

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (L) No. 2275 of 2007

Lafarge India Private Limited, A Company incorporated under the Indian Companies Act, 1956 through S. Lahiri, S/o S. S. Lahiri, aged about 42 years, Senior Manager (Personnel and Administration), Lafarge India Private Limited, R/o Lafarge Colony, Arasmeta Cement Plant, Janjgir, Dist. Janjgir-Chmpa, CG

---- Petitioner

Versus

1. President, Industrial Court, Chhattisgarh, Raipur, Chhattisgarh
2. State of Chhattisgarh through the Secretary, Department of Labour, D.K.S. Bhawan, Mantralaya, Raipur, Chhattisgarh
3. General Secretary, Cement Workers Union, Mazdoor Sabha Bhawan, Nandini Road, Bhilai, District Durg, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Rajeev Shrivastava along with Shri Malay Shrivastava, Advocate
For Respondent no.3	:	Shri Garry Mukhopadhyay, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

03/11/2016

The present writ petition has been preferred by the petitioner challenging the order of reference made by the State Govt. i.e. State of Chhattisgarh on 11.01.2007 whereby the Labour Department of the State of CG had made a reference to the Industrial Court at Raipur for adjudication of the terms of reference. The petitioner has further assailed the order of the Industrial Court dated 16.03.2007 whereby the objection raised by the petitioner in respect of the reference being entertained by the Industrial Court, Chhattisgarh, Raipur in stead of referring the matter to the Bench of Industrial Court at Bilaspur as the territorial jurisdiction of the plant falls within

the jurisdiction of the Industrial Court at Bilaspur was refused and the Industrial Court, Raipur proceeded to decide the reference.

2. This petition is of the year 2007 and the proceedings before the Industrial Court Chhattisgarh at Raipur have been stayed by an interim order passed by this Court on 12.04.2007.

3. The main grievance of the petitioner in assailing the two orders dated 11.01.2007 and 16.03.2007 is that the appropriate government in respect of the Cement Industry is the Central Govt. and that the State Govt. was not having jurisdiction to entertain a dispute of Cement Industry and therefore the reference was bad in law. It is submitted by the counsel for the petitioner that the nature of dispute raised by the petitioner would not fall within any of the item reflected in Scheduled 1 of Chhattisgarh Industrial Relations Act, 1960 (for short 'CGIR Act, 1960') and therefore, the reference is per se illegal. He further submits that the demand of bonus and *ex-gratia* by respondent no.3 Union also would not fall within the definition of wages as has been defined under Section 2rr of the Industrial Dispute Act 1947 and therefore, the reference ought not to have been made by the State Govt.

4. Counsel for the petitioner further submits that in the year 2006 the State Govt. has already issued a notification establishing a Bench of Industrial Court at Bilaspur and the plant of the petitioner situates within the jurisdiction of the Bench at Bilaspur and therefore, the reference if at all ought to have been made to the Bench at Bilaspur in stead of making a reference to the Industrial Court at Raipur. Counsel for the petitioner relied upon the judgment of the Supreme Court in the case of **Ghaziabad Zila Sahkari Bank Ltd. v. Addl. Labour Commissioner & Ors.** reported in **2007 AIR SCW 956** wherein the Supreme Court in paragraph-69 has held as under:

“69. In the instant case, the Additional Labour Commissioner allowed the payment as an *ex-gratia* payment to the employees of the Cooperative Bank from the public fund. The meaning of the word 'Bonus'

according to the new English dictionary is a boon or gift, over and above, what is normally due as remuneration to be received.In our view, the payment made as ex-gratia payment would not constitute any precedent for future years. The ex-gratia payment made in the instant case was neither in the nature of production bonus nor incentive bonus nor customary nor any statutory bonus. It cannot be regarded as part of the contract employment. Therefore, the ex-gratia payment made by the bank cannot be regarded as remuneration paid or payable to the employees in fulfillment of the terms of the contract of employment within the meaning of definition under Section 2 (22) of the I.D. Act, 1947.”

5. Relying upon the said law laid down by the Supreme Court counsel for the petitioner submits that in the present case also the reference being made in respect of payment of bonus is therefore not sustainable and the reference being bad in law deserves to be quashed.

