

Neutral Citation No. - 2024:AHC-LKO:26788

Reserved on :14.03.2024

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Case :- WRIT - C No. - 1002796 of 2003

Petitioner :- Hindustan Aeronautics Ltd. Thru G.M.

Respondent :- State Of U.P. Thru Secy. Labour And 3 Ors.

Counsel for Petitioner :- P.K. Sinha

Counsel for Respondent :- C.S.C.,Akash Sinha,Dhruv Mathur, J.N

Mathur,Prakash Kumar Sinha

and

Case:-WRIT - C No. - 1001632 of 2015

Petitioner :- Hindustan Aeronautics Ltd. Thru Executive Director

Respondent :- State Of U.P. Thru Secy. Labour Deptt. Govt. Of U.P. And Ors

Counsel for Petitioner :- Prakash Kumar Sinha,Akash Sinha

Counsel for Respondent :- C.S.C.,Avinash Pandey,Dhruv Mathur,Pranav Agarwal

Hon'ble Abdul Moin,J.

1. Heard Sri P.K. Sinha, learned counsel for the petitioner, learned Standing counsel appearing on behalf of the respondents no. 1, 3 & 4 and Sri Pranav Agarwal, learned counsel for the respondent no. 2.

2. Learned counsel for the contesting parties agree that that the facts of WRIT - C No. - 1002796 of 2003 and WRIT - C No. - 1001632 of 2015 are the same. As such, the Court proceeds to hear both the writ petitions together. For the sake of convenience, the facts of WRIT - C No. - 1002796 of 2003 are being taken.

3. Instant writ petition has been filed praying for the following main reliefs:-

(a) Issue a writ, order or direction in the nature of certiorari quashing the impugned orders dated 13.06.2002, 17.09.2002 & 16.06.2003 as contained in respectively Annexures No. 1, 2 & 3 to this writ petition.

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(b) Issue a writ, order or direction in the nature of mandamus restraining the opposite parties from interfering in any manner with the employment of contract labour at the establishment in accordance with the term and conditions as provided under the Contract Labour (Regulation and Abolition) Act, 1970.

4. The case set forth by the learned counsel for the petitioner is that Hindustan Aeronautics Karamchari Sabha affiliated itself with the Mazdoor Sabha through its General Secretary Sri Uma Shanker Mishra and filed a conciliation case before the Deputy Labour Commissioner, Lucknow Region. Lucknow for calling upon the employer and to ensure that there shall be no adverse effect on the service conditions of the members of the union due to publication of tender notice for employment of contract labourers through contractor for sanitation work of the factory premises.

5. The learned Deputy Labour Commissioner registered the same as C.P. Case No. 47 of 2001 and called upon the petitioner to submit its reply. In pursuance thereof, a reply was submitted by the petitioner praying for closure of the hearing of the case.

6. However, the conciliation case was referred to the State Government pursuant to which the State Government issued the impugned reference order dated 13.06.2002, a copy of which is annexure 1 to the writ petition which was subsequently amended vide corrigendum dated 17.09.2002, a copy of which is annexure 2 to the writ petition. It is contended that prior to amendment/corrigendum, the learned Presiding Officer, Industrial Tribunal, Lucknow registered the same as Adjudication Case No. 126 of 2002 and on 04.09.2022, notice under Section 4 (K) of the Uttar Pradesh Act, 26 of 1947 was issued.

7. Vide order dated 13.06.2002, the State Government has referred the industrial dispute to the Industrial Tribunal under Section 4 of the U.P. Act, 1947. Vide order dated 17.09.2002, the order dated 13.06.2002 has been corrected to read that instead of Section 4 of the U.P. Act, 1947, the reference order should be read to be under Section 10 (1) (d) of the Act,

1947.

8. It is contended that even after the corrigendum dated 17.09.2022, the earlier notice was not recalled and no notice under Section 10 (1) (d) of the Industrial Disputes Act, 1947 (hereinafter referred to as “Act, 1947”) was issued and the adjudication case was started.

