

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 17th March, 2015
Date of Decision: 07th April, 2015

+ W.P.(C) 3238/2013

ALL INDIA INSTITUTE OF MEDICAL SCIENCES Petitioner
Through: Mr. Rishab Kaushik, Advocate.

versus

RAMBIR YADAVRespondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE VED PRAKASH VAISH

JUDGMENT

1. By the present petition under Article 226 of the Constitution of India, the petitioner impugns order dated 22.06.2012 passed by the Central Government Industrial Tribunal-cum- Labour Court No.-I (hereinafter referred to as the Tribunal) in LCA No.9/2000 appointing Mr. D.K. Tyagi, Advocate as the local commissioner, order dated 22.02.2013 closing of the opportunity of the petitioner to argue the matter and order dated 27.02.2013 dismissing the application of the petitioner under Section 11 of the Industrial Disputes Act, 1947 (hereinafter referred to as the ID Act) seeking directions to contractors for production of original records and also dismissing the objection of the petitioner that the appointment of Mr. D.K. Tyagi, Advocate as local commissioner was violative of Rule 63 of Industrial Disputes

(Central) Rules, 1957 (hereinafter referred to as 'the Rules') along with the objections against the report filed by him.

2. Briefly stating the facts as emerging from the present petition are that in the year 1998-99, the petitioner awarded contract to contractors namely HTS Enterprise, Swastik Enterprise, Bhanot Electric Works, M/s. Competent Engineering Works and M/s. S.K. Consumers for carrying out some work in the institute. The work awarded to the contractors was said to have been carried out by the contractor through its employees including the respondent herein. The respondent alongwith other employees filed several writ petitions bearing W.P.(C) Nos. 5257/99, 5856/99, 6169/99, 6915/99, 5388/99, 5967/99, 6227/99, 5537/99, 6006/99 and 6886/99 seeking their regularisation with the petitioner on the ground that the work in which they were engaged was of perennial nature and further seeking that the salary be paid to them as per their counter parts engaged on a regular basis with the petitioner. Directions were also sought in these petitions that the respondents therein (including the present respondent) be employed directly under the petitioner's institute instead of appointing them through a contractor. In the said petitions this court, appointed the Chief Labour Commissioner vide its order dated 02.02.2000 with directions to hold inquiries from the contractor with regard to the payment of wages to the present respondent and other employees. The said labour commissioner submitted its report dated 13.03.2000 wherein it was recorded that the contractor had already placed evidence indicating that up-to-date payment had been made to the present respondent and other employees along with the observation

that the contract awarded to the contractors in regard to the said employees had already expired by November 1999 and the payments had already been made.

3. The said report was filed by the Chief Labour Commissioner before this court whereby the writ petitions filed by the said employees were disposed of vide its order dated 26.09.2000 referring the dispute between the parties to the Central Advisory Contract Labour Board for decision on merits. It was further directed that pending the recommendations made by the Central Advisory Contract Labour Board, the service of the respondent should not be substituted with other contract labours.

4. Thereafter, the respondent alongwith other employees filed an application under Section 33C (2) of the ID Act claiming their wages which were pending payment before the Tribunal. By such an application the respondent and said employees claimed wages for the period w.e.f. 01.08.1999 to 30.01.2000. The petitioner filed its reply to the said application, stating that the present respondent and the said employees had already been paid their wages by the contractor and this fact was already reported by the Chief Labour Commissioner appointed by this court in his report. The contractor also filed its reply stating that the contract awarded to it by the petitioner had come to an end by November 1999 and the concerned workmen had already been paid their salary which fact has already been substantiated by the report of the Chief Labour Commissioner.

5. On 17.07.2009, the learned Presiding Officer of the Tribunal passed an order thereby appointing Mr. D.K. Tyagi, Advocate as a Local Commissioner with the directions to go to the spot and conduct the inquiry from the associate workman, contractor and the principal employer to ascertain as to what period the workman and his associate have worked with the contractor for which their wages were not released to them. The said order was challenged by the petitioner before this Court by filing a Writ Petition bearing W.P.(Civil) No. 11307/2009 which was disposed of with the consent order dated 02.03.2012. By the said order, this court directed the Presiding Officer to pass fresh order after considering the earlier report of the Chief Labour Commissioner. As per the directions of this court in the said writ petition, the matter was heard by the Presiding Officer of the Tribunal leading to the passing of the impugned order dated 22.06.2012 appointing Mr. D.K. Tyagi, Advocate as the local commissioner on the ground that the Chief Labour Commissioner who had submitted his report dated 13.03.2000 was not vested with the powers as has been vested by the ID Act to the local commissioner appointed by the Tribunal. The said local commissioner submitted his report on 28.09.2012. Against the said report, the petitioner filed its detailed objections before the Tribunal.

