

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.808 OF 2017

Mumbai International Airport Pvt. Ltd. ... Petitioner
Vs.
Union of India, Ministry of Labour and Employment
and others ... Respondents

WITH
CHAMBER SUMMONS NO.307 OF 2017

Farooq Tandel and others ... Applicants
In the matter between:
Mumbai International Airport Pvt. Ltd. ... Petitioner
Vs.
Union of India, Ministry of Labour and Employment
and others ... Respondents

Ms Mitra Das a/w. Mr. Farid Karachiwala, Ms Sneh Mehta, Ms Jayeeta Das, Ms Mahek Chheda i/b. Wadia Ghandy & Co. for Petitioner.
Ms Jane Cox i/b. Ms Karishma Rao for Respondent No.2.
Mr. Sudhir K. Talsania, Senior Advocate a/w. Ms Kavita Anchan i/b. M/s. M. V. Kini & Co. for Respondent No.3.
Mr. Arshad Shaikh i/b. Mr. S. M. Shettigar for Applicant in CHSW No.307 of 2017.

**CORAM : R. M. BORDE &
R. G. KETKAR, JJ.**
Reserved on : JANUARY 29, 2018
Pronounced on : FEBRUARY 13, 2018

ORDER : (PER R. G. KETKAR, J.)

Heard Ms Mitra Das, learned Counsel for the petitioner, Ms Jane Cox, learned Counsel for the respondent No.2, Mr. Sudhir Talsania, learned Senior Counsel for the respondent No.3, Mr. Arshad Shaikh, learned Counsel for the applicants in Chamber Summons No.307 of 2017 at length.

2. By this Petition under Article 226 of the Constitution of India, petitioner, Mumbai International Airport Private Limited (for short

'M.I.A.L.') has challenged the Corrigendum dated 13.01.2016 at exhibit-E and Addendum dated 09.03.2016 at exhibit-F. By Corrigendum dated 13.01.2016, Government of India, Ministry of Labour added M.I.A.L. at Sr. No.3 to the Ministry's Order dated 02.06.2003 due to Operation, Management and Development Agreement (OMDA) between respondent No.3 - Airports Authority of India (AAI) and M.I.A.L. Consequent upon the direction of this Court in Writ Petition No.1701 of 2012 dated 10.04.2015 and the order of the Apex Court dated 03.07.2015 in S.L.P. (C) No.17056 of 2015, by Addendum dated 09.03.2016, Government of India, Ministry of Labour modified clause 2 of Ministry's Order dated 02.06.2003 due to OMDA between AAI and MIAPL, in the following terms:

“Whether the workers concerned should be declared as permanent / regular workmen of Airport Authority of India and of M/s. Mumbai International Airport Private Limited (MIAPL).”

3. In view of the above, the Corrigendum dated 13.01.2016 was also modified.

4. In support of this Petition, Ms Das strenuously contended that in view of the order dated 30.03.2010 passed by this Court (Coram : S. J. Kathawalla, J.) and order dated 05.01.2011 passed by this Court (Coram : S. C. Dharmadhikari, J.) in Writ Petition No.322 of 2010, respondent No.1-Union of India was not justified in passing the impugned orders. By order dated 30.03.2010, by consent of the parties, proceedings of Reference No.2/27 of 2003 pending before the Central Government Industrial Tribunal (CGIT) were stayed. By subsequent order dated 05.01.2011, hearing of Writ Petition No.322 of 2010 was adjourned sine die with liberty to the parties to mention the matter after Supreme Court proceedings are disposed of. She submitted that admittedly, the proceedings before the Apex Court are pending. As by

consent of the parties, proceedings in Reference No.2/27 of 2003 are stayed by this Court, respondent No.1 could not have issued Corrigendum dated 13.01.2016 and Addendum dated 09.03.2016 impugned in the present Petition. She submitted that respondent No.1 exceeded its power in passing the impugned orders. Apart from that, parties in Reference No.CGIT 2/44 of 2007 and 2/56 of 2007 and parties in the present Reference No.2/27 of 2003 are different. The subject matter of the References is also different. In short, facts and law arising in the various References are different.

