

THEIR WORKMEN THROUGH THE JOINT SECRETARY  
(WELFARE), FOOD CORPORATION OF INDIA EXECUTIVE  
STAFF UNION. A

v.

EMPLOYER IN RELATION TO THE MANAGEMENT OF THE  
FOOD CORPORATION OF INDIA & ANR. B

(Civil Appeal No. 4152 of 2023)

JULY 03, 2023

[KRISHNA MURARI AND SANJAY KUMAR, JJ.] C

*Approbate and Reprobate – Held: A party to a proceeding cannot be permitted to challenge the same but thereafter abide by it out of its own free will; garner benefit from it; get the opposite party to effectively alter its position and then press its challenge after the passage of a considerable length of time – In the present case, the management of FCI filed writ petition challenging the Award passed by the Industrial Tribunal but, despite having secured conditional interim relief therein, it still chose to implement the impugned Award though it was under no compulsion to do so – Management did not stop short at just reinstating the workmen in service but went further and absorbed them in regular service – Such absorption in service was not at all required under the interim order and was, therefore, squarely attributable to the will and volition of the management of FCI itself – The plea of the management that it was compelled to comply with the Award under the threat of contempt, cannot be accepted as the contempt proceedings were closed long prior to issuance of the orders of ‘reinstatement’ and ‘absorption’ – In effect, the management of FCI chose to acquiesce with and accept the Award passed by the Tribunal in its entirety, though it made such compliance subject to the result of the writ petition – Having allowed the workmen to put in regular service to its own benefit for over two decades, the management cannot claim an indefeasible right to continue with and canvass its challenge to the Award, merely because it made its compliance with the Award conditional long ago – Judgment passed by the Division Bench of the High Court set aside – Order of the Single Judge and the Award passed by the Industrial Tribunal restored, subject to the condition H*

A *stated – Industrial Disputes Act, 1947 – ss.10(1)(d), 17B, 25F – Acquiescence – Estoppel.*

*Union of India and others vs. N. Murugesan and others*  
**(2022) 2 SCC 25 – relied on.**

**Case Law Reference**

B

**(2022) 2 SCC 25**

**relied on**

**Para 14**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4152 of 2023.

C From the Judgment and Order dated 17.12.2020 of the High Court of Jharkhand at Ranchi in LPA No. 80 of 2019.

With

Civil Appeal No. 4153 of 2023.

D Mrs. Madhavi Divan, ASG, Gourab Banerji, Vikas Singh, Sr. Advs., Rakesh Talukdar, Ajit Pudussery, Varun Singh, Ms. Alankriti Dwivedi, Ms. Udit Singh, Ms. Vaishnavi S., Mrs. Vaishali Verma, P. V. Yogeswaran, B. K. Satija, Rajesh Singh Chauhan, Amrish Kumar, Advs. for the appearing parties.

The Judgment of the Court was delivered by

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**SANJAY KUMAR, J.**

1. Leave granted.

F 2. Arising out of the very same judgment dated 17.12.2020 passed by a Division Bench of the Jharkand High Court in L.P.A. No. 80 of 2019, these two appeals are amenable to a conjoined disposal.

G 3. By order dated 12.01.1996 issued under Section 10(1)(d) of the Industrial Disputes Act, 1947, the Ministry of Labour, Government of India, referred the industrial dispute raised by the Executive Staff Union of Food Corporation of India, espousing the cause of 21 casual workers, for adjudication. It was transferred to the Central Government Industrial Tribunal No. 2, Dhanbad (hereinafter, ‘the Tribunal’), and taken on file as Reference No. 128 of 1996. The schedule of the reference set out the dispute for resolution as under:

H ‘Whether the action of the management of Food Corporation of India, Patna, retrenching the services of S/Sh. Sashi Shankar and

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20 others (list enclosed) is justified and legal? If not, what relief A  
the concerned workmen are entitled to?’

4. One witness each was examined before the Tribunal by both  
sides. Exhibits M1 to M7 were marked by the management of Food  
Corporation of India (FCI) while Exhibits W1 to W12 were marked on  
behalf of the workmen. Upon considering the pleadings and evidence, B  
the Tribunal found that the 21 workmen in question were engaged as  
casual workers by the FCI at Patna and their retrenchment was void, as  
they were neither given notice nor paid compensation. Further, having  
found that an earlier Award directing reinstatement and regularization in C  
service of casual workers was upheld by the High Court, the Tribunal  
opined that these 21 workmen should also be regularized in service as  
vacancies in Class IV posts were available. However, taking note of the  
fact that the workmen had not rendered services for a long time, the  
Tribunal restricted their entitlement to back wages. In consequence, the  
Tribunal passed Award dated 18.03.1997, holding that the action of the D  
management of FCI in retrenching the services of these workmen was  
not justified and directed the management to reinstate them and regularize  
their services in Class-IV posts with effect from 10.05.1990, i.e., the  
date of their retrenchment, and to pay them 75% of their back wages,  
within a time frame.