9. Learned counsel for the petitioner states that the petitioner vehemently urged before the learned Tribunal that it has no jurisdiction to entertain the dispute in terms of the reference nor is it empowered to adjudicate the matter and that the reference has wrongly been sent to the U.P. Industrial Tribunal, Lucknow but the learned Tribunal vide order 16.06.2003, a copy of which is annexure 3 to the writ petition rejected the preliminary objections and held that the reference was maintainable.

10. Being aggrieved, the instant petition has been filed challenging the reference order dated 13.06.2002 along with corrigendum dated 17.09.2002 as well as the order dated 16.06.2003 whereby the preliminary objections filed by the petitioner of the reference not being maintainable have been rejected.

11. Sri Sinha states that subsequent to filing of the instant petition whereby the reference orders were challenged yet as no stay order had been granted by this Court, consequently, learned Tribunal proceeded further and vide order dated 24.02.2015, a copy of which is annexure 1 in Writ-C No. 10001632 of 2015, imposed cost on the HAL which thus constrained the petitioner to file the connected Writ C No. 1001632 of 2015. This Court vide order dated 03.04.2015 stayed the imposition of cost. For the sake of convenience, the main reliefs of Writ-C No. 10001635 of 2015 are reproduced below:-

- (a) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 24.02.2015 passed in Adjudication Case No. 126 of 2002 by the learned Opp. Party No. 3 as contained Annexure No. 1 to this writ petition.*
- (b) Issue a writ, order or direction in the nature of mandamus restraining the Opp. Party No. 3 from further proceeding towards adjudication of industrial disputes as pending before him in Adjudication Case No. 126 of 2002.*

12. The contention of learned counsel for the petitioner is that a perusal of the reference order dated 13.06.2002 would indicate that the State Government has referred the dispute under the provisions of the Uttar Pradesh Industrial Dispute Act, 1947 (hereinafter referred to as “U.P. Act, 1947”) by invoking the powers under Section 4 of the U.P Act, 1947 which order was amended vide corrigendum dated 17.09.2002 to read that instead of the reference being made under Section 4 of the U.P Act, 1947 the same is to be read as the Act, 1947 and the reference was being made under Section (10) (1) (d) of the Act, 1947.

13. The argument is that though sub Section (1) of Section 10 of the Act, 1947 empowers the appropriate Government by order in writing to refer a dispute or any matter appearing to be connected with or relevant to the dispute for adjudication and in terms of the notification dated 03.07.1998 issued by the Central Government, Ministry of Labour, a copy of which is annexure 18 to the writ petition, the appropriate Government would also refer to the State Government yet once the third proviso to sub Section (1) of Section 10 specifically provides that where a dispute in relation to which the Central Government is the appropriate Government it shall be competent for the Government to refer the dispute to the learned Labour Court or an Industrial Tribunal as the case may be, constituted by the State Government as such, the power of reference could only have been exercised by the State Government by taking recourse to the third proviso of sub Section (1) of Section 10 of the Act, 1947. However, a perusal of the reference order dated 13.06.2002 when read with the corrigendum dated 17.09.2002 indicates that the powers as vested in the appropriate Government, in this case the State Government, has not been exercised by taking recourse to the third proviso of sub Section (1) of Section 10 of the Act, 1947 consequently, the impugned reference made by the State Government as well as the order passed by the learned Tribunal rejecting the preliminary objections of the petitioner are patently bad in the eyes of law and beyond jurisdiction and as

such, merit to be set aside on this ground alone.

14. In this regard, learned counsel for the petitioner has also referred to the second supplementary affidavit dated 13.12.2022 filed in connected petition namely Writ- C No. 1001632 of 2015 more particularly to the letter dated 16.11.2022, a copy of which is annexure SSA 5 to the affidavit, issued by the Deputy Secretary, State of U.P to the learned Chief Standing counsel of this Court in pursuance to the query raised by this Court which indicates about a Government order dated 20.04.1957 having been issued per which three Industrial Tribunals had been established at Allahabad of which presently two are functioning at Lucknow after their transfer/establishment. It is also indicated that in terms of the notification dated 19.11.2001, all the Industrial Tribunals are functioning in terms of Section 7A and Section 7 of the Act, 1947.

