

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL SIDE APPELLATE JURISDICTION****WRIT PETITION NO. 646 OF 2016**

Grindwell Norton Ltd.

...Petitioner

vs.

State of Maharashtra and Ors.

...Respondents

Mr. V.P. Vaidya i/by Mr. Mahendra Agvekar for the Petitioner

Mr. A.P. Vanarse, AGP for the Respondent nos. 1 to 3 State.

Mr. Jaiprakash Sawant for respondent no. 4.

**CORAM : SHANTANU KEMKAR &
M.S. SONAK, JJ.
JULY 25, 2017**

P.C.:

Parties through their counsel.

2] At the request of and with the consent of learned counsel for the parties, we proceed to dispose of this petition finally at the stage of admission.

3] Mr. Vaidya, learned counsel for the petitioner submits that along with the charter of demands submitted by the respondent no. 4 union, even the petitioner, on 12th November 2014, had submitted its expectations / demands from the workmen represented by the respondent no. 4 union. Mr. Vaidya submits that in the course of the conciliation proceedings there

were discussions and negotiations not only in respect of the charter of demands submitted by the respondent no. 4 union but also the demand submitted by the petitioner management. Mr. Vaidya submits that this position is reflected in the failure report submitted by the conciliation officer. Mr. Vaidya submits that however, in its order of reference dated 26th October 2015 the Industrial Tribunal has only referred the demands raised by the respondent no. 4 union to the Industrial Tribunal for adjudication and omitted altogether the demands raised by the petitioner – management mainly on the issue of productivity expected by the management from the workmen. Mr. Vaidya submits that such omission is improper and the appropriate government may either correct the same by issuing a corrigendum or in the alternate the order of reference dated 26th October 2015 may itself be quashed and set aside.

4] Mr. Vanarse, learned AGP for respondent nos. 1 to 3 and Mr. Sawant for respondent no. 4 submits that there is absolutely no case made out to set aside the reference order dated 26th October 2015, as there is no legal infirmity in the reference order. Further, they point out that the demands raised by the respondent no. 4 union, are, in a sense, inter linked with the issue of productivity. Therefore, based upon the reference order dated 26th October 2015, the Industrial Tribunal, can always go into the demand of productivity raised by the petitioner and for that purpose, there is no

necessity of issuance of any corrigendum and delaying the adjudication before the Industrial Tribunal any further.

5] Mr. Sawant, learned counsel for the respondent no. 4 union made a categorical submission that since the failure report made by the conciliation officer reflects negotiations, not only upon the charter of demands submitted by the respondent no. 4 union but also the demands raised by the petitioner, the reference order dated 26th October 2015 will have to be construed as including the dispute arising, *inter alia*, the demand of productivity raised by the petitioner management.

6] In view of the aforesaid, we are satisfied that the grievance of the petitioner stands substantially redressed. There is no necessity for directing the appropriate government to issue any corrigendum and there is absolutely no case made out to set aside the order of reference dated 26th October 2015. Taking into consideration the submissions made by the learned counsel for the respondents and upon perusing the failure report, we are satisfied that the reference order contemplates adjudication upon issue of productivity raised by the petitioner management along with adjudication upon the charter of demands submitted on behalf of the respondent no. 4 union. With this clarification, the apprehensions expressed by Mr. Vaidya stand substantially redressed.

7] The matter can be examined from yet another aspect. Upon perusal of the charter of demands / expectations dated 12th November 2014 submitted by the petitioner, it is apparent that the petitioner's desire that the issue of productivity be linked with the issue of demands raised by the workmen. In a sense, therefore the issue of productivity is in the nature of the defence raised by the petitioner to the charter of demands raised by the respondent no. 4 union. To a certain extent, this is also clear from the reply filed by the petitioner before the Industrial Tribunal in response to the claim statement submitted by the respondent no. 4. This being in the nature of defence, the Industrial Tribunal, will obviously be required to consider the same whilst adjudicating upon the charter of demands raised by the respondent no. 4 union. In any case, we clarify this position and further grant the petitioner liberty to file additional reply before the Industrial Tribunal, so that the issue of productivity squarely arises and is ultimately adjudicated by the Industrial Tribunal. In such circumstances, it is really unnecessary to delay the adjudication before the Industrial Tribunal any further or require the appropriate government to issue some clarification or corrigendum in the matter.

