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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (L) No. 65 of 2015**

Navbharat Press Karmachari Kalyan Sangh Through its
President, Navbharat Press Karmachari Kalyan Sangh,
Registration No. 7905, Distt.- Bilaspur (Chhattisgarh)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through its Dy. Labour Commissioner, O/o Dy. Labour Commissioner, Shankar Nagar, Raipur (Chhattisgarh)
2. Assistant Labour Commissioner-Cum- Conciliation Officer Under The I.D. Act 1947, O/o Assistant Labour Commissioner, Bilaspur (Chhattisgarh)
3. Dainik Navbharat Press, Through its Director, Dainik Navbharat Press, Navbharat Building Press Complex, G.E.Road, Raipur (Chhattisgarh)
4. Chief Executive Officer, Dainik Navbharat Press, Navbharat Building, Navbharat Building Press Complex, G.E. Road, Raipur, (Chhattisgarh)
5. Manager (P), Dainik Navbharat Press, Navbharat Building, Near Old Bus Stand, Bilaspur (Chhattisgarh)
6. Press Karmachari Sangh, through its President, Registration No.51, In Front of Indira Vihar, Main Gate Nutan Chowk Sarkanda, Bilaspur (Chhattisgarh).
7. The Presiding Officer, Under The Industrial Dispute Act, 1947 Labour Court. Near Ram Mandir, Tilak Nagar, Bilaspur (Chhattisgarh)

---- Respondents

For Petitioner : Mr. Vinod Deshmukh, Advocate.

For Respondents No. 1 & 2: Mr. Dhiraj Kumar Wankhede,
Govt. Advocate.

For Respondents No. 3 to 5 : Mr. H.B. Agrawal, Senior
Advocate with Mr.
Venkateshwar Tiwari, Advocate.

For Respondent No. 6 : None appears, though served.

Hon'ble Shri Justice Sanjay K. Agrawal

CAV Order

30-11-2015

(1) The determining issue falling for consideration would be whether the appropriate Government failed to refer actual/real industrial dispute existing between the parties to the labour court for adjudication in exercise of power conferred under Section 10 (2) of The Industrial Dispute Act, 1947 ?

(2) Dainik Navbharat Press, Bilaspur through its Manager, respondent No. 5 herein, made an application to the Assistant Labour Commissioner under The Industrial Disputes Act, 1947 (hereinafter referred to as 'the I.D. Act') stating *inter alia* that the petitioner-Sangh in collusion with respondent No. 6 herein, Navbharath Press Karmachari Sangh went into illegal strike on 9.8.2014 at 7 p.m., consequently publication of newspaper was disrupted on 10.8.2014 & 11.8.2014 and, as such, the strike called by petitioner-Sangh in collusion with respondent No. 6 is *prima facie* illegal strike, as no notice was served before undertaking strike and the provisions contained

in Sections 22 & 23 of the I.D. Act, 1947 have not been followed in its letter & spirit and, as such, the matter be referred to the Labour Court for adjudication with reference to the validity of strike by the petitioner-Sangh.

(3) Pursuant to the application under The I.D. Act, conciliation proceedings were held by Respondent No. 2- Assistant Labour Commissioner-cum-Conciliation Officer on 11.08.2014, but no amicable settlement was reached. Again on 12.8.2014, conciliation proceedings were held by respondent No. 2-Assistant Labour Commissioner for amicable settlement but the proceedings failed and respondent No. 2- Assistant Labour Commissioner-cum-Conciliation Officer sent its report to the Competent Authority under Section 12(4) of the I.D. Act, 1947 and ultimately, the appropriate Government by its order dated 14.08.2014 in exercise of power conferred under Section 10 of the I.D. Act referred the matter to the Labour Court for adjudication as to whether the strike commenced from 9.8.2014 by the petitioner-Sangh along with respondent No. 6 is illegal and if 'yes' what direction should be given to the said *Sangh*.

(4) Thereafter, the Labour Court, by its order dated 21.01.2015 also passed an interim order holding the strike as

prima facie illegal and directed the Sangh not to interfere in the publication of newspaper.

