

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1761 OF 2014

National Textile Corporation Limited,
Western Region

.... Petitioner

Vs.

Rashtriya Mill Mazdoor Sangh & Others

.... Respondents

Ms Meena H. Doshi for the Petitioner.

Mr. S.N. Deshpande with Ms Nivedita Deshpande
for Respondent No.1.

Mr. Laxmikant T. Satelkar, AGP, for Respondent
Nos.2 & 4.

CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.

DATE : DECEMBER 04, 2017

P.C:

1. By this petition under Article 226 of the Constitution of India, the petitioner-National Textile Corporation Limited (“NTCL” for short) is challenging a Notification dated 31-1-2014 by which the NTCL feels aggrieved on account of the Department of Industries, Energy & Labour, Government of Maharashtra, referring to what, the Notification says, is an

industrial dispute for adjudication by the Industrial Tribunal, Mumbai.

2. After taking us through the Notification, copy of which is at pages 89 and 91 of the paper-book, so also the explanatory statement, copy of which is at page 94 of the paper-book, it is urged, firstly, that the term "industrial dispute" is defined in Section 3, Clause 17 of the then Bombay, now, the Maharashtra Industrial Relations Act, 1946 ("the Act" for short).

3. It is submitted that so long as an industrial dispute does not arise, the power to make a reference under Section 73 of the Act, vesting in the State Government, cannot be exercised.

4. By inviting our attention to Section 73, it is submitted that the State Government may, at any time, refer an industrial dispute to the arbitration of the Industrial Court, but the conditions on which the satisfaction can be recorded are expressly set out in the Clauses of Section 73.

5. Then, our attention is invited to the Schedule to

submit that both the issues that are referred for adjudication would not fall within the purview of these Clauses as there is no industrial dispute at all in this case within the meaning of the Act which can be referred to the arbitration of the Industrial Court.

6. Then, it is submitted that there is a prayer in the petition which would indicate that there should be a corrigendum issued and that corrigendum, as prayed, if cannot be issued by the Industrial Court, then all the more we should not allow the reference to proceed.

7. With the assistance of Ms Doshi, appearing on behalf of the petitioner-NTCL, we have perused the petition and all the annexures thereto. What we have on record is the dispute which was sought to be raised by the Rashtriya Mill Mazdoor Sangh ("RMMS" for short), a Union representing the workers employed in Textile Mills. On the other hand, the NTCL-petitioner before us stated that though the RMMS is a representative Union for the Cotton Textile Industries in Mumbai, the NTCL has been set

up and primarily to take care of sick mills. The NTCL invited the attention of the State Government to the proceedings before the Board for Industrial and Financial Reconstruction, set up under the Sick Industrial Companies (Special Provisions) Act, 1985. There were references made to certain agreements between the NTCL and the said RMMS.

8. The State Government made several attempts to secure an overall settlement but it found that it was not possible by mutual discussions and negotiations. It is in these circumstances that the following two issues, as enlisted in the Schedule of the Government Notification challenged in this petition, were referred for arbitration by the Industrial Tribunal, Mumbai:-

"Issue No:1 - i) Appollo Mill, ii) New City Mill, iii) Goldmohur Mill & iv) India United Mill No.1 should be started as per joint venture agreement and as per sanctioned BIFR Scheme to ensure employment of 6927 employees.

Issue No: 2 – Viable Mills i) Potdar Mill, ii) Tata Mill, iii) India United Mill No.5, these mills should be relocated to land of i) Sitaram Mill, ii) Kohinoor

*Mill No.1/2, **iii**) Jam Mill respectively. Digvijay Mill should be relocated on land of Madhusudan Mill. Upon relocation, each of the Mills should be completely and fully modernized. And compliment of workmen as envisaged in the sanctioned scheme to be engaged and full fledged activities in each of the four cotton textile mills should be commenced effective from 1st January, 2014.”*

9. We do not think that merely because there is a specific stand taken by the NTCL and with regard to the jurisdiction of the Industrial Court to grant any such reliefs, as are claimed in the statement of claim by the RMMS, that we should entertain the petition.

10. It is common ground that the power to refer an industrial dispute for arbitration vests in the Government.

11. Whether at all an industrial dispute exists in the facts and circumstances of the present case and whether it is capable of being adjudicated by the Industrial Court, or settled by arbitration in terms of the legal provisions, is a matter which can be squarely raised by the petitioner before the Tribunal. We have no hesitation in observing that in the event such a plea is

taken and the jurisdiction of that Tribunal is challenged, the Tribunal will, while dealing with the matter, express its opinion on that aspect as well and after giving an opportunity of hearing to both sides. We do not think that we should and particularly when the matter is factual, go into this aspect any further. We do not think that the NTCL is powerless, in the sense in the event the reference is disposed of by giving certain directions or otherwise adversely affecting the interest of the petitioner-Corporation, then, while challenging that order the NTCL cannot be precluded from raising all the pleas as are raised in the present petition, including the jurisdictional point. We do not think that we should entertain such an issue here.

12. Equally we do not think that any request, as made by the NTCL to the Government, should detain us. The NTCL prays that there should be a corrigendum issued. We do not think that any such request, as now made and by amendment of the petition, should be considered.

13. We do not think that we must command the

Government and at this stage to issue any corrigendum. It is the satisfaction of the Government and which the Government says it has expressly recorded. It has also explained in the affidavit as to how it was satisfied that the industrial dispute exists and that it should be referred for arbitration to the Industrial Tribunal at Mumbai. We, therefore, think that once the jurisdictional issue and other aspects have been kept open and for being decided by the appropriate Forum, all the more we should not keep this petition pending.

14. By clarifying that none of the contentions raised by both sides, including the reliefs specifically sought by the petitioner are rendered infructuous, but the pleas in that behalf are kept open, then, the writ petition can be disposed of conveniently with these directions. It is accordingly disposed of.

(SMT. BHARATI H. DANGRE, J.)

(S.C. DHARMADHIKARI, J.)