5. Aggrieved by the said Award, the management of FCI filed E  
CWJC No. 953 of 1998 (R) before the Jharkhand High Court. Interim  
stay of the Award was granted in the writ petition on 05.08.1999, subject  
to the FCI continuing to pay the full wages last drawn by the workmen.  
Thereupon, the management started paying each of them <sup>1</sup> 507 per month,  
claiming that they were entitled only to minimum wages. Disputing this, F  
the workmen instituted contempt proceedings in MJC Case No. 371 of  
2000. This contempt case was disposed of on 12.05.2000, holding that if  
the management failed to comply with the condition in the stay order  
dated 05.08.1999 within two weeks, it would automatically stand vacated  
and the workmen would be entitled to take steps for implementation of  
the Award. The management thereupon issued Orders dated 10/ G  
17.11.2000, 24/26.11.2000 and 27.11.2000, implementing the Award. The  
workmen were absorbed in regular service and paid 75% of their back  
wages from 10.05.1990 up to 18.03.1997 and full wages, applicable to  
Class IV, for the period thereafter. This compliance was made subject  
to the final outcome of the writ petition.

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A           6. However, a learned Judge of the Jharkhand High Court dismissed CWJC No. 953 of 1998 (R), vide order dated 01.11.2018. The learned Judge affirmed the finding of the Tribunal that the workmen concerned had worked in the FCI at Patna for 240 days in the preceding 12 months and were then stopped from doing so without complying with the mandatory provisions of Section 25F of the Industrial Disputes Act, 1947. Further, the learned Judge noted that the management did not controvert the claim of the workmen that similarly situated persons had been regularized in service pursuant to the earlier order passed by the High Court and it did not cite any factor to distinguish the cases of the workmen in question from those of the workmen so regularized. Having said so, the learned Judge observed that a casual employee who worked for 240 days in the preceding calendar year would only be entitled to reinstatement in service, if his termination from service is without notice or compensation in lieu thereof, as provided under Section 25F of the Industrial Disputes Act, 1947, and he would not be entitled to seek regularization in service. However, as the management had chosen to comply with the impugned Award, without abiding by the condition imposed in the interim order passed in the writ petition, and as the workmen concerned had been availing the benefit of the impugned Award for more than 18 years, the learned Judge opined that it would cause great hardship to them if the position was changed at that stage. The learned Judge, accordingly, dismissed the writ petition, upholding the Award in its entirety.

D           7. The matter was thereupon carried in appeal by the management before a Division Bench of the Jharkhand High Court in LPA No. 80 of 2019. By judgment dated 17.12.2020, the Division Bench modified the order under appeal, by quashing the Award to the extent that it directed regularization of the services of the workmen. This modification was made on the ground that such relief could not be sustained when there was no term of regularization in the reference of the industrial dispute. The Division Bench disposed of the appeal by setting aside the order of the learned Judge declining to interfere with the Award in so far as it directed regularization of services, but left untouched the direction to pay 75% of the back wages.

G           8. Both sides are in appeal before this Court against the judgment of the Division Bench. The Executive Staff Union of FCI filed an appeal on behalf of the workmen concerned, aggrieved by the denial of

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regularization of their services, while the management of FCI is in appeal A  
against the direction of reinstatement and payment of 75% of the back  
wages to the said workmen. While issuing notice on 08.03.2021 in SLP  
(C) 3656 of 2021 filed on behalf of the workmen, this Court directed that  
operation of the Division Bench judgment shall remain stayed. Contempt  
Petition (C) No. 366 of 2021 was instituted alleging disobedience to this B  
stay order and the same was disposed of with certain observations on  
26.07.2022.