15. Placing reliance on the notification dated 19.11.2001, a copy of which is part of annexure SSA 4 to the second supplementary affidavit (page 73), the contention of Sri Sinha is that the Tribunals have not been established and functioning as per Section 7A & Section 7 of the Act, 1947 rather they are only confined to Rule 11 of the Uttar Pradesh Working Journalist (Industrial Dispute) Rules, 1957 (hereinafter referred to as “Rules, 1957”) which rule provides for a learned Labour Court or learned Tribunal to be notified in the official gazette.

16. Reliance has also been placed on the information under the Right to Information Act, 2005 (hereinafter referred to as “Act, 2005”) as provided by the Assistant Labour Commissioner, Kanpur dated 08.07.2013, a copy of which is annexure 25 to the petition whereby, with respect to a query dated 10.06.2013, a copy of which is annexure 24 to the writ petition, which was as to whether there is any notification of the gazette published under the Act, 1947 conferring powers to the Industrial Tribunal/ learned Labour Court constituted by the State Government to adjudicate Industrial Disputes pertaining to establishment for which the Central Government is the

appropriate Government, the reply is that no such notification has been issued.

17. The argument of Sri Sinha is that keeping in view the aforesaid information as provided under the Act, 2005 read with the order dated 20.04.1957 and the notification dated 19.11.2001 it is apparent that no industrial tribunal has been constituted under the provisions of Section 7A of the Act, 1947 in the State of U.P for hearing the cases pertaining to disputes relating to the petitioner and as such, the impugned reference order and the corrigendum are patently beyond jurisdiction and as such, merit outright quashing.

18. Sri Sinha also argues that under the provisions of the U.P. Act, 1947, the tribunals constituted under Section 4B of the U.P. Act, 1947 would not have jurisdiction to decide the industrial dispute for a controlled industry to which the petitioner Hindustan Aeronautics Limited (HAL) belongs considering Section 2 (l) (ii) of the U.P. Act, 1947 more particularly when as per Industries Development and Regulations Act, 1951 (hereinafter referred to as “Act, 1951”) HAL is a scheduled industry as per entry 52 of list 1 of the seventh schedule of the Constitution of India.

19. However, Sri Sinha fairly submits that in case the reference would have been made by invoking the third proviso to sub Section (1) of Section 10 of the Act, 1947 then the Tribunal, as constituted by the State Government would have jurisdiction to hear and decide the matter.

20. Another argument is that third proviso to sub Section (1) of Section 10 of the Act, 1947 could have enabled the appropriate Government, in this case the State Government, to refer the matter to the Industrial Tribunal but the said reference order read with the corrigendum would indicate that the powers as vested in the State Government under the third proviso have not been exercised.

21. In support of his arguments, Sri Sinha has placed reliance on the judgments of the Apex Court in the cases of **Bhavnagar University**

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Vs.Palitana Sugar Mill (P) Ltd and Ors reported in **2003 (2) SCC 111**, **J.N.Gantra Vs. Morvi Municipality, Morvi** reported in **1996 (9) SCC 495** & **S. Sundaram Pillai and Ors Vs. V.R.Pattabiraman and Ors** reported in **1985 (1) SCC 591** as well as the order of the learned Industrial Tribunal dated 12.11.1998 passed in Adjudication Case no. 47 of 1997 Inre; Manager, HAL, Lucknow Vs. Sri Lalita Parasad whereby the learned Tribunal has held that the State has no power or authority to make the reference to the learned Tribunal with regard to HAL.

22. On the other hand, Sri Pranav Agarwal, learned counsel for the respondent no. 2 argues that the reference order dated 13.06.2002 has to be read along with the corrigendum dated 17.09.2002 and the notification dated 03.07.1998 per which on account of the power conferred by the Central Government, Ministry of Labour through its notification, the powers exercisable by the Central Government under the Act, 1947 and the rules with regard to various central public sector undertakings including the HAL were to be exercisable also by the State Government. Accordingly, the State Government vide reference order dated 13.06.2002 read with corrigendum dated 17.09.2002 exercising the power under Sub Section (1) of Section 10 of the Act, 1947 referred the dispute to the learned Tribunal.