6. At the time of hearing of the objections by the Tribunal on 21.12.2012, it was observed by the petitioner that the records which were supplied to the local commissioner were the photocopies of the payment vouchers and not their originals. The petitioner, hence, sought time from the Tribunal to produce the originals. However, the said

original vouchers could not be produced by the petitioner as the originals were kept with the contractor as the respondent and other employees were not the employees of the petitioner but the employees of the contractors who had supplied only photocopies of the payment vouchers to the petitioner. The petitioner made request letters to the contractors to supply the original documents. However, the contractors did not oblige to the request. The said contractors informed the petitioner that they had already shown the original records to the Chief Labour Commissioner earlier appointed by this court in W.P. (C) No. 6915/99 and the same were duly verified by him.

7. Thereafter, the petitioner moved an application dated 22.02.2013 under Section 11 of the ID Act seeking necessary directions from the Presiding Officer, Tribunal to the contractors for production of the original records pertaining to the payments made by the contractors to the respondent and other employees. The Ld. Presiding officer on 22.02.2013 passed impugned order thereby closing the opportunity of the petitioner to argue the matter and adjourned the matter to 27.02.2013 on which date the impugned order dismissing the application of the petitioner under Section 11 of the ID Act along with another order dismissing the objections of the petitioner to the report of the local commissioner was passed and the matter was put for arguments without giving opportunity to the parties to lead evidence.

8. Learned counsel for the petitioner contended that the impugned orders are without any jurisdiction and per se void. The said orders also violate the principles of natural justice as the Tribunal did not give

petitioner an opportunity of being heard. The said orders are also against the mandate of the law laid down by the Hon'ble Supreme Court in various judgments that the proceedings under Section 33C (2) ID Act are in a nature of execution proceedings and the said provision is applicable only when there is some pre- existing right in favour of applicant and that the entitlement qua that right has already been adjudicated by the court or where there has been any admission on the part of the employer. In support of his contention, he has placed reliance on the judgment in '**State of U.P. & Anr. v. Brijpal**', 2005 (8) SCC 58.

9. It was further contended on behalf of the petitioner that the working period as claimed by the respondent is seriously disputed by the petitioners as well as the contractor through whom he has claimed to have been engaged by the petitioner. The Chief Labour Commissioner has already stated in his report that the payments for the period which the respondent had worked with the petitioner had already been made to him and no payment is due as against him. The respondent has not filed any proof to the effect that he had worked with the petitioner during the alleged period or has proved his entitlement during the said period.

10. It was also contended on behalf of the petitioner that as per Rule 63 of the Industrial Disputes (Central) Rules, 1957 only that person could be appointed as a local commissioner for the purpose of Section 33 C(2) ID Act who has experience in the particular industry, trade and business involved in the industrial disputes or a person who has

experience as a Judge of Civil Court or Magistrate or Registrar or Secretary to Labour Court or a Tribunal. However, Mr. D.K. Tyagi, Advocate who was appointed as the local commissioner, did not possess these qualifications. The said local commissioner did not conduct the proceedings as per the law and did not give any opportunity to the parties to cross examine the respective parties. The said officer did not give any finding qua working period of the workmen/respondent and other employees nor qua the payments released to them.

11. Learned counsel for the petitioner lastly contended that the Tribunal closed the opportunity of the petitioner to argue vide its order dated 22.02.2013 without letting the petitioner to put its case forward.

12. Nobody appeared on behalf of respondent to address arguments. On 17.03.2015 liberty was granted to the respondent to file their written submissions, however, the same were not filed.

13. I have given my thoughtful consideration to the submissions made by learned counsel for the petitioner and perused the material on record.

14. At the outset it would be pertinent to reproduce Section 33 C of the ID Act which reads as under:-

“33C. Recovery of money due from an employer. - (1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of⁴ Chapter VA or Chapter VB], the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his

assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue: Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer: Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government;¹ within a period not exceeding three months:]² Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.]

