Mechanical-cum-Manual Off-Loading [phase-II] from Wagons of specified quantity of BF/Mixed Coke/Coal/Ores which was to be executed within 31st October, 2016. For the aforesaid purpose, the respondent no.8 had obtained contractor's licence from the licensing authority and accordingly, had deployed its workers as per contractual requirements. The work had since, been completed. The petitioners and/or members complain of retrenchment of the workers employed by the respondent no.8. The respondent no.7 had not engaged or

disengaged the aforesaid workers. There was no employer-employee relationship and as such the respondent no.7 cannot be made responsible therefor.

8. Heard the learned advocate appearing for the petitioners and considered the materials on record. Admittedly it appears that the members of the petitioner no.1 are all contract labourers and were engaged by the respondent no.8. There is no employer-employee relationship between the members of the petitioner no.1 on the one hand and the respondent no.7 on the other. The contract for which the respondent no.8 was engaged had long been completed. It was for the respondent no.8 to comply with its obligation as against its workers. It is not a case where the contractor has failed to pay the contractual amount in favour of the contract workers for the contract workers to claim reimbursement thereof, from the principal employer by invoking the provisions of Section 21(4) of the Contract Labour (Regulation and Abolition) Act, 1970.

9. In view thereof, I am of the view that the petitioners have failed to establish any legal right, as against the respondent no.7, and therefore, are not entitled to any relief.

10. The writ application accordingly stands dismissed. However, there shall be no order as to costs.

11. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)