23. The argument of Sri Pranab Agarwal, learned counsel for the respondent no. 2 is that the word "Tribunal" as provided under the provisions of the Act, 1947 more particularly Section 7A of the Act, 1947 would not come into play inasmuch as the learned Tribunal as indicated in Section 10 (1) (d) of the Act, 1947 would be relatable to the word "Tribunal" as provided under Section 4B of the U.P. Act, 1947.

24. Elaborating the same, the argument of Sri Agarwal is that once sub Section (1) (10) of the Act, 1947, keeping in view the notification dated 03.07.1998, empowers the State Government to exercise the powers of the Central Government consequently, when the State Government was of the opinion that an Industrial Dispute existed then it referred the dispute or the

matter connected with the said dispute to the learned Tribunal which Tribunal has been constituted by the State Government keeping in view the order dated 20.04.1957 per which three Industrial Tribunal had been established as would be apparent from a perusal of the information dated 16.11.2022 made available by the Deputy Secretary of the State Government in pursuance to the query raised by the Court and thus merely because in the reference order, the third proviso of sub Section (1) of Section 10 of the Act, 1947 was not cited, the same would not negate or invalidate the reference made by the State Government. He thus contends that both the petitions are patently misconceived and merit to be dismissed.

25. Heard learned counsels for the parties and perused the records.

26. From the arguments as raised by the learned counsels for the parties and perusal of record, it emerges that initially a reference was made by the State Government on 13.06.2002 under the provision of Section 4 of the U.P. Act of 1947 referring the dispute, as raised by the HAL Union vis-a-vis the petitioner HAL and 2 others before the Industrial Tribunal. The said reference order was amended vide the amended order dated 17.09.2002 by indicating that the reference, as made under Section 4 of the U.P. Act of 1947, be read as a reference under Section 10(1)(d) of the Act, 1947. The petitioner put in appearance before the learned Tribunal i.e. the Tribunal constituted by the State Government as provided under Section 4B of the U.P. Act of 1947 and raised an objection that the reference was bad. The learned Tribunal rejected the said objection and held the reference to be valid vide order dated 16.06.2003.

27. Being aggrieved, instant petition was filed in which this Court did not stay the proceedings pending before the learned Tribunal. The learned Tribunal proceeded further and, on account of delaying tactics being adopted by the petitioner HAL before the learned Tribunal, imposed cost of Rs.25,000/- vide order dated 24.02.2015.

28. Being aggrieved, the petitioner challenged the said order by filing Writ C No.1001632 of 2015 i.e. connected petition in which this Court vide order dated 03.04.2015 has stayed the imposition of cost. The further status of the proceedings is not known. However, the proceedings are said to be still pending before the learned Tribunal.

29. The grounds raised to challenge the reference order dated 13.06.2002 as amended vide order dated 17.09.2002 are manifold.

30. The first ground is that sub-section (1) of Section 10 of the Act, 1947 empowers the appropriate Government to refer the dispute to a Tribunal for adjudication. The 'Tribunal' is defined under the definition clause more particularly Section 2(r) of the Act, 1947 as an Industrial Tribunal constituted under Section 7A and includes an Industrial Tribunal constituted before 10.03.1957 under the Act. Section 7A of the Act, 1947 provides that the appropriate Government may by notification constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter.

31. Placing reliance on the aforesaid provisions of the Act, 1947, the contention is that the State Government through the aforesaid reference order dated 13.06.2002 as amended on and 17.09.2002, has referred the matter to a Tribunal constituted under the provisions of the U.P. Act of 1947 and as such the said reference is patently bad and the learned Tribunal which has proceeded to hear the matter in pursuance to the said reference orders lacks jurisdiction.

32. In order to consider this ground, the Court will have to consider the provisions of Sections 2(r), 7A and 10(1) of the Act, 1947.

33. For the sake of convenience, the said provisions are reproduced below:-

“2(r) “Tribunal” means an Industrial Tribunal constituted under section 7A and includes an Industrial Tribunal constituted before the

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10th day of March, 1957, under this Act.