8] The Division Bench of this Court in *Voltas Limited, Mumbai vs. State of Maharashtra & Ors.*¹ has held that it is settled position in law

¹ 2013 (6) ABR 994

that the terms of reference are never to be construed pedantically. The order making a reference has to be read along with pleadings of the parties and other circumstances with a view to cull out therefrom, the various points about which the parties are at variance leading to the dispute and to determine the real nature of the dispute. The parties are to be offered an opportunity before the industrial Tribunal to file their statements of claim and response. As long as the parties do not travel way beyond the terms of the reference, the Tribunal would be well within its jurisdiction in adjudicating the dispute between the parties.

9] The Division Bench of this Court in *Sheshrao Bhaduji Hatwar vs. Presiding Officer, First Labour Court & Ors.*² has observed that there is a long line of decisions of the Supreme Court taking a view that an order of reference should be liberally construed and the reference should not be rendered incompetent merely because it is made in general terms and it is always permissible for the Labour Courts or the Tribunals to construe the reference in the light of the back-drop against which it is made and to bring out the real dispute for its decision. Relying upon the decision of the Supreme Court, it was held that the Tribunal must look to the pleadings of the parties to find out the exact nature of the dispute and the mere wording of the reference was not decisive in the matter of tenability of a reference. If points of difference are discernable from the material before

² 1990 (II) C.L.R. 726

the Court or Tribunal, it has only one duty and that is to decide the points on merits and not to be astute to discover formal defects in the wording of the reference.

10] The Supreme Court in the case of Management of Express Newspapers (Pvt.) Ltd., Madras vs. The Workers & Ors.³, has observed thus :

“An order of reference hastily drawn or drawn in a casual manner often gives rise to unnecessary disputes and thereby prolongs the life of industrial adjudication which must always be avoided. Even so, when the question of this kind is raised before the Courts, the Courts must attempt to construe the reference not too technically or in a pedantic manner, but fairly and reasonably.”

11] Again, in a context similar to the present one, the Supreme Court in ***Delhi Cloth and General Mills Company Ltd. vs. The Workmen***⁴ has observed that :

“In our opinion, the Tribunal must, in any event, look to the pleadings of the parties to find out the exact nature of the dispute, because in most cases the order of reference is so cryptic that it is impossible to cull out therefrom the various points about which the parties were at variance leading to the trouble. In this case, the order of reference was based on the report of the Conciliation Officer and it was certainly open to the Management to show that the dispute which had been referred was not an industrial dispute at all so as to attract jurisdiction under the Industrial Disputes Act. But the parties cannot be allowed to go a stage further and contend that the foundation of the dispute mentioned in the order of reference was non-existent and that the true dispute was something else. Under Section 10(4) of the Act it is not competent to the Tribunal to entertain such a question”.

³ AIR 1963 SC 569

⁴ 1967-I- LLJ- 423

12] In the present case, learned AGP as well as learned counsel for the respondent no. 4 have themselves urged that the reference order dated 26th October 2015 is to be construed to include the question of productivity which was raised by the petitioner in the course of conciliation proceedings. In these circumstances, there is no reason to entertain any apprehension that the issue of productivity will not be adjudicated by the Industrial Tribunal in the reference proceedings.

13] With the aforesaid clarification and observations, we do not deem it appropriate to either interfere with the order of reference dated 26th October 2015 or issue any other directions as prayed for by the petitioner.

14] We also clarify that we have not adverted to the merits of the disputes between the parties and all such issues are left open for determination by the Industrial Tribunal. Accordingly, we direct the Industrial Tribunal to dispose of the reference in accordance with law and on its own merits.

15] The petition is disposed of in the aforesaid terms. There shall be no order as to costs.

(M.S. SONAK, J.)

(SHANTANU S. KEMKAR, J.)