5. Ms Das further submitted that issue of the joinder of M.I.A.L. is subjudice in Writ Petition No.322 of 2010. In issuing corrigendum on 13.01.2016 and addendum on 09.03.2016, respondent No.1 overreached the orders passed by this Court. It amounts to interference with the administration of justice. She submitted that respondent No.1 was not justified in law and in facts in issuing corrigendum dated 13.01.2016 in the absence of any erratum in the original schedule of Reference No.CGIT 2/27 of 2003. She further submitted that respondent No.1 was not justified in law in adding M.I.A.L. as party to the proceedings in Reference No.CGIT 2/27 of 2003 at Sr. No.3 on the ground that OMDA had been entered into between M.I.A.L. and respondent No.3 without considering that the M.I.A.L. came into existence in 2006. OMDA was signed on 26.04.2006 whereas the purported dispute referred for adjudication was in respect of a period prior to 2006.

6. Ms Das submitted that respondent No.1 committed serious error by modifying the schedule to the order of reference dated 02.06.2003 by way of addendum dated 09.03.2016 on the basis of directions of this Court dated 10.04.2015 in Writ Petition No.1701 of 2012 and of the Apex Court dated 03.07.2015 in S.L.P. (C) No.17056 of 2015, which

have no nexus and / or connection with present Reference No.2/27 of 2003. She submitted that the corrigendum and addendum dated 13.01.2016 and 09.03.2016 respectively demonstrate clear non-application of mind by respondent No.1 and the same is contrary to the material on record. The issuance of corrigendum and addendum has resulted addition of M.I.A.L as a party thereby enlarging the scope of Reference No.CGIT 2/27 of 2003, which is untenable and unjustified in law. In any case, the corrigendum and addendum have been issued in violation of principles of natural justice. She, therefore, submitted that the Petition requires consideration.

7. On the other hand, Ms Cox and Mr. Talsania as also Mr. Shaikh appearing for Applicants in Chamber Summons have supported the impugned corrigendum and addendum. At the outset, Ms Cox submitted that respondent No.2 will not proceed with the present Reference till such time the stay granted by this Court in Writ petition No.322 of 2010 is not vacated. Ms Cox invited our attention to ground (i) and (xviii) of Writ Petition No.322 of 2010 instituted by M.I.A.L. She also invited our attention to paragraphs 18, 19 and 21 of this Court's order dated 10.04.2015 passed in Writ Petition No.1701 of 2012. She submitted that in exercise of powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, by order dated 02.06.2003, Government of India, Ministry of Labour, referred the following dispute for adjudication to the CGIT.

“1. Whether the contract between Airport Authority of India and the respondent contractor, is a sham and bogus and is a camouflage to deprive the workers concerned in the petition of benefits available to permanent workmen of Airport Authority of India?

2. Whether the workers concerned in the petition should be declared as permanent workers of Airport Authority of India?

3. What are the wages and consequential benefits to be paid to the workers concerned in the petition?”

8. She submitted that by order dated 27.12.2004, Government of India made Reference No.2/40 of 2005 in the following terms:

“1. Whether the contract between Airport Authority of India and M/s. Friends Communication Services, Mumbai is 'sham' and 'bogus' and is a camouflage to deprive Shri Digamber Madye and 22 other contract workmen (list enclosed), of benefits available to permanent workmen of Airport Authority of India, Mumbai?

2. Whether the workmen concerned should be declared as permanent / regular workmen of Airport Authority of India?

3. What are the wages and consequential benefits to be paid to Shri Digamber Madye and 22 other workmen and from which date and what other direction are necessary in the matter?”

9. She submitted that a comparison of these two References would indicate that identical controversy is raised in both these References. She invited our attention to paragraphs 8, 9 and 13 of the application dated 26.10.2015 made by the second respondent to the first respondent. In particular in paragraph 13, respondent No.2 prayed for issuing corrigendum in the present Reference in the light of law laid down by this Court vide order dated 10.04.2015 in Writ Petition No.1701 of 2012 and the order of the Apex Court dated 03.07.2015. She submitted that basically, OMDA was executed between M.I.A.L. and A.A.I. on 26.04.2006 for a period of 30 years. As per that agreement, A.A.I. had granted lease of Mumbai Airport for a period of 30 years to M.I.A.L. With effect from 03.05.2006, the management of Chhatrapati Shivaji International Airport (C.S.I.A.) was transferred from A.A.I. to M.I.A.L. In terms of clause 5.1 of OMDA, the rights and obligations associated with the operation and management of the airport would stand transferred to M.I.A.L. She, therefore, submitted that no case is made out for interfering with the impugned corrigendum and addendum.