7A. (1) The appropriate Government may, by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter, whether specified in the Second Schedule or the Third Schedule [and for performing such other functions as may be assigned to them under this Act.

(1A) The Industrial Tribunal constituted by the Central Government under sub-section (1) shall also exercise on and from the commencement of part xiv of Chapter VI of Finance Act, 2017, the jurisdiction, powers and authority conferred on the Tribunal referred to in Section 7(d) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952.

10. Reference of disputes to Boards, Courts or Tribunals. - (1) *[Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time], by order in writing-*

- (a)refer the dispute to a Board for promoting a settlement thereof; or*
- (b)refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or*
- (c)[refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or*
- (d)refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication:*

Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause (c):]

[Provided further that where the dispute relates to a public utility service and a notice under section 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced:]

[Provided also that where the dispute in relation to which the Central Government is the appropriate Government, it shall be competent for the Government to refer the dispute to a Labour Court or an

Industrial Tribunal, as the case may be, constituted by the State Government.]

34. The Central Government, Ministry of Labour had issued a notification dated 03.07.1998 whereby in exercise of powers conferred by Section 39 of the Act, 1947, the Central Government had directed that all the powers exercisable by it under that Act and the Rules made thereunder shall, in relation to all the Central Public Undertakings and their subsidiaries, corporations and autonomous bodies, as per Schedule annexed to the notification, would be exercisable by the State Government also. HAL finds place at serial no.40 of the Schedule.

35. For the sake of convenience, Section 39 of the Act, 1947 and the notification dated 03.07.1998 are reproduced below:-

"39. Delegation of powers.- The appropriate Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act or rules made thereunder shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also,-

(a) where the appropriate Government is the Central Government, by such officer or authority subordinate to the Central Government or by the State Government, or by such officer or authority subordinate to the State Government, as may be specified in the notification; and

(b) where the appropriate Government is a State Government, by such officer or authority subordinate to the State Government as may be specified in the notification"

Notification

**“MINISTRY OF LABOUR NOTIFICATION
NEW DELHI, THE 3RD JULY, 1998**

S.O 556 (E) Section 1947), In exercise of the powers conferred by Section 39 of the Industrial Disputes Act, 1947 (14 of the 1947), the Central Government hereby directs that all the powers exercisable by it under that Act and the Rules made thereunder shall in relation to all the Central Public Sector Undertakings and their subsidiaries, Corporations and autonomous bodies specified in Schedule annexed to this notification be exercisable also by the State Government subject to the condition that the Central Government shall exercise all the powers under the said Act and Rules made thereunder as and when it considers necessary to do so.”

36. Section 39 of the Act, 1947 provides the delegation of powers per

which the appropriate Government, by notification in the official gazette may direct that any power exercisable by it under the Act, 1947 or rules be exercisable also, where the appropriate Government is the Central Government, by an officer or authority subordinate to the Central Government or by the State Government. In pursuance thereof, the notification dated 03.07.1998 was issued per which the powers of Central Government as exercisable by it under the provisions of the Act, 1947 made thereunder in relation to Central Public Sector Undertakings and their subsidiaries, Corporation and autonomous bodies specified in the schedule annexed in the notification were exercisable also by the State Government.

37. From a perusal of the provisions of the Act, 1947, it emerges that a Tribunal under the Act, 1947 is a Tribunal constituted under Section 7A of the Act, 1947. Section 7A provides that the appropriate Government by notification may constitute one or more Industrial Tribunals for adjudication of the industrial disputes. Section 10(1) of the Act, 1947 provides that where the appropriate Government is of the opinion that any industrial dispute exists or is apprehended it may by order in writing refer the dispute or any matter connected with or in relevant to the dispute to the tribunal for adjudication. The third proviso to Section 10 (1) (d) provides that where the dispute in relation to which the Central Government is the appropriate Government, it shall be competent for the Government to refer to refer the dispute to a Labour Court or an Industrial Tribunal as the case may be constituted by the State Government.

