

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.A.No.163 of 2016 and W.P.No.34247 of 2015

The Executive Director
Bharat Heavy Electricals Limited
Tiruchirapalli 620 014 ..Appellant/Writ Petitioner/WP. & WA.

-vs-

1. Government of India
represented by Secretary to Government
Ministry of Labour
Shram Shakti Bhavan
Rafi Marg, New Delhi 110 001
2. The Presiding Officer
Central Government Industrial Tribunal
cum Labour Court
I Floor, "B" Wing
Shastri Bhavan
No.26, Haddows Road
Chennai 600 006
3. The Secretary
BHEL Valaga Oppanda Thozhilalar Nala Sangam
No.5, Dheen Complex, 1st Floor
Thiruvarambur
Trichy 620 013
4. The Special Officer
BHEL Labour Contract Society
No.24, Building BHEL
Tiruchirappalli 620 014

..Respondents/Respondents/WP. & WA.

Appeal under Clause 15 of the Letters Patent, against the order dated 07.01.2016 made in M.P.No.1 of 2015 in W.P.No.34247 of 2015.

MP.NO.1/15 PRAYER:- To Grant Ad Interim to Stay all further proceedings in I.D.NO.121/15 on the file of the 2nd Respondent pending disposal of the W.P.No.34247 of 2015 respectively.

W.P.No.34247 of 2015 PRAYER:- Writ of Certiorari, to call for the records connected with the Reference No.-L-42011/07/2015-IR (DU) DATED 04/09/15 on the file of the 1st Respondent and quash the same.

Writ Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, to call for the records connected with the reference No.L-42011/07/2015-IR(DU) dated 04.09.2015 on the file of the first respondent and quash the same.

For Appellant/ :: Mr.Vijay Narayan
Writ Petitioner Senior Counsel for
Mr.John Sachariah
for Fox Mandal & Associates

For Respondents/ ::Ms.N.K.Nithila Vani
Respondents Central Government Standing
Counsel for R1
R2-Tribunal
Mr.R.Viduthalai
Senior Counsel for
Mr.D.Veerasekaran
for R3
Mr.R.Dhasaratha Rao for R4

JUDGMENT

(Judgment of the Court was made by HULUVADI G.RAMESH, J.)

Both the writ appeal and the writ petition have been preferred by the Executive Director of Bharat Heavy Electricals Limited, Tiruchirappalli, aggrieved by the order passed by the learned single Judge in vacating the order of stay, against the order passed by the Central Government, the first respondent herein in referring the matter to the Central Government Industrial Tribunal cum Labour Court, Chennai, the second respondent herein for adjudication, in regard to the dispute raised by the members (approx. numbering 1174) of the BHEL Valaga Oppanda Thozhilalar Nala Sangam (BHEL Contract Labour Union), Tiruchirappalli, the third respondent herein with respect to their absorption and regularisation on the ground that that even though they are working for several years as contract labourers, the Management is exploiting them, instead of absorbing them on par with the regular employees of BHEL, without taking into consideration the continuous service rendered by them for more than 30 years as contract labourers through the contractor only for the welfare and functioning of the BHEL company.

2. Heard the learned senior counsel for the appellant/writ petitioner-Management and the learned senior counsel for the

third respondent/Sangam-Contract Labourers.

3. It transpires that earlier when the Central Government refused to refer the dispute after the failure of conciliation talks, the third respondent-Sangam of contract labourers under the contractor had approached this Court in Writ Petition No.9271 of 2015 and obtained an order for referring the dispute to the Central Government Industrial Tribunal cum Labour Court and based on the direction issued by this Court, the Central Government has referred the matter to the second respondent-Industrial Tribunal accepting that there is a dispute. This aspect has been disputed by the learned senior counsel for the appellant/writ petitioner on the ground that the order passed by the learned single Judge in the said writ petition referring the dispute to the second respondent-Industrial Tribunal for adjudication is bad in law for non-compliance of the principles of natural justice.