(5) Feeling aggrieved & dissatisfied with the order passed by the appropriate Government referring the industrial dispute to the Labour Court for adjudication, this writ petition has been filed alleging that the petitioner is registered Union representing the employees working at Navbharat Press, Bilaspur to their respective posts and their basic salary was revised by respondent No. 2 as per settlement dated 19.08.2013 arrived at between the management of Navbharat press and Unions before the Assistant Labour Commissioner, Bilaspur as per Majithia Wage Board. It was further pleaded that the said revised pay scale were paid regularly to the employees till June, 2014 and after July, 2014 instead of implementing the Majithia Wage Board Award, respondents No. 3 & 4 in most arbitrary manner reduced basic salary of the employees for which the employees through their Union had raised various demands including revised pay scale according to Majithia Wage Board Award introduced by the Government of India, which is applicable to all the Press units including the petitioner and it has also been notified by the Government of India in a meeting of Central Level Monitoring Committee held on 27th August, 2014 in which it has been

directed that the Press units shall take necessary action on the decision taken by the Committee for implementing the Majithia Wages Board Award. It was also pleaded that the Assistant Labour Commissioner again vide its letter dated 13.05.2014 directed the management of Navbharat Press to implement the Majithia Wage Board Award as per direction issued by the Supreme Court and to pay arrears of wages as per the said Wage Board. It was also pleaded that due to reduced salary, some of the employees could not attend the duty and management of Navbharat Press had raised the industrial dispute, which was uncalled for and after receipt of notice for referring the matter petitioner-Sangh has also raised preliminary objection in respect of maintainability of the said case and submitted that real/actual dispute existed between the parties with regard to entitlement of the revision of pay scale as per Majithia Wage Board has not been referred to the appropriate Government for adjudication and, as such, the reference made by the appropriate Government as well as interim order passed by the Labour Court on 21st January, 2015 deserves to be quashed.

(6) Respondents No. 1 & 2/State has filed its return stating *inter alia* conciliation proceedings were held by respondent No. 2 between the petitioner and respondents No. 3 to 5 but

the same has failed and thereafter the failure report was sent to the appropriate Government which, in turn, referred the matter to the Labour Court for adjudication in accordance with law and, as such, no interference is called for in exercise of jurisdiction of this Court under Article 226/227 of the Constitution of India.

(7) Return has also been filed on behalf of respondents No. 3 to 5 stating *inter alia* that petition suffers from misjoinder of cause of action as challenge to the validity or otherwise of the reference can be made only under Article 226 of the Constitution of India whereas the order passed by the Labour Court on 21.01.2014 can be challenged only in writ petition under Article 227 of the Constitution of India. It has also been pleaded that writ petition as framed and filed is not maintainable in law as the petitioners have alternative remedy of raising dispute or claiming wages under Section 15 of the Payment of Wages Act. It has also been pleaded that the petitioner themselves made statement of claim before the Labour Court in which they have stated that they are filing separate case for deduction for not paying the due salary/deduction and, as such, the writ petition deserves to be dismissed.

(8) Mr. Vinod Deshmukh, learned counsel appearing for the petitioner, would submit that the Central Government has already accepted the recommendation of Majithia Wage Board in respect of revised salary/wages of the working journalists and non-journalist newspaper employees on 11.11.2011 and settlement has been arrived between the management of Navbharat Press and Unions on 19.08.2013 before respondent No. 2 – Assistant Labour Commissioner. He would further submit that the Hon'ble Supreme Court has already dismissed the writ petition filed by ABP Private Limited challenging the recommendation and acceptance of Majithia Wage Board by Government of India directing that the wages as revised/determined shall be paid from 11.11.2011 and all the arrears up to March, 2014 shall be paid to all eligible persons in four equal installments within a period of one year from the date of order and, as such, the terms of reference made by the appropriate Government is not appropriately worded as the terms of reference did not reflect the real dispute between the parties i.e. petitioner-Sangh and respondents No. 2 to 5, the appropriate Government has made one sided reference to the Labour Court for adjudication and has failed to refer the real/actual dispute existing between the parties in respect of the

entitlement of revision of pay scale according to the Majithia Wage Board. On the circumstances, the appropriate Government be directed to make reference in respect of entitlement of salary and revised salary of the employees of petitioner-Sangh, which is the real industrial dispute existing between the parties. He would also submit that order dated 21.01.2015 passed by the Labour Court granting interim relief to the respondents No. 3 & 5 is also illegal and bad in law.