38. When the aforesaid provisions of the Act, 1947 are seen in the context of the notification dated 03.07.1998 it emerges that Section 10 (1) (d) along with the third proviso would read that where the State Government is of the opinion that any industrial dispute exists or is apprehended it may by order in writing refer the dispute or any matter appearing to be connected with or relevant to the dispute, to a tribunal for adjudication, provided that where a

dispute in relation to which the Central Government is the appropriate Government, it would be competent for the State Government in terms of notification dated 03.07.1998 to refer the dispute to an industrial tribunal constituted by the State Government. Thus, the provisions of the Act, 1947 when read in consonance with the notification dated 03.07.1998 clearly indicate that the reference order dated 13.06.2002 as corrected on 17.09.2002 has been correctly issued by the State Government.

39. The reason for the said finding is that though at first blush, the argument of Sri P.K. Sinha, learned counsel for the petitioner, is attractive inasmuch as it is the Central Government which could have referred the dispute to a Tribunal as constituted by the Central Government for adjudication of the dispute as referred by the reference order dated 13.06.2002 amended on 17.09.2002 but the said argument ignores the effect of the notification dated 03.07.1998 which confers all powers exercisable by the Central Government under the Act, 1947 and the rules to be exercisable also by the State Government, the notification having been issued by the Central Government in exercise of powers conferred by Section 39 of the Act, 1947.

40. Accordingly, when the provisions of the Act, 1947 are seen in the context of the notification dated 03.07.1998, it is clearly apparent that the State Government could have referred the industrial dispute to a Tribunal for adjudication which in effect has been done by means of reference order dated 13.06.2002 amended on 17.09.2002. Admittedly, in terms of the third proviso of Section 10 (1) (d) of the Act, 1947, the State Government is competent to refer the dispute to an Industrial Tribunal constituted by the State Government. Merely because in the reference order dated 13.06.2002 as amended on 17.09.2002, the third proviso does not find place, the same cannot and will not take away the powers of the State Government, which is the competent Government in terms of the notification dated 03.07.1998, of

referring the industrial dispute to a tribunal constituted by it.

41. In this regard, it would be apt to refer to the judgment of the Apex Court in the case of **Ram Sunder Ram Vs. Union of India** reported in **2007 (9) Scale 197** wherein the Apex Court has held as under:-

"20.....It appears that the competent authority has wrongly quoted Section 20 in the order of discharge whereas, in fact, the order of discharge has to be read having been passed under Section 22 of the Army Act. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law [see N. Mani v. Sangeetha Theatre & Ors. (2004) 12 SCC 278]. Thus, quoting of wrong provision of Section 20 in the order of discharge of the appellant by the competent authority does not take away the jurisdiction of the authority under Section 22 of the Army Act. Therefore, the order of discharge of the appellant from the army service cannot be vitiated on this sole ground as contended by the learned counsel for the appellant.....".

42. Likewise, the Apex Court in the case of **N.Mani Vs. Sangeetha Theatres & Ors** reported in **(2004) 12 SCC 278** has held as under:-

"9. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law."

43. The Apex Court in the case of **P.K.Palanisamy Vs. N. Arumugham and Anr** reported in **(2009) 9 SCC 173** has also held likewise.

44. From a perusal of the judgments of the Apex Court in the case of **Ram Sunder Ram (supra)**, **N.Mani (supra)** & **P.K.Palanisamy (supra)** it clearly emerges that if an authority has a power under the law to do a particular thing but while exercising that power, the source of power is not specifically referred to that by itself would not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law. At the risk of the repetition, it can be said that once the power is vested with the State Government to refer the industrial dispute to an Industrial Tribunal constituted by it considering the provisions of Section 10 (1) (d) of the Act, 1947 and the third proviso to Section 10 (1) (d) of the Act, 1947

read with notification dated 03.07.1998 then merely because in the reference order dated 13.06.2002 as amended on 17.09.2002, the third proviso to Section 10 (1) (d) of the Act, 1947 was not referred to, that by itself would not vitiate the order of reference.