10. Mr. Talsania substantially adopted the submissions advanced by Ms Cox.

11. In support of the Chamber Summons No.307 of 2017, Mr. Shaikh has taken us through the affidavit of Mohammed Maqusud Alam, and in particular paragraphs 4 and 5. He submitted that 81 workmen have filed statement of claims in Reference No.2/27 of 2003 before the CGIT. Applicants in Chamber Summons are being independently represented in the said Reference. He, therefore, submitted that Chamber Summons may be made absolute in terms of prayer clause (a).

12. We have considered the rival submissions advanced by the learned Counsel appearing for the parties. We have also perused the material on record. We have already extracted the terms of reference vide order dated 02.06.2003 in Reference No.2/27 of 2003 as also Reference made to CGIT in pursuance of order dated 27.12.2004 passed by Union of India. A comparison of the References clearly shows that substantially identical controversy is raised in these two References. Ms Das relied upon order dated 25.04.2008 passed by the learned Single (Coram : S. C. Dharmadhikari, J.) in Writ Petition No.695 of 2008 with Writ Petition No.841 of 2008 and the order dated 15.06.2009 passed by the Division Bench upholding that order.

13. A perusal of decision dated 25.04.2008 in Writ Petition No.695 of 2008 and 841 of 2008 shows that M.I.A.L. had challenged order dated 05.02.2008 impleading them as parties to the Reference being Reference No.CGIT-2/44 of 2007 and 2/56 of 2007. M.I.A.L. also challenged order dated 28.02.2008 rejecting their application to recall or review order dated 05.02.2008. In paragraph 9, submissions of M.I.A.L. were referred. Paragraph 9 reads thus,

“9. Mr. Dada, learned Senior Counsel for petitioners submits that the impugned order is ex-facie erroneous and untenable in law. He submits that the learned Presiding Officer has failed to apply his mind to the contents of the application for recalling his earlier orders. He submits that the petitioners have absolutely no connection or nexus with the reference. If the terms of reference are perused, it is apparent that the dispute which has been referred for adjudication to the CGIT pertains to the status of concerned employees with AAI. In other words, whether the action of the AAI in engaging the contractors and getting the work done through them means that the subject employees cease to be the employees of AAI or whether the master - servant relationship subsists as between them are the issues for determination. The relief is claimed on the basis that the contracts entered into by AAI with contractors are sham and bogus. It is that issue which is referred for adjudication. Whether employees are contract labourers or employees of the principal employer AAI or whether they are employees of the contractors engaged by AAI are matters of arising for decision and adjudication. There is no question of any relationship of employer employee arising between the petitioners and subject employees. The issues which are referred for adjudication arise out of disputes between the Union and AAI. These disputes are because of the demands which have been raised by the employees/unions against the AAI. The relief of permanency and continuity in service so also relationship is something between such employees and AAI. At this stage, the petitioners are nowhere in the picture. It is not the case of the union that the petitioners have engaged any contractors and that the relationship between the petitioners and the employees is the subject matter of reference. Mr.Dada’s submission is that the lis, if any, is between the employees and the respondent No.1 AAI. When contract is between AAI and contractors engaged by it, there is no privity insofar as the workers and the petitioners. In such circumstances, the recall application ought to have been allowed and the orders quashed and set aside. The orders are ex-parte and passed without hearing the petitioners and, therefore, an application for recall is maintainable. yet, the Presiding Officer proceeded on the basis that petitioners are seeking review of his earlier order and further their being no power of review, the application is not maintainable. On merits as well the impugned order is untenable because the learned Presiding Officer has failed to apply his mind to section 18(3)(b) of the I.D.Act and the general principles applicable while deciding the issue of Joinder of parties.”

14. In paragraph 20, the terms of reference were reproduced.

Paragraph 20 reads thus,

20. In this context, it would be worthwhile referring to the dispute which has been referred for adjudication. The learned Presiding Officer is aware of the fact that appropriate Government has referred to it a dispute for adjudication. The dispute proceeds thus:-

"1. Whether the contract between Airport Authority of India and the respondents contractors, is a sham and bogus and is a camouflage to deprive the workers concerned in the petition of benefits available to permanent workmen of Airport Authority of India?