(9) Mr. Dhiraj Kumar Wankhede, learned Govt. Advocate appearing on behalf of the State/respondents No. 1 & 2 would submit that pursuant to the application made by respondent No. 5 regarding illegal strike, conciliation proceedings were held but no settlement could be reached and due to failure of conciliation proceedings, report was sent to the competent authority and upon consideration of the report, the appropriate Government has referred the matter to the Labour Court for adjudication under Section 10(1) of the ID Act, 1947 to decide the validity or otherwise of the strike called by petitioner-Sangh with respondent No. 6. He would further submit that petitioner-Sangh have not moved any application or have not made specific claim under the provisions of the Industrial Disputes Act raising their specific grievance under Section 10(2) of the ID Act, 1947. He would also submit that

petitioner is the association of workers of respondent No. 5 and they are working journalists defined under Section 2(f) of the Working Journalists and Other News Paper Employees (Condition of Service) and Miscellaneous Provisions Act, 1955 (for the sake of brevity hereinafter called as “the Act, 1955”) and, therefore, appropriate remedy available to the petitioner-Association is to raise a claim under Section 17 of the Act, 1955 before Assistant Labour Commissioner, as it is a dispute with regard to non payment of their wages as per Majithia Wage Board Award, which was constituted under the provisions of Industrial Dispute Act and, therefore, relief claimed in the instant writ petition is the matter relating to revision of pay scale as per recommendation of Majithia Wage Board, which is a matter of enforcement under Section 17 of the Act, 1955 and, therefore, writ petition as framed and filed deserves to be dismissed.

(10) Mr. H.B. Agrawal, learned Senior Advocate appearing on behalf of respondents No. 3 to 5 would submit that the petitioner-Sangh has already pleaded to file separate proceeding for illegal deduction in the Statement of Claim made before the Labour Court and, therefore, the petitioner-Sangh is estopped for claiming reference to be invalid on the ground that real dispute has not been referred to the Labour

Court for adjudication. Learned Senior Counsel Shri Agrawal would further submit that no such dispute was raised before respondent No. 2 in the prescribed form as required by Rule 3 of Industrial Disputes (Central) Rules, 1957 and, therefore, there was no occasion for respondent No. 2 to consider their case and make recommendations to the appropriate Government for referring the matter to the Labour Court for adjudication. Learned Senior Counsel would also submit that the petitioner is not a registered Trade Union, but it is only a society under the Madhya Pradesh Societies Registrikaran Adhiniyam, 1973 and, therefore, it cannot make any application for reference in accordance with the provisions of the Industrial Disputes Act, 1947. Elaborating his submissions, learned Senior Advocate would lastly submit that pursuant to the decision of the Supreme Court, the report of the Majithia Wage Board is binding and it is a matter of enforcement, it is not a matter to be referred to the Labour Court for adjudication under Section 10 of the ID Act, 1947, as the dispute with regard to their entitlement is already settled, by which, the petitioner-Association is free to get it enforced under Section 13(3) of the ID Act, 1947 and, as such, the writ petition deserves to be dismissed.

(11) I have heard learned counsel appearing for the parties and considered their rival submissions made therein and also gone through the record with utmost circumspection.

(12) It is not in dispute that in exercise of power conferred under the Act, 1955, the Central Government constituted Majithia Wage Board in respect of the revision of salary/wages of working journalists and non-journalist newspaper employees, and recommendations made by the said Board under Section 10 of the Act, 1955 were accepted by the Central Government under Section 12 of the I.D. Act, 1947, as such, challenge to the said recommendations and acceptance was not found favour by the Supreme Court in the matter of **ABP Pvt. Ltd. & Anr. Vs. Union of India & Ors.**¹ decided on 07.02.2014, by which, Their Lordships of the Supreme Court have clearly held that the wages as revised/determined shall be payable from the date of notification i.e. 11.11.2011 and all the arrears shall be paid to all eligible persons in four equal installments within one year from the date of order and shall continue to pay the revised wages from April, 2014 onwards.