45. This aspect of the matter would also be apparent from the notification dated 19.11.2001 wherein all the Industrial Tribunals are functioning in terms of Section 7A of the Act, 1947. Merely because the notification dated 19.11.2001 also records that under Rule 11 of the Rules, 1957, the Tribunals are functioning and Rule 11 of the Rules, 1957 provides the appointment of a Board, Court, Labour Court or Tribunal the same cannot be construed that the said Tribunal as constituted under Section 7A of the Act, 1947 would only be confined to the working journalist under Rule 11 of the Rules, 1957. Thus, the said argument is rejected.

46. The further argument of Sri Sinha, learned counsel for the petitioner, that as per information under Right to Information Act as provided by the Assistant Labour Commissioner, Kanpur dated 08.07.2013 no notification has been issued conferring the powers to the Industrial Tribunal constituted by the State Government to adjudicate industrial disputes pertaining to establishment for which the Central Government is the appropriate Government, the same cannot resile from the fact of existence of the notification dated 03.07.1998 conferring the power of the appropriate Government to the State Government and thus the information under Right to Information Act would have to be seen in the context of notification dated 03.07.1998 and the provisions of the Act, 1947 in the context of 'appropriate Government'. Thus, the said argument is also rejected.

47. Now the Court proceeds to consider the case laws as cited on behalf of the petitioner.

48. The Apex Court in the cases of **Bhavnagar University (supra)** and **J.N. Gantra (supra)** has held that when a statutory authority is required to

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do a thing in a particular manner the same must be done in that manner or not at all.

49. There cannot be any dispute to the aforesaid proposition of law. However, as already discussed above, the appropriate Government in this case in terms of the notification dated 03.07.1998 is the State Government and the State Government has correctly proceeded to refer the dispute to a Tribunal constituted by it as discussed above and thus the said judgments would have no applicability in the facts of the instant case.

50. As regards the judgment of the Apex Court in the case of **S. Sundaram Pillai (supra)**, the Apex Court has held that a proviso is an exception to the main part of the section but it is recognized that in exceptional cases a proviso may be a substantive provision itself.

51. While citing the aforesaid judgment, learned counsel for the petitioner has contended that though the State Government was perfectly empowered to refer the dispute to a Tribunal constituted by it yet while issuing the amended reference dated 17.09.2002 it did not refer to the said proviso. However, the aforesaid argument is hyper technical inasmuch as once the State Government was exercising powers vested in it vide the notification dated 03.07.1998 consequently merely because it did not mention in the amended reference dated 17.09.2002 that it was exercising the power as vested in it under the third proviso the same cannot and will not depart from the fact that the State Government was perfectly empowered to refer the dispute to the Tribunal constituted by it, which has fairly been admitted by Sri Sinha also, and thus the judgment of **S. Sundaram Pillai (supra)** would have no applicability in the facts of the instant case.

52. As regards the order of learned Industrial Tribunal dated 12.11.1998 passed in Adjudication Case No.47 of 1997, suffice to state that the said order cannot bind this Court. Apart from this, the said adjudication case was filed prior to the notification dated 03.07.1998 which conferred the powers

of the Central Government on the State Government which has been considered by the learned Tribunal and it has held that the said notification will not have retrospective effect.

53. Learned counsel for the petitioner has also vehemently argued that HAL being a controlled industry, the tribunals constituted by the State Government are not empowered to decide the case pertaining to controlled industry and that considering the definition of "Industrial Dispute" as defined under Section 2 (l) of the U.P Act, 1947, an industrial dispute concerning the controlled industries would not be governed by the provisions of the U.P Act, 1947. The said argument is patently fallacious keeping in view the notification dated 03.07.1998 and the powers vested in "appropriate Government" in this case, the State Government, which considering the third proviso to Section 10 (1) (d) of the Act, 1947 was perfectly empowered to refer the industrial dispute to a tribunal constituted by it and HAL finds placed in the said notification and thus the said argument is also rejected.

54. Keeping in view the aforesaid discussion, no case for interference is made out. Accordingly, the writ petition is dismissed.

Order date: 01.04.2024

Pachhere/A. Katiyar

(Abdul Moin, J.)

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