2. Whether the workers concerned in the petition should be declared as permanent workers of Airport Authority of India?

3. What are the wages and consequential benefits to be paid to the workers concerned in the petition?"

15. In paragraph 21, the learned Single Judge observed that it is nobody's case that the issue is whether petitioners' action of engaging contractors is a matter of adjudication before the Tribunal. Paragraph 21 reads thus,

"21. A bare perusal of the same would indicate that what is to be decided by the learned Presiding Officer is a matter arising out of contract between AAI and their contractors. It has to adjudicate and decide as to whether these contracts are sham, bogus and camouflage to deprive the workers concerned in the reference, of benefits available to permanent workmen of AAI. If there was any doubt as to what are the precise terms, a perusal of clause 2 of the terms of reference makes the matter more clear. The adjudication is on the issue as to whether the workers concerned should be declared as permanent workers of AAI and what are their wages and consequential benefits. One fails to understand as to how petitioners are connected with these aspects. It is nobody's case that the issue is whether petitioners' action of engaging contractors is a matter of adjudication before the Tribunal. The Tribunal is concerned with a matter wherein the AAI has allegedly deprived the concerned employees the benefits of permanency on the plea raised by it. The plea raised by it is

that the concerned workers are employees of contractors and not the AAI. To my mind, had the learned Presiding Officer perused these aspects carefully, he would not have reached a conclusion that presence of petitioners is necessary for effective and complete adjudication of the dispute. There is substance in the contention of Mr.Dada that the order has been rendered overlooking the terms of reference and by not applying the mind to them. It is vitiated by an obvious error. By joining the petitioners as parties, the Presiding Officer has enlarged the scope of the reference.”

16. As against this, a perusal of decision dated 10.04.2015 in Writ Petition No.1701 of 2012 shows that Union of India rejected the application on 13.12.2011 filed by petitioners / workers for amendment of Reference No.CGIT-2/40 of 2005 made earlier. In paragraph 3(c), terms of reference vide order dated 27.12.2004 were extracted. In paragraph 3(d), the reference to the agreement between A.A.I. and M.I.A.L. was made. By agreement called OMDA, A.A.I. had granted lease of the Mumbai Airport for a period of 30 years to M.I.A.L. was made. With effect from 03.05.2006, the management of C.S.I.A. was transferred from A.A.I. to M.I.A.L. In paragraph 3(e), the case of the petitioners that clause 5.1 of the OMDA provides that the rights and obligations associated with the Operation and Management of the airport would stand transferred to M.I.A.L. was referred. The proposed amendment sought by the petitioners was also extracted. The proposed amendment reads thus,

“(2) Whether the workmen concerned should be declared as permanent / regular workmen of Airports Authority of India and permanent / regular workmen of M/s. Mumbai International Airport Private Limited with effect from 03.05.2006 after the transfer of the management of the airport from Airports Authority of India to M/s. Mumbai International Airport Private Limited.”

17. The Division Bench considered decision of the Apex Court in ***Delhi International Airport Private Limited Vs. Union of India, (2011)***

12 SCC 449 and *M/s. Hochtief Gammon Vs. State of Orissa and others*, **AIR 1975 SC 2226**. In paragraph 10, paragraphs 53 and 71 of the decision of the **Delhi International Airport** (*supra*) were extracted. In that case, the Apex Court held that in view of clause 5.1 of OMDA, the rights and obligations associated with the operation and management of the airport would stand transferred. It was further held that the obligations, which were cast upon the A.A.I. would be required to be fulfilled by its lessee (M.I.A.L.). It is not in dispute that clause 5.1 of the agreement between A.A.I. and M.I.A.L. is identical. The Division Bench also referred to the decision of *Hochtief Gammon Vs. Industrial Tribunal, Bhubaneswar, Orissa and others*, **AIR 1964 SC 1746**, and extracted paragraph 7 thereof. Paragraph 13 of that decision was reproduced. In paragraph 18, the Division Bench observed that the present proceedings are arising out of an application before the Central Government for amendment of the reference. As such, the present case would be governed by the second judgment of the Apex Court in *M/s. Hochtief Gammon Vs. State of Orissa and others*, **AIR 1975 SC 2226** and not the first one i.e. *Hochtief Gammon Vs. Industrial Tribunal, Bhubaneswar, Orissa and others*, **AIR 1964 SC 1746**. In paragraph 19, it was observed that if the respondent No.3 (M.I.A.L.) is made a party and the amendment as sought is made, it would not expand the scope of the dispute. The only additional question that would be decided is if in the event the petitioners are successful in justifying their claim against respondent No.2-A.A.I., whether respondent No.3-M.I.A.L. who steps into the shoes of the respondent No.2 would be liable to perform obligations of the respondent No.2 from 03.05.2006 or not. Aggrieved by this decision, M.I.A.L. preferred S.L.P. before the Apex Court which was dismissed on 03.07.2015.