(13) Thus, entitlement of the petitioner-sangh to the revised wages as determined by Majithia Wage Board is finally

¹ (2014) 3 SCC 327

determined and payable pursuant to its acceptance by the Central Government on 11th November, 2011 and duly upheld by the Supreme Court in the matter of **ABP Pvt. Ltd.** (supra).

(14) Keeping in view the above-stated factual matrix of the case, particularly, the entitlement of the petitioner-Sangh to get revised wages as per Majithia Wage Board, the question to be considered is whether reference made by the appropriate Government confining to validity of strike called by the petitioner-Association reflects actual/real industrial dispute existing between the parties.

(15) The Industrial Disputes Act, 1947 is enacted to make provisions for investigation and settlement of industrial disputes and for certain other purposes indicated in the preamble to the I.D. Act, 1947. Examination of the provisions of the I.D. Act, 1947 indicates that the Act was brought on the statute book to ensure that collective bargaining did not get out of hand so as to injure the interest of the society. The collective bargaining had to be carried out between industry and workmen subject to the restrictions and regulations placed thereupon by the I.D. Act, 1947.

(16) "Strike" is defined in Section [2\(q\)](#) as cessation of work by a body of persons employed in any industry acting in

combination, or a concerned refusal, or a refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment. Correspondingly, Section [2\(1\)](#) defines "lock-out", which is the corresponding industrial action on the part of the employer of shutting out the workmen from work and refusing to continue to employ any number of persons employed by it. In both cases, the withdrawal of labour by workmen, or refusal of work by the employer, is carried out with a view to forcing the other party to come to terms. Strike and lock-out are often described as weapons in the armoury of collective bargaining, albeit of last resort.

(17) Having defined "strike" and "lock-out", the I.D. Act, 1947 prohibits resort to strike or lock-out without following the procedure prescribed. Section [22](#) makes a distinction between the ordinary industrial establishment and what is known as a "public utility service". The definition of "public utility service" covers most of the public service industries, though it is competent to the Government to declare as a public utility service certain types of other industries which are indicated in the First Schedule to the Act. With regard to workmen employed in public utility services, the Industrial Disputes Act, 1947 imposes a restriction on their right to

strike. Section [23](#) makes restrictions with reference to strikes and lock-outs in non-public utility service industries.- Section [24](#) which declares a strike or a lock-out to be illegal if it is commenced or declared in contravention of Section [22](#) or [23](#). Under sub-section (3) of Section [10](#) of the I.D. Act, 1947, the Appropriate Government is empowered to refer an industrial dispute between an industry and its workmen and simultaneously prohibit commencement or continuance of a strike or lock-out in such industries.

(18) The petitioner-Sangh, all of a sudden, on 9.8.2014 at 7 p.m. went on strike disputing some wage determination resulting in complete closure of the work of respondents No. 3 to 5 besides non-publication of newspaper, which was to be distributed on 10.8.2014 & 11.08.2014. It is the case of respondents No. 3 to 5 that the strike made by petitioner-Sangh in collusion with respondent No. 6 is *prima facie* illegal and it was not notified prior to such strike and Section 23 of the I.D.Act, 1947 which provides for prohibition of strikes and lock-outs, was not followed and, in the above backdrop, request was made to refer the dispute to the appropriate Government to adjudicate the validity of strike in accordance with law.

(19) Respondent No. 2-Assistant Labour Commissioner-cum-

Conciliation Officer under the I.D. Act, 1947 held the conciliation proceedings on the same day with the petitioner-Sangh and respondent No. 6 followed by meeting on 12.1.2014 in presence of all concerned but ultimately the conciliation proceedings failed and no settlement was arrived at. Respondent No. 2-Conciliation Officer sent a report to the appropriate Government setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for arriving a settlement thereof and, thereafter, the appropriate Government after consideration of the report under Section 12(4) of the I.D. Act, 1947 and after being satisfied finding the existence of Industrial dispute referred the dispute to the Labour Court, referred the matter to the Labour Court for adjudication by its impugned order (Annexure P-1).