(3) For the purposes of computing the money value of a benefit, the Labour Court may, if it so thinks fit, appoint a commissioner who shall, after taking such evidence as may be necessary, submit a report to the Labour Court and the Labour Court shall determine the amount after considering the report of the commissioner and other circumstances of the case.

(4) The decision of the Labour Court shall be forwarded by it to the appropriate Government and any amount found due by the Labour Court may be recovered in the manner provided for in sub- section (1).

(5) Where workmen employed under the same employer are entitled to receive from him any money or any benefit capable of being computed in terms of money, then, subject to such rules as may be made in this behalf, a single application for the recovery of the amount due may be made on behalf of or in respect of any number of such workmen. Explanation.-- In this section " Labour Court" includes any court constituted under any law relating to investigation and settlement of industrial disputes in force in any State.]]”

15. The primary contention of the petitioner before this court is that the Tribunal was not competent to order the appointment of the labour commissioner while exercising its power under Section 33 C(2) of the ID Act which is purely in a nature of an execution proceeding. This contention does not find favour with this court. A perusal of Section 33-C of the ID Act shows that the Tribunal is invested with the power under sub-section (3) of Section 33-C of the ID Act to take such evidence as may be necessary for the purposes of computing the money value of a benefit and for such purpose to appoint a commissioner who shall, after taking such evidence as may be necessary, submit a report to the Labour Court. The Labour Court thereafter, as per the said Section, shall determine the amount after considering the report of the commissioner and other circumstances of the case. Further, the power with which said labour commissioner is invested is provided under Rule 68 of the ID Rules which are:-

“68. Powers of Commissioner.—Any Commissioner appointed under these rules may unless otherwise directed by the order of appointment—

(a) examine the parties themselves and any witnesses whom they or any of them may produce, and any other person whom the Commissioner thinks proper to call upon to give evidence in the matter referred to him;

(b) call for and examine documents and other things relevant to the subject of enquiry;

(c) at any reasonable time enter upon or into any premises mentioned in the order.”

16. It was also contended on behalf of the petitioner that the Tribunal was bound by the report of the Regional/Chief Labour Commissioner dated 13.03.2000 as submitted pursuant to the order of this court in the various writ petitions filed by the respondent and other employees of the petitioner. However, the perusal of the impugned order dated 22.06.2012 shows that the Tribunal has given proper consideration to the said report and gave its reasons of not considering the same. It was observed by the Tribunal therein:-

“9. The report projects that details of payment, made by the contractors and duly witnessed by the representative of AIIMS was annexed with the documents. The report does not explain that the payment, being made, was witnessed by the representative of the AIIMS in discharge of statutory

responsibility under the above Act. The said annxure is not placed before the Tribunal. Petitioners, in the writ petition, referred above, 'were contacted on 24.02.2000 and 25.02.2000 but they were not confronted with the details of the payment by the Regional Labour Commissioner (Central). Petitioners, in the aforesaid writ petition denied to have received payment. They disputed the record of the contractor and claimed that it was not genuine. Even at that juncture, the petitioners were not confronted with the payment record. Their assertions were recorded to the effect that either the vouchers were forged or their signatures were obtained by the contractor on blank papers and amount were filled in later on. Consequently, the report, referred above, projects that the claimant and his associates made bold claims that no payment was made to them. At that juncture, the Regional Labour Commissioner (Central) was under an obligation to meticulously examine the record and confront the contract labour with that record and to record positive findings that their signatures were there on the payment scrolls or not. Without recording any positive findings, Regional Labour Commissioner (Central) showed his inclination to place reliance on the statement of the contractor. Consequently, I am of the view that the report, referred above, places a subjective opinion on the record, which is not based on reasonable assessment of facts.

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12. From the above facts, it emerges over record that the Local Commissioner appointed by this Tribunal has been vested with plenty of powers by the Act and the Rules. He stands on a different pedestal than the Regional Labour Commissioner (Central) who submitted his report dated 13.03.2000 before the High Court of Delhi. Regional Labour Commissioner (Central) was neither vested with the above powers nor he opted to exercise the same. Consequently, the Local

Commissioner, which would be appointed by the Tribunal would discharge his statutory duties with which the Regional Labour Commissioner (Central) was not invested. In view of those facts, I am of the considered opinion that the Local Commissioner is to be appointed in the case, who shall reach the spot, associate the claimant, contractor and the principal employer in the proceedings to ascertain as to for what period the claimant and his associates worked with the contractor for which their wages were not released to them. For the purpose of carrying out the Commission, the Commissioner may examine the parties or their witnesses whom they or any of them may produce before him or he may call any person to whom he thinks proper to give his evidence in the matter. He shall call and examine documents and other things relevant to the enquiry and may enter upon or into any premises where the record relating to the subject matter of the enquiry are kept and thereafter submit his report to this Tribunal on the above points.”

