

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.C No. 4119/2014 and CM PPL.8270/2014, 22870/2017
and 47013/2017

Judgment reserved on : 03.04.2018
Date of decision : December 29th, 2018

BHARAT HEAVY ELECTRICALS LTD..... Petitioner

Through: Mr. Sandeep Sethi, Senior
Advocate with Mr. A.K.Roy,
Advocate

versus

UDAIBIR SINGH & ORS. Respondents

Through: Ms. Asha Jain Madan,
Advocate for R-1 to 164
Mr. R.K. Saini, Adv. for R-165-
166.
Mr. Arun Bhardwaj, CGSC for
R-167-168.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioner Bharat Heavy Electricals Ltd. vide this petition under Articles 226 & 227 of the Constitution of India seeks the setting aside of the Reference made vide order no. L-42011/55/2013-IR (DU) dated 25.07.2013 vide which the Central Government opined that an industrial dispute exists between the employer in relation to the

management of the BHEL House and their workmen in respect of the matter specified in the Schedule annexed with the order which read to the effect:-

“Whereas the action of the management of BHEL is not regularizing the employment of Shri Udaibir Singh and 163 others and engagement of the said workers through M/s. Arron Aviation Services Pvt. Ltd. and M/s Oynx Management Services Pvt. Ltd. as per annexure, is legal and justified? To what relief the workmen are entitled to?”

and thus referred the said dispute in terms of Section 10(1)(d) and Section 10(2A) of the Industrial Disputes Act, 1947 which were referred for adjudication to the Central Government Tribunal-cum-Labour Court No.2, New Delhi calling upon the Tribunal to give its award within three months.

2. The petitioner also thus sought that the consequential proceedings in ID No.94/13 pending adjudication before the Central Government Industrial Tribunal-cum-Labour Court-II, KKD be also quashed and sought that the entire records of the conciliation proceedings before the Additional Labour Commissioner in ALC-1.8 (35) 2011 and the documents which formed the basis of the Reference be called for.

3. There are 168 respondents arrayed to the present petition with respondent nos.1 to 164 being workers represented through Shri Jagdish Prasad, President of the Delhi State General Workers Congress and M/s Aroon Aviation Services Ltd. and M/s Oynx Management Services Pvt. Ltd. arrayed as respondent nos.165-166 to the present petition and the Union of India represented through the Office of Regional Labour

Commissioner (Central), Ministry of Labour and Employment is arrayed as respondent no.167 and the respondent no.168 is the Secretary, Government of India, Ministry of Labour and Employment.

4. This reference has arisen out of the failure report of conciliation dated 01.04.2013 passed by the Assistant Labour Commissioner (Central), Office of the Regional Labour Commissioner (Central) in ALC-1.8 (35) 2011. The said notice was issued by the Labour Commissioner to the petitioner to attend the proceedings fixed on 17.10.2011 in order to hold conciliation and arrive at an amicable settlement of the dispute referred by the Delhi State General Workers Congress for regularization of Jagdish Prasad and others.

5. It was further submitted on behalf of the petitioner that the notice dated 13.09.2011 received from the Office of the Divisional Labour Commissioner (Central) had a copy of statement of claim containing the names of 167 workmen who were as follows:

S.No.	Name
1	Jagdish
2	Raju
3	Ramesh Chand
4	Ram Niwas
5	Vinod Kumar
6	Radhey Lal
7	Lallan Tiwari
8	Bhogi Lal
9	Birender Singh
10	Jagdir Singh
11	Ali Jan
12	Bal Mukand
13	VS Ganeshan
14	Ramesh

15	Sheesh Pal
16	Kali Charan
17	Naresh Kumar
18	Ram Prasad
19	Raj Kumar
20	Shiv Shankar
21	Hari Kishan
22	Ganga Das
23	Padam Singh
24	Vijay Kumar
25	Ashok Kumar
26	Ranbir Singh
27	Kishan Pal
28	SP Singh
29	AP Singh
30	Ranbir Singh Ch.
31	Manoj Kumar
32	S Andawar
33	Satish Kumar Suri
34	Shankar
35	Hari Singh
36	Ram Veer
37	VP Singh
38	Bhole Ram
39	Kanta
40	Kandaswamy
41	Mani Ram
42	Mahesh Babu
43	Naresh Panwar
44	Panchi Ram
45	Yashoda
46	V Bomiah
47	SN Roy
48	Thakur Das
49	Joginder Singh
50	Jaswant Singh
51	Jagdish Chandar