(20) A careful reading of records would show that it is the respondent No. 5, who has made an application to respondent No. 2 for making reference to the Labour Court for declaring the strike commenced by the petitioner-Sangh as illegal by its letter dated 11.8.2014. Petitioner-Sangh has not brought any documents on record, after 11.8.2014, to demonstrate that any claim was made to respondent No. 2 to make a reference to any industrial dispute for adjudication.

(21) Section 10 of the Industrial Disputes Act, 1947 provides for reference of disputes to the Board, Courts or Tribunals. Section 10(2) of the ID Act, 1947 further provides where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, for a reference of the dispute to a Board, Courts or Tribunals, the appropriate Government, if satisfied that the persons applying represent the majority of each party, shall make the reference accordingly.

(22) Rule 3 of the Industrial Disputes (Central) Rules, 1957 provides that an application under sub-section (2) of Section 10 for reference of an industrial dispute to the Court shall be made in Form A and shall be delivered personally or forwarded by registered post in triplicate to the Secretary to the Government of India in the Ministry of Labour. The application shall be accompanied by a statement setting forth-

- (a) the parties to the dispute;
- (b) the specific matters in dispute;
- (c) the total number of workmen employed in the undertaking affected;
- (d) an estimate of the number of workmen affected or likely to be affected by the dispute; and
- (e) the efforts made by the parties themselves to adjust the dispute.

and schedule appended to the Rules Form A under Rule 3,

prescribes the form of application for the reference of an industrial dispute to a Board of conciliation/court of enquiry/Labour Court/Tribunal/National Tribunal under Section 10(2) of the Industrial Disputes Act, 1947.

(23) Thus, in order to make valid reference under Section 10(2) of the I.D. Act, 1947 parties to the industrial dispute has to apply in the prescribed form either jointly or separately consistent with the requirements of the Rules of 1957 in Form 'A' prescribed by Rule 3 of the Rules, 1957.

(24) A careful reading of the provisions contained in the Industrial Dispute (Central) Rules, 1957 would show that that petitioner-Sangh never applied either jointly with respondent No. 5 or separately in the prescribed manner showing the industrial dispute for adjudication to the competent authority and, therefore, to say that the appropriate Government has not referred the matter to the Labour Court for adjudication is not based on record. Apart from this, the petitioner-Sangh, in the statement of claim made before the Labour Court, has clearly stated that separate case is being filed claiming deduction on wages/revised pay scale.

(25) In the matter of **Tata Iron and Steel Company Limited Vs. State of Jharkhand & others**², Their Lordships of the

² (2014) 1 SCC 536

Supreme Court has held that real dispute existed between the parties has to be referred and the reference should not be made only depicting version of one side, it is bounded duty of the appropriate Government to make the reference appropriately, which is reflective of real/exact nature of dispute between the parties. Claim of the petitioner-Sangh with respect to the wages determined/revised by Majethia Wage Board is not in dispute, their entitlement to the said wages as per Majithia Wage Board is final as its challenge has been repelled by the Supreme Court and the period during which arrears has to be disbursed has also been indicated by the Supreme Court in ABP Private Limited Case (supra).

(26) Where any amount is due to a newspaper employee from an employer, the newspaper employee himself can make an application to the State Government for recovery of the amount due to him, and the State Government, on being satisfied that amount is so due, shall issue a certificate for that amount to the Collector, and the Collector shall proceed to recover that amount in the same manner as an arrear of land revenue and by virtue of sub-section (2) of Section 17 of the Act, 1955 if any question arises as to the amount due under this Act to a newspaper employee from his employer,

the State Government may, on its own motion or application made to it, refer the question to any Labour Court constituted by it under the Industrial Disputes Act, 1947 for adjudication under that Act and the decision of the Labour Court shall be forwarded by it to the State Government, which made a reference and amount found due by the Labour Court may be recovered in the manner provided in sub-section 1 of Section 17 of the Act, 1955.

(27) Thus, the complete machinery has been provided for recovery of wages to the newspaper employee covered under the Act, 1955.