17. As observed above, the Tribunal has rejected the report of the Labour Commissioner after considering the lacunae and faults found therein. While passing the said order, the Tribunal observed that the report was based on a subjective opinion of the Commissioner and was not based on a reasonable assessment of facts. The objections of the claimant/workmen therein were not considered. It was further observed in the said order by the Tribunal that the petitioners were not confronted with the payment records despite the objections of the employees that the records of the contractor were not genuine. The Tribunal had lastly observed in the said order that the Regional Labour Commissioner was under an obligation to meticulously examine the

record and confront the contract labour with that record and to record positive findings that their signatures were there on payment scroll or not. However, the Regional Labour Commissioner had shown his inclination to place reliance on the statement of the contractor. Clearly, under such circumstances the Tribunal, in the opinion of this court, was correct in invoking its power under Section 33C (3) ID Act, ordering the appointment of the local commissioner so that the investigation into the unpaid wages of the workman can be properly carried out. At this juncture it is also pertinent to mention that even in its objections dated 11.01.2013, the petitioner had challenged the appointment of Mr. D.K. Tyagi as the local commissioner and his report dated 28.09.2012. Here also the petitioner had not per se challenged the directions of appointment of the Local Commissioner in the impugned order dated 22.06.2012.

18. So far as the impugned order dated 27.02.2013 is concerned it can be observed from a perusal of the said order that the petitioner had sought time from the Tribunal on earlier occasion to bring on record the details of payment made by it to the respondent and other workmen. However, it later on moved an application under section 11 of the ID Act seeking directions from the contractor to do so. However, the contractor had submitted before the Tribunal that the original vouchers stood destroyed being old record. In such a situation the only option left with the Tribunal was to dismiss the said application. In my opinion, the conclusion as reached by the Tribunal is correct. Section 21 of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as 'the Act') places a duty

on the contractor to pay wages to the contract employees before the expiry of such period as may be prescribed. On his failure, the duty shifts on the primary employer to make the payments of wages in full or unpaid balance due. Further as per sub-Section 2 of Section 21 of the said Act the principal employer is duty bound to nominate a representative to be present by the contractor and the said representative is duty bound to certify the amount paid as wages in the manner as may be prescribed. Section 21 of the Act reads as under:-

“21. Responsibility for payment of wages.-

- (1) A contractor shall be responsible for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed.
- (2) Every principal employer shall nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.
- (3) It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer.
- (4) In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by

the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.”

19. Even if the contractor had not produced the documents relating to payments made to the respondent and other employees the same could have been done by the petitioner by bringing the certificate of their representative as provided under Section 21(2) of the Act on record. Instead the petitioner chose to move an application under Section 11 of the ID Act and cast the burden on the contractor thereby delaying the proceedings before the Tribunal. In no case the petitioner can be allowed to take advantage of his own wrongs and use technicalities to delay the proceedings before the trial court. As aforementioned, once the contractor had submitted before the Tribunal that the original records were destroyed and the petitioner had not produced the certificate of its representative, the Tribunal was left with no option than to dismiss the application of the petitioner.

20. Mr. Tyagi was appointed as the local commissioner pursuant to Rule 63 of the ID Rules which read as under:-

“63. Appointment of Commissioner.—Where it is necessary to appoint a Commissioner under sub-section (3) of section 33C of the Act, the Labour Court may appoint a person with experience in the particular industry, trade or business involved in the industrial dispute or a person with experience as a judge of civil court, or as a stipendiary magistrate or as a Registrar or Secretary of a Labour Court, or Tribunal constituted

under any Provincial Act or State Act or of a Labour Court, Tribunal or National Tribunal constituted under the Act or of the Labour Appellate Tribunal constituted under the Industrial Disputes (Appellate Tribunal) Act, 1950”

Although, Mr. Tyagi was neither experienced in the field in which the petitioner was working, nor was a person with experience as a Judge of civil court or Stipendiary Magistrate, Registrar, Secretary of a labour court etc. However no fault can be found in his appointment since the trial court has already observed that Mr. Tyagi had a long standing and experience on the issue which he was supposed to address to and collect facts. The purpose behind appointment of a local commissioner, as observed above is to collect evidence in the matter in issue and any person of experience in such a field who the trial court finds competent enough can be appointed by it. In such case, pure grammatical and technical application of the provisions is not required. The rules are meant to aid justice and not to delay it by technicalities. Therefore, no fault can be found in the said impugned order dated 27.02.2013.