18. In the present case, respondent No.2 had made application dated 26.10.2015, enclosing therewith documents to the Secretary to

the Government of India, Ministry of Labour and Employment, New Delhi for amending the terms of Reference No.2/27 of 2003 to include M.I.A.L. and amend the schedule to the Reference as set out therein. Respondent No.2 relied upon order dated 04.04.2003 passed by this Court in Writ Petition No.2994 of 1999. In pursuance of that order, Central Government made an order of reference on 02.06.2003. Respondent No.2 referred to OMDA entered into between M.I.A.L. and AAI. It is the case of the respondent No.2 that on the signing of OMDA, M.I.A.L. has stepped into the shoes of A.A.I. and being the successor in interest is bound by and under obligation to comply with the subsisting orders dated 04.04.2003, 23.11.2000 passed by this Court in Writ Petition No.2994 of 1999 against AAI protecting the services of the workmen.

19. In paragraph 7, respondent No.2 made reference to an identical Reference No.2/44 of 2007. Reference was also made to order dated 25.04.2008 passed by the learned Single Judge in Writ Petition No.695 of 2008 and 841 of 2008 as also order of the Division Bench dated 15.06.2009 in Appeals upholding the order of the learned Single Judge. Against these decisions, matter was carried to the Supreme Court. Leave has been granted by the Apex Court. No stay was granted. Respondent No.2 also referred to application dated 27.07.2007 filed by it in Reference No.2/27 of 2003. That application was allowed on 29.10.2009 by CGAT. Aggrieved by that decision, Writ Petition No.322 of 2010 is instituted in this Court. As noted earlier, the said Petition is pending and by consent of the parties, Petition is adjourned sine die. Respondent No.2 made reference to order dated 10.04.2015 passed by this Court in Writ Petition No.1701 of 2012 as also the Apex Court order dated 03.07.2015. Respondent

No.2, therefore, prayed for issuing corrigendum.

20. On 13.01.2016, Government of India issued corrigendum, which is to the following effect:

“Due to Operation Management and Development Agreement (OMDA) between Airport Authority of India & Mumbai International Airport Private Limited (MIAL), “M/s. Mumbai International Airport Private Limited, Mumbai-400099” is added at Sl. No.3 to this Ministry's Order of even no. dated 02.06.2003. Accordingly, revised seriatim is given below.”

21. On 09.03.2016, addendum was issued by the Government of India, which is to the following effect:

“ADDENDUM

Consequent upon the direction of Hon'ble High Court, Bombay in WP No.1701 of 2012 dated 10.04.2015 and SLP (C) No.17056 of 2015 dated 03.07.2015, Clause 2 of Ministry's Order of even no dated 02.06.2003 is modified due to Operation Management and Development Agreement (OMDA) between Airport Authority of India & (MIAPL) and is given below:-

“Whether the workers concerned should be declared as permanent/ regular workmen of Airport Authority of India and of M/s. Mumbai International Airport Private Limited (MIAPL)”

Accordingly, Corrigendum of even no. dated 13.01.2016 also stands modified.”

22. Ms Das submitted that controversy raised in the present Reference and the other References is entirely different. She submitted that Government exceeded its power in issuing corrigendum and addendum. She submitted that issue of the joinder of M.I.A.L. is subjudice in Writ Petition No.322 of 2010. In issuing corrigendum on 13.01.2016 and addendum on 09.03.2016, respondent No.1 overreached the orders passed by this Court, which amounts to interference with the administration of justice. We do not find any merit in any of these

submissions. We have already held that the controversy raised in various references is almost identical. As noted earlier, Ms Cox has submitted that till such time the stay granted by this Court in Writ Petition No.322 of 2010 is not vacated, respondent No.2 will not proceed with the Reference. Statement made by Ms Cox, on instructions, is recorded.

23. In the light of the aforesaid discussion, we do not find that any case is made out for invocation of extra-ordinary jurisdiction under Article 226 of the Constitution of India. In the Reference, it will be open to M.I.A.L. to raise all contentions that are available to them in law. Subject to this, Petition fails and the same is dismissed. In view of dismissal of the Petition, nothing survives in the Chamber Summons and the same stands disposed of accordingly.

(R. G. KETKAR, J.)

(R. M. BORDE, J.)