

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.11870 OF 2015

Reliance Corporate IT Park Limited

... Petitioner

vs

The Association of Chemical Workers and anr.

...Respondents

.....

Mr.S.K. Talsania, Senior Advocate with Ms.Melania D'Souza i/b M/s
A.S.Dayal and Associates for the Petitioner.

Ms.Nayana Buch i/b Mr. Shailesh K. More for Respondent No.2.

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CORAM : S.C. GUPTE, J.

DATE : JULY 29, 2016

P.C. :

1. Heard learned Counsel for the parties. Rule. Taken up for hearing forthwith with consent.

2. The petition challenges an order dated 28.6.2010 passed by the Labour Court at Thane impleading the Petitioner as a party respondent in a pending reference under the Industrial Disputes Act. The impugned order of joinder was passed admittedly without any notice to the Petitioner.

3. The subject reference is at the instance of the 1st Respondent Union on behalf of 322 contract labourers of National Organics Chemicals Limited, Respondent No. 2 herein, 'NOCIL'. It is the case of the Union that these employees were in fact employees of NOCIL and not of the contractor. The reference, filed in the year 2001, relates to termination of these 322 employees as far back as in 1979. By a notification issued on 7.5.1985 under section 10 of the Contract Labour

(Regulation and Abolition Act) 1970, contract labour was abolished in certain specified processes in the establishment of NOCIL. Based on this notification, a complaint of unfair labour practice was filed in the year 1992 on behalf of these contract labour employees, who were terminated in 1979. The complaint was dismissed by the Industrial Court. The Writ Petition and the Letters Patent Appeal also came to be dismissed by this Court. The matter was, thereafter, carried before the Supreme Court in a Special Leave Petition. By its order passed on 26.8.1992, the Supreme Court *inter alia* directed that in future vacancies in the respective operational areas of NOCIL preference should be given to the workmen, whose services were terminated in the year 1979 by the respective labour contractors. The present reference complains of non-implementation of that order.

4. In their Statement of Claim filed before the Labour Court in the reference, the Union submitted that NOCIL had deliberately failed and neglected to comply with the order passed by the Supreme Court directing it to appoint these workmen on the vacancies in the respective departments governed by the notification dated 7.5.1985. It was the grievance of the Union that NOCIL had instead persisted in engaging contract labourers in the said areas in violation of the order of the Supreme Court. The Union, accordingly, prayed for setting aside the termination of services of 322 workmen listed in the Schedule to the Reference and to reinstate these workmen with full back wages and continuity of service. This was in the face of the earlier rejection of the complaint of unfair labour practice complaining of illegal terminations, referred to above. Be that as it may, during the pendency of the Reference, an application was made to the Labour Court for joinder of the Petitioner herein. The basis of the application was that there was a Memorandum of Understanding between NOCIL's

recognized employees' union, namely, NOCIL Employees Union, and the Petitioner therein *inter alia* requiring the Petitioner to allow the employees of NOCIL to join the services of the Petitioner; and that the scheme of demerger and transfer sanctioned by this Court as between NOCIL and the Petitioner herein reflects this settlement. It was submitted that in the premises, the joinder of the Petitioner as a party respondent to the reference was necessary for giving effective relief to 322 workmen concerned in the reference. On this application, the Labour Court proceeded to implead the Petitioner herein without as much as a notice to the Petitioner of the proposed joinder.

5. If one has regard to the Scheme of Amalgamation between NOCIL and the Petitioner, what transpires is that amongst the various undertakings of NOCIL, the Petrochemicals undertaking was transferred and merged into the Petitioner as a going concern. In other words, the Petitioner is not the successor of NOCIL for all purposes, but only to the extent the scheme of demerger provides for such succession. The scheme of demerger, in turn, shows that the workers, who had opted for voluntary retirement from the services of NOCIL had ceased to be employees of NOCIL. The scheme records that their dues were fully paid. The scheme further provides that those employees, who have opted to join Relene Petrochemicals Private Limited (as the transferee company was then known), will alone be governed by the terms and conditions provided in the Memorandum of Understanding regarding the employment with the petitioner.

6. The overall position, which emerges from the record, including the Memorandum of Settlement and the Scheme of Demerger, is that (i) NOCIL had already declared its closure prior to the scheme with some employees opting for voluntary retirement; (ii) these 322

employees had ceased to be the employees of NOCIL even prior thereto, i.e. since 1979 ; (iii) even those existing employees, who had opted for voluntary retirement, had ceased to be employees of NOCIL; and (iv) only those employees of NOCIL, who had opted to join the Petitioner were to be governed by the terms of the Memorandum of Understanding. There is, in the premises, a clearly arguable case that the Petitioner is in no way concerned with the dispute in the Reference since there is no indication in this scheme of things that the liability of the employees represented by the Respondent Union was either taken over, or was required to be discharged, by the Petitioner.

7. All this indicates that leaving aside the general principle that no order can be passed against any party, even if it be for its joinder to a pending legal proceeding, without hearing it, there are important reasons why, in a case like this, a notice ought to be issued to the affected party, namely, the Petitioner. Without issuing such notice, the Labour Court could not have passed the impugned order of joinder.

8. Learned Counsel for the Respondent Union submits that though notice was not issued to the Petitioner before joinder, the order of joinder was communicated to the Petitioner as far back as on 4.7.2010. She submits that the writ petition, filed nearly 5 years after such communication, is not maintainable and, in any event, ought not to be entertained by this Court in its jurisdiction under Articles 226 and 227 of the Constitution of India. The petition is filed on the footing, as mentioned in paragraph No. 3 of the petition, that the Petitioner received a copy of the amended Statement of claim on 15.7.2015 showing the Petitioner as a party Respondent in the subject reference, and upon receipt thereof and after making inquiries with NOCIL, this Petition challenging the impugned order could be filed. Whether the

impugned order was served on the Petitioner and if it was served, what is the effect of such service, are matters of dispute. In any event, however, considering the facts that (i) the order of joinder passed in the absence of a party, who was sought to be joined and without as much as a notice to that party, is patently illegal and reflects on the very power and authority of the court; (ii) the Petitioner has approached this Court immediately after the amended Statement of Claim was served on it; and (iii) the trial of the reference has not started as yet, it is in the interest of justice that the impugned order is set aside and the Labour Court is directed to hear the application for joinder afresh with notice to the Petitioner and in accordance with law.

9. In the premises, Rule is made absolute and the impugned order of the Labour Court is quashed and set aside, and the application is remanded to the Labour Court.

10. The Labour Court is directed to decide the application for joinder of the Petitioner herein to the subject reference afresh and in accordance with law after notice to the Petitioner.

11. The observations made in this order are only for the purpose of deciding the writ petition and will not influence the Labour Court whilst deciding the application for joinder.

12. All rights and contentions of the parties on merits of the application for joinder are kept open.

(S.C.GUPTE J.)