21. No fault can also be attributed to the order dated 22.02.2013 for the reason that the said order once again reflects how the petitioner has tried to dictate his own terms in the proceedings before the Tribunal by delaying the proceedings therein alongwith an insistence that he be allowed to argue on even points unrelated to the matter before the court. On the said date the AR for the petitioner insisted on reading the points unrelated and did not want to argue on the matter in

controversy. He was given full opportunity to present his case in the matter in controversy however, he wanted to dictate the terms and the manner of the proceedings as can be reflected from the said two paragraphs of the said order:-

“3. Application, raising objections to the report of the Local Commissioner, was moved by Shri Gupta on the last date, which application has also been replied orally by Shri Singh. Shri Gupta was called upon to advance arguments on the objections, raised to the report of the Local Commissioner. He started arguing, referring the order dated 17.07.2009, saying that in the said order, this Tribunal had given directions to the Local Commissioner. He was reminded that the Local Commissioner was appointed vide order dated 22.06.2012 and was called upon to come to that order, with a view to substantiate his application. He asserts that he would refer order dated 17.07.2009 first, since in that order this Tribunal had given directions to the Local Commissioner to carry out the local inspection. He was instructed to read those instructions only and to come to order dated 22.06.2012, on the strength of which the Local Commissioner was appointed. At this juncture, he started reading the order dated 17.07.2009, he was called upon to confine himself to the order dated 22.06.2012. He was permitted to read only relevant portion of the earlier order. He insisted that he would read last para of that order. It was reminded that such insistence is uncalled for and he may highlight only the directions, if any, issued to the Local Commissioner in order dated 17.07.2009, which is not the subject matter of the application. Shri Gupta asserts that he would argue the matter in his own fashion. He was advised to come to the proposition raised in the application. He insists that his argument may not be interrupted and he may be allowed to address the Tribunal in the manner he likes. When told to address himself to the real proposition, he uttered

that the Court cannot ask him to do so. Since he does not listen and does not want to come to the real issue, only with a view to delay the matter, he was reminded again to come to the point and raise arguments on the application. It is impressed upon Shri Gupta that he has to advance arguments on the proposition which he has raised in the application under reference. He comments that his case may be transferred. He was reminded that this power vests with the appropriate Government, to whom he should approach.

4. He was again called upon to advance arguments, but he insists that he would argue in the matter in the manner he likes. The Tribunal impressed upon Shri Gupta to come to the point, to which he says that he is not ready now. Shri Singh is heard on the objections. Adjourned for orders on the application as well as on the objections raised by Shri Gupta to the report of Local Commissioner for 27.02.2013.”

22. The principles of natural justice are meant to aid the parties in the proceedings and are the basis of a sound judicial proceeding. One of the important principle therein is that the parties should be afforded with an opportunity to present his case and that no order should be passed against a party unheard. However, the procedure should be restricted to the aid of the parties and not as a mechanism to delay the proceedings before the court. No party can, under the garb of the principles of natural justice, come to become the master of a proceeding and decide what the court is to hear and the manner in which it has to hear the parties. Although, court is duty bound to hear a party on the matter before pronouncing its judgment, however, if the party wants to argue on facts unrelated to the matter in controversy the court is well within its right to close the opportunity of a party to

argue. If a Court comes to a conclusion that the only motive of a party behind availing such an opportunity is to delay the proceedings, it is well within the power of such a court to ask the party to restrict itself to the matter in controversy and still if it fails to do so to close his opportunity to argue any further.

23. In the light of the aforesaid discussion, the present petition deserves to be dismissed and the same is hereby dismissed. So far as the objection regarding the fact that vide impugned order dated 22.06.2012 the Tribunal directed the labour commissioner to give its report for even the disputed period for which the respondent had worked with the petitioner, the petitioner is granted liberty to raise the said objection at an appropriate stage before the Tribunal.

24. The Trial Court record be sent back forthwith.

C.M. Appl. No.6123/2013

The application is dismissed as infructuous.

(VED PRAKASH VAISH)
JUDGE

APRIL 07th, 2015

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