9. Significantly, para 12 of the impugned Division Bench judgment  
dated 17.12.2020 records that the learned counsel for the management  
of FCI did not assail that part of the Award whereby directions were C  
given for reinstatement and payment of back wages to the extent of  
75% and that the management was aggrieved by the Award pertaining  
to regularization. In fact, the grounds raised by the management in its  
appeal before the Division Bench related mostly to the aspect of  
regularization of the services of the workmen and there was only a D  
passing reference to the issue of reinstatement. In any event, in the light  
of the clear recording by the Division Bench that the management was  
not assailing the Award to the extent of directing reinstatement in service  
and payment of back wages, it is not open to the management to raise  
the same before this Court. The appeal filed by the management of FCI  
raising these issues is, therefore, liable to be dismissed on that short E  
ground.

10. As regards the appeal filed on behalf of the workmen, the  
only issue raised therein is as to the regularization in service of those  
workmen and the legality of the Award to the extent of granting such  
relief. At this stage, we may note that though the learned Judge himself F  
concluded that there should not have been an order of regularization in  
service by the Tribunal, he chose not to interfere therewith as the  
workmen, in the meanwhile, had rendered regular service for about 18  
years and interference at that stage would be harsh upon them. On the  
other hand, the Division Bench held that once the Court comes to the  
conclusion that a wrong order was passed, it would be its sovereign duty G  
to rectify such mistake rather than perpetuate the same. The Division  
Bench, however, did not consider the decisive features that had weighed  
with the learned Judge while upholding the Award of the Tribunal, viz.,  
the fact that the management of FCI chose to fully implement the Award  
during the pendency of the writ petition and the fact that the workmen H

- A availed the benefit thereof for 18 years. In this regard, the Office Order dated 24/26.11.2000 issued by the management, in compliance with the Award, is of relevance. It reads as under:

‘THE FOOD CORPORATION OF INDIA

- B DISTRICT OFFICE: NORTH GANDHI MAIDAN (GAYA)  
Ref: No. Estt.10[C/L-Cum-Class-IV]/2000/1927 24/26.11.2000

OFFICE ORDER

- C In pursuance of Award dated 18.03.1997 in I.D. Case No.128/96 by CGIT Dhanbad, interim Order dated 5.8.1999 passed in CWJC No.953/98[R] and subsequent order dated 12.05.2000 passed in MJC No. 371/2000 by the Hon’ble the High Court, Patna, Ranchi and in compliance of Sr. Regional Manager, FCI, Patna Office Order No.Esst.30[88]/94-Vol.II dated 10.11.2000, the following Ex.Casual Workmen are hereby re-
- D instated w.e.f., 10.05.90, in the Cat.IV [Watchman].

They are entitled to 75% of full back wages from 10.05.1990 to 18.03.1997 and thereafter full wages of Cat.IV.

- E Further, the above order is subject to the out-come of the CWJC No.953/98 pending before the Hon’ble High Court, Patna, Ranchi Bench.

They are directed to report for duty within 10[Ten] days from the date of receipt of this order.

- F Srl. No. Name  
1. Sri Sashi Shankar.  
.....  
21. Sri Ajoy Kumar.

- G Sd/-  
District Manager[I/c]  
....’

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11. Thereafter the management of FCI issued a corrigendum on A  
27.11.2000, which is of great significance. The corrigendum reads thus:

‘THE FOOD CORPORATION OF INDIA

REGIONAL OFFICE, PATNA-1

REF:NO.ESTT.30[88]/94-VOL.-II DATED:27.11.2000 B

CORRIGENDUM

In the office order issued under reference of even no. dated  
10/17.11.2000 regarding re-instatement of S/Sri Shashi Shankar  
and 20 others Casual workers of FSD, Chandauti, the word “re- C  
instated” as mentioned in line 6 of the said Office Order may be  
read as “absorbed”

Sd/-

Regional Manager

...’ D

12. Notably, all that was required of the management of FCI, as  
per the interim order dated 05.08.1999 in CWJC No. 953 of 1998 (R),  
was that it should pay the full wages last drawn by the workmen  
concerned, pending the disposal of the said writ petition, in due compliance  
with Section 17B of the Industrial Disputes Act, 1947. Thereafter, the E  
final order dated 12.05.2000 passed in MJC Case No. 371 of 2000 only  
put the management on notice that if it failed to comply with the conditional  
stay order within two weeks, the said order would stand vacated and the  
workmen would be at liberty to seek implementation of the Award. Faced  
with this situation, the management of FCI could have paid the wages F  
last drawn to the workmen concerned after ascertaining the same. That  
would have sufficed for continued subsistence of its interim protection  
during the pendency of the writ petition. However, the management of  
FCI did not choose to adopt this course of action. In its wisdom, the  
management not only reinstated the workmen concerned, under the Office  
Orders dated 10/17.11.2000 and 24/26.11.2000, but went one step further G  
and issued the Corrigendum dated 27.11.2000, ‘absorbing’ the said  
workmen in regular service. In effect, the management of FCI voluntarily  
chose to implement the Award in its totality, despite the conditional interim  
protection afforded to it in the writ petition.