6. Counsel appearing for the contesting respondent no.3, however, took the Court through Section 2 (13) of the CGIR Act, 1960 which for ready reference is reproduced hereunder:

(13) “Employee” means any person employed in any industry to do any skilled, unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and includes-

(a) a person employed by a contractor to do any work for him in the execution of a contract with an employer within the meaning of sub-clause (e) of clause 14; and”

7. Counsel for respondent no.3 submits that this clearly reflects that 'employee' includes the contract employees also. Further the CGIR Act of 1960 also defines the wages and as per the provisions of Section 2 (35) defining wages which clearly includes bonus and other allowances. For ready reference Section 2 (35) of the CGIR Act of 1960 is reproduced hereunder:

“(35) “Wages” means remuneration of all kinds capable of being expressed in terms of money and payable to the employee in

respect of his employment of work done in such employment and includes-

- (i) any bonus, allowances (including dearness allowance), reward or additional remuneration;”

8. Counsel for the respondent No.3 further relies upon the decision of the Division Bench of this Court passed in W.P. No. 3973 of 2004 wherein the issue as to whether the State Govt. or the Central Govt. would be the appropriate Govt. having already been decided and it has been held that in view of the provisions of CGIR Act, 1960 it would be the State Govt. who would be the appropriate Govt. for the Cement Industry. Thus, counsel for the Respondent no.3 submits that the grounds raised by the counsel for the petitioner for challenging the present petition are not sustainable in the eye of law and therefore, the present petition deserves to be rejected. He prayed for dismissal of the petition and that the Industrial Court may further be directed to proceed further with the reference and to adjudicate upon the same as early as possible.

9. Having considered the rival contention put forth by the counsel appearing on either side and on perusal of the record what clearly reflects is that so far as the issue whether the appropriate Govt. in respect of the Cement Industry would be the State Govt. or the Central Govt. is concerned, the matter squarely stands decided by the Judgment of the Division Bench passed in W.P. No. 3973 of 2004 decided on 16.12.2010. Thus, in the light of the decision of the Division Bench of this Court, the objection of the petitioner in respect of the appropriate Govt. stands rejected.

10. So far as the issue whether the reference could have been made under Section 31 (2) to the Industrial Court in respect of the payment of bonus and *ex gratia* is concerned, it would be relevant at this juncture to refer to the definition of 'wages' as defined under the CGIR Act of 1960. A plain perusal of the definition of wages under the said Act clearly reflects that

the legislature while framing the Act clearly included the term bonus, other allowances and remunerations as part of the wages. Thus, the claim of bonus as well as *ex gratia* as has been claimed by the respondent no.3 would definitely fall within the definition of wages as per Section 2 (35) of the CGIR Act of 1960. Thus, the objection of the petitioner that the term *ex gratia* is not included in the definition of the Industrial Dispute Act is not sustainable as it would be the definition of wages as per the Act of 1960 which will be material to decide the issue.

11. Another aspect which cannot be brushed aside is that undisputedly the Cement Industries are Governed by the Provisions of CGIR Act. The cement industry is one of the notified industries as is reflected from the notification issued by the State Govt. of CG where cement is Entry No.7. Since the provisions of CGIR Act 1960 applies on the cement industry, the dispute in respect of the said industry has to be raised under the provisions of 31 of the CGIR Act i.e. at the first instance by the aggrieved person which in the instant case has been raised by respondent no.3 before the appropriate Authority who in turn has seized the same and has made a reference under Section 51 of the CGIR Act of 1960 to the Industrial Court.

12. A perusal of Section 31 (2) of the CGIR Act of 1960 clearly reflects that the said provision of law is in respect of those persons who are aggrieved by an action of employer and which would also include the issues which are neither covered under the standing orders nor specified in scheduled II. Thus, even if the contention of the petitioner is accepted of the payment of bonus not being reflected in Scheduled I, the fact that sub section 2 of Section 31 empowers the representative demanding a notice of change in respect of the terms which are not specified either in the standing order or in Scheduled II which could be raised by the representative of the employees or the union as the case may be.

13. Thus, in the opinion of this Court no illegality as such has been committed on the part of the State Govt. in accepting the notice of change and thereafter making a reference to the Industrial Court. The ground raised by the petitioner so far as the issue raised by the respondent No.3 not being a dispute which would have been referred by the authorities as the dispute does not fall under either Schedule I or under Schedule II stands rejected.

14. So far as the last contention of the petitioner that the matter should have been referred to the Industrial Court, Bilaspur in stead of Industrial Court, Raipur is concerned, this issue is being left open for the petitioner to make a request on the administrative side before the Bench at Raipur explaining the feasibility and the notification issued by the State Govt. so far as the constitution of the Bench at Bilaspur is concerned and the Court on such an application would take a decision and pass an appropriate order.

15. For the aforesaid observations, the present petition stands dismissed and the interim order granted by this Court on 12.04.2007 stands vacated.

16. Since the terms of reference has been made by the State Govt. in the year 2007, the Industrial Court shall proceed and adjudicate upon the reference and decide the case as expeditiously as possible subject to the cooperation rendered by the contesting parties.

17. Any observation made by this Court while deciding the present writ petition should not come in the way of the Court below while deciding the terms of reference nor should the Court be in any manner influenced by it and shall decide the same strictly in accordance with the law prevailing.

Sd/-

(P. Sam Koshy)
Judge