

WRIT PETITION NO. 620/2015

V/s.

1. The Secretary (Labour),
Government of India,
Ministry of Labour and Employment,
Sharm Mantralaya,
Rafi Marg, New Delhi 110 001.
2. The Regional Labour Commissioner
(Central), Government of India,
Mukund Building, 3rd Floor,
F.L. Gomes Road,
Vasco da Gama, Goa 403 802.
3. The Mines Manager,
Huldool Dongor Bimbol Iron More Mines,
Bimbol, Shigao,
Collem, Goa 403 410.
4. The Managing Director,
Infrastructure Logistics Pvt. Ltd.,
Cidade de Goa, Vaiguinim Beach,
Dona Paula, Goa 403 004.
5. The Proprietor,
M/s. Vishwaroop Enterprises,
Nagar-Priol, 2nd floor, Flat No.5,

Mardol, Ponda, Goa 403 404.

6. The Mines Manager,
M/s. N.S. Narvekar Mines-Kalay,
Having office at
Ambeudak at Maina,
Village Panchayat Sanvordem,
Post Office Dhabal-Kirlapal, Goa 403706

7. The Managing Director,
M/s. Machado & Sons Agents &
Stevedores Pvt. Ltd.,
8-6/7, 0-5/6, 1st Floor,
Tilak Commercial Complex, West Wing,
Vasco-da-Gama, Goa 403 802.

8. The Mines Manager,
Cuddegal Voril Soddo Mines,
P.B. No.37, Curchorem, Goa 403706

9. The Managing Director,
M/s. Hardesh Ores Pvt. Ltd.,
Villa Flores da Silva,
Erasmio Carvalho Street,
Margao, Goa 403601.

10. The Managing Director,
M/s. Sociedade de Fomento
Industrial Pvt. Ltd.,
Villa Flores da Silva,
Erasmio Carvalho Street,
Margao, Goa 403601.

..... Respondents.

Shri Thalman Pereira, Advocate for the petitioner.

Shri Mahesh Amonkar, Central Govt. Standing Counsel for the
respondents No.1 and 2.

Shri Parag Rao, and Mrs. Shambhavi Rao, Advocates for the
respondents No.3 and 4.

Shri Anand R. Pai, Advocate for the respondents No.5 and 7.

Shri R. S. Pai and Shri Prasanna Chawdikar, Advocates for the respondents No.8 & 9.

Shri Govind Kamat, Advocate for the respondents No. 10.

**CORAM :- F.M. REIS &
NUTAN D. SARDESSAI, JJ.**

Date : - 13/06/2016.

ORAL JUDGMENT : (PER F.M. REIS, J.)

Heard Shri Thalman Pereira, learned Counsel appearing for the petitioner, Shri Mahesh Amonkar, learned Central Govt. Standing Counsel appearing for the respondents No.1 and 2, Shri Parag Rao, learned Counsel appearing for the respondents No.3 and 4, Shri Anand R. Pai, learned Counsel appearing for the respondents No.5 and 7, Shri R. S. Pai, learned Counsel appearing for the respondents No.8 and 9 and Shri Govind Kamat, learned Counsel appearing for the respondent No. 10.

2. Rule. Learned Counsel appearing for the respondents waive service. Heard forthwith, with the consent of the learned Counsel.

3. The above petition challenges the orders passed by the Central Government-respondent No.1, refusing to make a reference of the alleged dispute raised by the petitioners against the respondents No.8 and 9 and inaction on the part of the respondent No.1 in taking a decision with regard to an application filed for reference by the petitioner as against the respondents No.3 to 7 and 10.

4. Mr. Pereira, learned Counsel appearing for the petitioner has pointed out that by the impugned Order dated 9th April, 2015, the respondent No.1 has refused to make the reference based on the Judgment dated 21/04/2014 of the Apex Court in the petition filed by Goa Foundation, dealing with the mining in Goa being Writ Petition No.235/2012. The learned Counsel further submits that there were conciliation proceedings wherein the petitioner and the concerned respondents were parties and as the conciliation proceedings failed, and consequently, the failure report was filed to the Appropriate Government by the respondent No.2 to make a reference to the concerned Tribunal, in accordance with law. The learned Counsel further points out that at this stage, the respondent No.1 has no powers to adjudicate the dispute as the respondent No.1 can only examine

whether the dispute raised by the petitioner is genuine. The learned Counsel further points out that the very fact that the respondents-employers have taken part in the conciliation proceedings would itself suggest that the dispute raised by the petitioner was genuine. The learned Counsel further points out that as far as the respondents No.8 and 9 are concerned, the impugned order dated 9/4/2015 passed by the respondent No.1, refusing to make a reference, be quashed and set aside and, as far as the remaining respondents are concerned, the respondent No.1 be directed to take a decision on the application for reference, pending consideration by the respondent No.1.