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A 13. The feeble plea of the management of FCI that it was  
compelled to comply with the Award, under the threat of contempt, cannot  
be accepted as the contempt proceedings in MJC Case No. 371 of 2000  
were closed on 12.05.2000 itself, long prior to issuance of the orders of  
‘reinstatement’ and ‘absorption’ in November, 2000. Having committed  
B itself to this course of action on its own, albeit by making it subject to the  
result of the pending writ petition, the question that arises is whether the  
management of FCI can be permitted a *volte-face* at this late stage.  
Pertinently, there is no evidence of the management at least seeking  
expeditious disposal of the writ petition after complying with the Award,  
making it subject to the result thereof. In fact, the management merrily  
C allowed the situation to continue for 18 long years, till the dismissal of  
the writ petition in November, 2018.

14. Given this factual scenario, we are of the opinion that the  
learned Judge of the Jharkhand High Court was perfectly justified in  
dismissing the writ petition on the grounds that he did, thereby upholding  
D the Award.

In **Union of India and others vs. N. Murugesan and others**  
[(2022) 2 SCC 25], this Court pointed out that the phrases ‘approve’  
and ‘reprobate’ mean that no party can be allowed to accept and reject  
the same thing, as the principle behind the doctrine of election is inbuilt in  
E the concept of approve and reprobate, that is, a person cannot be  
allowed to have the benefit of an instrument while questioning the same.  
It was noted that an element of fair play is inbuilt in this principle and it  
is a species of estoppel dealing with the conduct of a party.

15. In the case on hand, the management of FCI filed a writ  
F petition challenging the Award passed by the Tribunal but having secured  
conditional interim relief therein, the management chose to implement  
the impugned Award though it was under no compulsion to do so. As  
pointed out hereinbefore, the management did not stop short at just  
reinstating the workmen in service but went further and absorbed them  
in regular service. Such absorption in service was not at all required  
G under the interim order dated 05.08.1999 and was, therefore, squarely  
attributable to the will and volition of the management of FCI itself. In  
effect, the management of FCI, be it for whatever reason, chose to  
acquiesce with and accept the Award in its entirety, though it made such  
compliance subject to the result of the writ petition. Its somnolence,  
H thereafter, in taking timely measures for expeditious disposal of the writ

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petition compounded the matter further, leading to the passing of 18 long years, which conclusively weighed with the learned Judge and, in our considered opinion, rightly so. A party to a proceeding cannot be permitted to challenge the same but thereafter abide by it out of its own free will; garner benefit from it; get the opposite party to effectively alter its position; and then press its challenge after the passage of a considerable length of time. A B

16. Having allowed the workmen to put in regular service to its own benefit for over two decades, the management can no longer claim an indefeasible right to continue with and canvass its challenge to the Award, merely because it made its compliance with the Award conditional long ago. In the light of their absorption in regular service, these workmen, who may have otherwise opted for employment opportunities elsewhere, altered their position and remained with the FCI. Having placed them in that position, it is no longer open to the management of FCI to seek to turn back the clock. Unfortunately, these crucial aspects were lost sight of by the Division Bench, while dealing with the management's appeal. D  
In that view of the matter, we are not inclined to alter the position obtaining for over two decades, by accepting the legally weighty but essentially pedantic view taken by the Division Bench, ignoring the factual position. C

17. The appeal filed by the Executive Staff Union of FCI, on behalf of the workmen, is accordingly allowed and the judgment dated 17.12.2020 in LPA No. 80 of 2019, passed by the Division Bench of the Jharkhand High Court, is set aside. In consequence, the order dated 01.11.2018 passed by the learned Judge in CWJC No. 953 of 1998 (R) and the Award dated 18.03.1997 passed by the Central Government Industrial Tribunal No.2, Dhanbad, in Reference No.128 of 1996, are restored, subject to the observations in the order dated 26.07.2022 passed by this Court in Contempt Petition (C) No. 366 of 2021 in SLP (C) No. 3656 of 2021. E F

The appeal filed by the management of FCI is dismissed.

Pending I.A.s, if any, in both appeals shall stand closed. G

Parties shall bear their own costs.