(28) Very recently, in the matter of **Bennet Coleman & Co. Limited Vs. State of Bihar & others**³, Their Lordships of the Supreme Court considered the jurisdiction of the Court to proceed under the provisions of the I.D. Act and held that the recommendations of the Wage Board is neither an award nor a settlement in terms of the provisions under the I.D. Act. It is not an agreement between the parties. Its enforceability, being a recommendation depends on the order passed by the Central Government and once the Central Government has accepted the recommendations of the Wage Board and if the same is not complied with, the remedies lie under Section 17

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for recovery or under Section 18 for penalty and not under the provisions of the I.D. Act, 1947. Paragraph 18 of the report states as under:-

“18. Having regard to the scheme of the Working journalists Act and having regard to the provisions of the I.D. Act, as incorporated by Section 3 of the Working Journalist Act, prosecution for unfair labour practice is maintainability only under Section 25U. Section 25U provides for penalty for committing unfair labour practice and Section 29 provides for penalty for breach of settlement of award. Section 2(ra) of the I.D. Act defines unfair conciliation proceedings and includes a written agreement between the employer and the workmen otherwise than in the course of conciliation proceedings. The recommendations of the Wage Board is thus neither an award nor a settlement in terms of the provisions under the I.D. Act. It is not passed by the Labour Court or Industrial Tribunal or National Industrial Tribunal and it is not an Arbitration Award in terms of Section 10A of the I.D. Act. It is not a settlement in terms of Section 2(b) of the I.D. Act. It is not an agreement between the parties. Its enforceability, being a recommendation, depends on the order passed by the Central Government. The Central Government has passed that order by issuing Annexure P-1 notification. If the same is not complied with, as we have already referred to above, the remedies lie Under Section 17 for recovery or Under Section 18 for penalty and not under the provisions of the I.D. Act.”

(29) Their Lordships of the Supreme Court further observed in the above referred case that after notification of recommendation by the Central Government if any dispute regarding payment due under the notification, remedy available is to raise dispute under Section 17(2) of the Act of 1955. Para

21 of the report states as under:-

“ **21.** A bare reading of the provision would show that the same provides for exercise of the powers of the Tribunal by the Wage Board in the process of making its recommendations in regulating its procedure. The provision does not make Wage Board a Tribunal. The Tribunal under the I.D. Act does not make recommendations, it passes award; whereas the Wage Board under the Working Journalists Act is competent only to make a recommendation in terms of Section 10 and after the notification of the recommendations by the Central Government if there is any dispute regarding any amount due under the notification, a dispute is raised under Section 17(2) of the Working Journalist Act and thereafter an award is passed by the Labour Court.”

(30) Thus, if the recommendations as notified by the Central Government of Majiethia Wage Board are not being complied with and if there is any dispute regarding amount due, the petitioners-sangh is free to raise dispute under Section 17 of the Act, 1955 and, as such, claim for reference, which the petitioner has admittedly not raised before respondent No. 2 has rightly not been referred by the appropriate Government for adjudication to the Labour Court. Reference made by the appropriate Government with regard to industrial dispute raised by respondent No. 5 is strictly in accordance with law and no interference is warranted under Article 226 of the Constitution of India, I do not find any jurisdictional illegality in the said interim order dated 21.01.2015 warranting

interference by this Court.

(31) As a fall out and consequence of the aforesaid discussion, the writ petition is held to be devoid of merit and accordingly dismissed. However, the petitioner is at liberty to invoke Section 17 of the Act, 1955 for redressal of grievances/ to claim wages provided under the Majiethia Wage Board as notified by the Central Government.

(32) There shall be no order as to cost (s)

Sd/-
(Sanjay K. Agrawal)
Judge

D/-

Head Note

(1) Newspaper employee/its union are competent to invoke Section 27 of the Working Journalist Act, 1955 for the amount due including for recommendation of Wage Board accepted by Government of India.

(1) भारत सरकार द्वारा स्वीकृत मजदूरी बोर्ड की अनुशंसा सहित शोध्‍य रकम हेतु, श्रमजीवी पत्रकार अधिनियम की धारा 27 का अवलंब लेने के लिए, समाचारपत्रीय कर्मचारी/उसके संघ सक्षम हैं।