5. On the other hand, Shri R. S. Pai, learned Counsel appearing for the respondents No.8 and 9 has submitted that the respondent No.1 has, in fact, relied upon the Judgment in the case of Goa Foundation (supra), to come to the conclusion that there was no industrial dispute which requires adjudication by the Tribunal. The learned Counsel further points out that the petitioner would be entitled only to the amount as directed by the Apex Court in the said Judgment and, as such, according to him, the question of claiming any further amount by the petitioner would not arise. The learned Counsel has also pointed out that a review petition is pending before the respondent

No.1 and, as such, unless the review petition is decided, the question of issuing any further direction to the respondent No.1 would not arise.

6. Shri Parag Rao, learned Counsel appearing for the respondents No.3 and 4 has submitted that as far as the said respondents are concerned, the only direction which can be issued is to call upon the respondent No.1 to decide whether a reference deserves to be made in connection with the alleged dispute raised by the petitioner.

7. The learned Counsel appearing for the other respondents have supported the submission of Shri P.S. Rao, learned Counsel appearing for the respondents No.3 and 4.

8. We have considered the submissions of the learned Counsel and we have also gone through the records. The Apex Court in the Judgment in the case of **M/s. Rahman Industries Pvt. Ltd. vs. State of U.P. and others**, reported in **AIR 2016 SC 551** has recorded the parameters which have to be considered whilst deciding whether a reference is to be made in terms of the Act, by observing at paras 4 and 9, thus :

“4. We find force in the submission made by the learned Counsel. In the scheme of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'), it is not as if the Government has to act as a post office by referring each and every petition received by them. The Government is well within its jurisdiction to see whether there exists a dispute worth referring for adjudication. No doubt, the Government is not entitled to enter a finding on the merits of the case and decline reference. The Government has to satisfy itself, after applying its mind to the relevant factors and satisfy itself to the existence of dispute before taking a decision to refer the same for adjudication. Only in case, on judicial scrutiny, the court finds that the refusal of the Government to make a reference of the dispute is unjustified on irrelevant factors, the court may issue a direction to the Government to make a reference.

9. The High Court has, in the impugned order, denied the jurisdiction vested in the Government in the scheme of the Act to examine a case for the purpose of satisfying itself as to whether there exists a dispute for referring to the Labour Court/Industrial Tribunal for adjudication. The High Court has issued a mandatory direction in the very first instance to refer the dispute, if any, raised by the workmen for adjudication before the Labour Court. That is against the scheme of the Act as we have seen from the legal position settled by this Court.”

Taking note of the said observations, we find that the respondent No.1

whilst passing the impugned order in connection with the respondents No.8 and 9 have not taken into consideration such aspect whilst drawing such conclusion. Merits of the dispute cannot be adjudicated by the respondent No.1 while examining whether a reference has to be made or not in view of the failure of the conciliation proceedings. In such circumstances, on this short point alone the impugned order refusing to make a reference as against respondents No.8 and 9 is concerned, would have to be quashed and set aside and the respondent No.1 be directed to examine such an application afresh in the light of the observations made by the Apex Court in the said Judgment, in accordance with law.

9. As far as the remaining respondents are concerned, the main grievance of the petitioner is the inaction on the part of the respondent No.1 in taking a decision whether a reference has to be made or not to the Tribunal. It is pointed out by the learned Counsel appearing for the petitioner that this aspect is pending before the respondent No.1 since 27th October, 2014 when the failure report was submitted and no decision with that regard has been taken up to this date.

10. Shri Amonkar, learned Central Government Standing

Counsel appearing for the respondent No.1 states that a decision with that regard shall be taken by the respondent No.1 within four months, in accordance with law. Accepting the said statement of Shri Amonkar, upon instructions, we direct the respondent No.1 to take a decision with regard to the claim of the petitioner for making a reference in terms of law with regard to the alleged dispute raised by the petitioner as against the respondents No.3 to 7 and 10, as expeditiously as possible and, in any event, within four months. Needless to say, considering the view taken by us, we find that the review petition pending is only in the nature of a representation to exercise administrative powers by the respondent No.1 which can be considered on its own merits by the respondent No.1 whilst taking a decision pursuant to the directions issued in the present petition.

11. As far as the respondents No. 8 and 9 are concerned, we quash and set aside the impugned communication dated 9th April, 2015 and direct the respondent No.1 to take a fresh decision with that regard in the light of the observations made in the said Judgment of the Apex Court in the case of **M/s. Rahman Industries Pvt. Ltd.**, (supra) in accordance with law, within four months. Needless to say that the respondent No.1 shall not be influenced by any of the observations

made herein above.

12. Rule is disposed of in the above terms.

NUTAN D. SARDESSAI, J.

F.M. REIS, J.

ssm.