4. However, challenging the order passed in W.P.No.9271 of 2015 dated 31.7.2015 at the instance of the contract labourers, an appeal was filed by the Management in W.A.No.1667 of 2015 seeking to delete the observations made by the learned single Judge on the merits of the case, since they would have a binding effect in the adjudication by the Industrial Tribunal of the dispute raised and the Division Bench also, by order dated 10.12.2015, after recording the fair submission made by the learned senior counsel representing the contract labourers for deletion of the observations made in respect of the merits of the case, deleted all the observations made in respect of the merits of the case and gave liberty to the Industrial Tribunal to proceed with the matter in accordance with law.

5. Thereafter the present writ petition and the writ appeal have been filed by the Management challenging the impugned order of reference passed by the Central Government as well as the order of the learned single Judge vacating the order of stay of reference of the dispute to the second respondent-Industrial Tribunal. The learned senior counsel for the appellant/writ petitioner, relying upon the judgment of the Apex Court in the case of M/s Rahman Industries Private Limited v. State of U.P. & others, AIR 2016 SC 551, has contended that the Central Government cannot act as a post office by referring each and every petition received by them, as the Central Government is well within its jurisdiction to see whether there exists a dispute worth referring for adjudication.

6. On the other hand, the learned senior counsel representing the contract labourers, emphasising on the observations made by the Apex Court in the aforesaid judgment, has contended that the Court, on judicial scrutiny, can issue a direction to the Government to make a reference, if it finds that the refusal of the Government to make a reference of the dispute is unjustified on irrelevant factors.

7. We have also gone through the judgment of the Apex Court in the case of M/s Rahman Industries Private Limited v. State of U.P. & others, AIR 2016 SC 55, wherein the Apex Court, in paragraph-4, has observed as follows:-

"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."

8. Of course, as relied upon by the learned senior counsel for the contract labourers, the observation in paragraph-4 speaks to the fact that the High Court can issue a direction to the Government to make a reference. But, in the case on hand, the fact remains that there was non-compliance of the principles of natural justice while issuing such a direction, as the Management was not made a party in the earlier writ petition filed by the contract labourers.

9. Be that as it may, in the present W.P.No.34247 of 2015 filed by the Management, though initially they obtained an order of stay against the impugned order of reference, the order of stay having been vacated by the learned single Judge, in the light of the observations made by the Division Bench in W.A.No.1667 of 2015 dated 10.12.2015, giving rise to the filing of W.A.No.163 of 2016, during the course of the proceedings, as the learned senior counsel for the third respondent-contract labourers has agreed that the Industrial Tribunal can decide whether the order of reference made by the Central Government is maintainable or not, as a preliminary issue, we feel that it would be proper for the parties to agitate the matter before the second respondent-Industrial Tribunal in accordance with law. Accordingly, without going into the merits, we direct the second respondent-Central Government Industrial Tribunal cum Labour Court to entertain the dispute on the preliminary issue as to

whether the order of reference made by the Central Government is maintainable or not and to decide the same in accordance with law. Both the parties, namely, the Management and the contract labourers are at liberty to approach the second respondent-Industrial Tribunal and to raise all the contentions available to them. The matter may be taken up by the second respondent-Industrial Tribunal within a period of one month from the date of receipt of a copy of this order. With these observations, both the writ appeal and the writ petition are disposed of accordingly. Consequently, C.M.P.No.2297 of 2016 and M.P.No.1 of 2015 are closed. No costs.

ss

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The Secretary to Government
Ministry of Labour
Shram Shakti Bhavan
Rafi Marg, New Delhi 110 001
 2. The Presiding Officer
Central Government Industrial Tribunal
cum Labour Court
I Floor, "B" Wing
Shastri Bhavan
No.26, Haddows Road
Chennai 600 006
- + 1 cc to Ms.N.K.Nithila Vani, Advocate Sr 43279
- + 1 cc to Mr.R.Dhasaratha Rao, Advocate Sr 43392
- + 1 cc to Mr.D.Veerasekaran, Advocate Sr 43175
- + 1 cc to Fox Mandal & Associates, Advocate Sr 42942

KR/10/8/16

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