52	Girjanand
53	Nand Lal
54	Akbar
55	Shakeena
56	Narayan Bhura
57	MI Yadav
58	Deepak Kumar Mahto
59	Surender Singh
60	Prem Pal
61	Chandra Pal
62	Satyaner Pal
63	Rajender Singh Bisht
64	Parmesh Tyagi
65	Sri Chand
66	Umed Singh
67	Ashok Tyagi
68	Prabhu Dayal
69	S Shanmugam
70	Shiva
71	Liyak Ali
72	Kali Charan
73	Baleshwar Tyagi
74	Lalsa
75	Ram Babu
76	Vijay Pal Singh
77	VS Murgan
78	Ratan Pal
79	Daya Chand
80	Rakesh
81	Shvoraj
82	Anil Massey
83	RS Tyagi
84	Ramesh Kumar
85	Birender Kumar
86	Ram Kumar
87	Ram Lal
88	Ganesh Murgan

89	Soran
90	Prem Singh Yadav
91	Udaibeer Singh
92	Yashwant Singh
93	Kailash Chand
94	Kishor Deen
95	Devi Charan
96	Balewhwar Dayal
97	ID Prasad
98	DK Tyagi
99	Mahender
100	Kiran Pal
101	Kishan Chand
102	R Nagenderan
103	Ram Babu
104	Mohan Lal
105	Mohan Kumar
106	Nirakar Das
107	Ramesh Gupta
108	Narayan Singh
109	Bhuban Prasad
110	Ashok Chopra
111	Umesh Kumar Singh
112	A Mani
113	Raj Pal Sehrawat
114	Daya Ram
115	Indira Lal
116	Vinod Kumar
117	Chinta Mani
118	Ram Khiladi
119	Veer Pal
120	MS Baskharan
121	Lakhi Ram
122	Raja Singh
123	Ram Lal Sharma
124	Ram Kumar
125	Rajender Singh

126	Ramavtar
127	Harish Chand
128	Babu Lal
129	M Thriuvassugam
130	Jayanti
131	Somnath
132	Veeru
133	Sukhbir Singh
134	Briendra Kumar
135	Suresh
136	BP Singh (I)
137	Lalit Prasad
138	Mahender Singh
139	Naresh Kumar
140	Lal Shah
141	Ram Babu
142	Rajesh
143	Ashok Kumar
144	Naresh Kumar
145	Sulekh Chand
146	Laxmi
147	Kamla
148	Jyoti Swaroop
149	Devendra Kumar Tyagi
150	Mahender Singh
151	Ram Kishan
152	Kishan Chand
153	Balwant Singh
154	Garib Chand
155	K Channa Durai
156	KK Mukandan
157	Tejpal Singh
158	Prem Singh Yadav
159	Inder Dev Prasad
160	Baleshwar Dayal
161	Rakesh
162	Ishwar Deen

163	Gyan Singh Rawat
164	TV Thapa
165	Balbir Singh Rawat
166	K Shanmugan
167	M Shiva Kumar

The said notice apart from being addressed to the petitioner was also addressed to Goyal Services and O.P. & Associates (Contractors).

6. The petitioner further submitted that the statement of claim had been signed by five persons and that the petitioner no.4 herein was in the capacity of an alleged and unrecognized union by the name of Jagdish Prasad and that there was nothing to show that the President and the signatory of the statement of claim were duly authorized by other persons as listed in the statement of claim.

7. The petitioner thus submitted that the very initiation of proceedings was without any authorization and authentication. It was further submitted on behalf of the petitioner that the petitioner had participated in the conciliation proceedings and filed a detailed written statement dated 14.10.2011 challenging the claims of the respondent concluding that the claim of the respondents/workmen was barred by the principle of *resjudicata* and submitted that the said written statement was submitted during the conciliation proceedings on 18.10.2011. The petitioner has further submitted that the President of the Union moved an application dated 23.03.2011 before the Conciliation Officer for deletion/addition of the names of the workers in the list as filed in the statement of claim and in the said application, the grounds raised for deletion was that certain workers were working against their own

interest and were no longer members of the Union and thus the Union and other workers decided to delete the name of such workers and the Union sought the deletion of the names of 13 workers and addition of seven workers in its place. It has been submitted on behalf of the petitioner that this application was not allowed by the Conciliation Officer nor was there any amendment ever directed to be carried out. The said application for deletion/addition of names of workers in the list of workers filed with the statement of claim as submitted before the Assistant Labour Commissioner (Central) states that:

“That the claimant had raised the above Industrial Dispute for the regularization of the services of the workers named in Annexure P-1 attached there to. It is submitted that since the workers named here under in this para had been working against the interest of the workers and since they are no more the members of the above union, the union and the other claimant workers have decided to remove the names of the following workers from the array of parties/list of workers:

69.	S Shanmugam			
70.	Shiva			
75.	Lalsa			
93.	Yashwant Singh			
96.	Devi Charan			
141.	Lalshah			
149.	Jyoti Swarioop			
150.	Devendra Kumar Tyagi			
156.	K Channa Dural			
157.	KK Mukandan			
158.	Tejpal Singh			
165.	TB Thapa			
168	M Shiva Kumar			

and further stated vide para-2 to the effect that:

“The union and the other workers have also decided to implead the names of the following workers who were unfortunately left out from being included in the list of workers due to typographical error

66.	Vikram	Chander Pal Singh	
156.	Lalit Prasad	Girja Dutt	
158.	Ch. Mahinder Singh	Late Chaman Lal	
159.	Shashi Rawat	Late Shri Balbir Rawat	
160.	Davki Banola	Late Anant Singh Banola	
161.	Bhram Pal	Late Shri Bhule Ram	
162.	Vinod	Shri Kashmiri Lalo	

8. The said application thus stated that the final list covered in the Industrial Dispute was as per the amended list of workers to the effect:

S.N o.	Name	Father's Name	Date of Joining	Salary
1	Jagdish	Nanne	11.02.2003	11400.00
2	Raju	Kalu Ram	01.03.1980	11400.00
3	Ramesh Chand (15)	Sohan Pal	01.01.1980	11400.00
4	Ramesh (Sup.)	Late Lohre	06.01.1982	12000.00
5	Ram Niwas	Shambhu Lal	07.04.1981	11400.00
6	Vinod Kumar (CC)	Som Dutt	15.06.1989	11400.00
7	Radhey Lal	Nanak Chand	01.11.2003	11400.00
8	Lallan Tiwari	Gauri Shankar	15.06.1987	11400.00
9	Bhogi Lal	Man Singh	16.06.1981	11400.00
10	Virender Singh	Tora Ram	26.03.1982	11400.00
11	Jagdir Singh	Sube Singh	01.01.1982	11400.00
12	Ali Jan	Chhuda Khan	01.06.1989	11400.00
13	Bal Mukand	Harihar Prasad	10.10.1980	11400.00
14	VS Ganeshan	V. Subramani	15.05.1982	11400.00
15	Sheesh Pal	Nanuha	01.07.1989	11400.00
16	Kali Charan	Nanha Singh	13.05.1990	11400.00
17	Naresh Kumar	Shri Shyam Lal	01.04.1984	11400.00
18	Ram Prasad	Nanuha	01.04.1990	11400.00
19	Shiv Shankar	Kalu Chand	17.10.1993	11400.00

20	Hari Kishan	Namraj	24.06.1986	11400.00
21	Ganga Das	Bansi Das	21.06.1981	11400.00
22	Padam Singh	Rattan Lal	08.11.1981	11400.00
23	Vijay Kumar	Hari Bajan	10.01.1990	11400.00
24	Ashok Kumar	Hemraj	20.06.1981	11400.00
25	Ranbir Singh	Mulayam Singh	01.01.1986	12000.00
26	Kishan Pal	Joravar	01.07.1987	11400.00
27	SP Singh	Jagbhadur Singh	25.11.1985	11400.00
28	AP Singh	Ghanshyam Pd. Singh	02.01.2001	11400.00
29	Ranbir Singh Ch.	JM Singh	01.04.1982	12000.00
30	Manoj Kumar	Lat. A Chitya	15.06.1982	12000.00
31	S Andawar	Subramaniam	15.06.1980	11400.00
32	Satish Kumar Suri	Jaswant Singh	29.10.1982	11400.00
33	Shankar	Laxman	01.07.1981	11400.00
34	Hari Singh	Late Suraj Bhan	15.06.1982	11400.00
35	Ram Veer	Ganesh	15.06.1982	11400.00
36	BP Singh	Lal Mohar Singh	01.01.1983	11400.00
37	Bhule Ram	Totla Ram	01.01.1980	11400.00
38	Kanta	Usi Masi	09.03.1981	11400.00
39	M Kandaswamy	Muthu	15.06.1980	11400.00
40	Mani Ram	Perumal	01.01.1980	11400.00
41	Mahesh Babu	Shri Ram Charan	03.11.1983	11400.00
42	Naresh Panwar	Panu	01.17.1980	11400.00
43	Panchi Lal	Late Jai Ram	17.02.1981	11400.00
44	Yasoda	Lt. Chanden Singh	15.06.1979	11400.00
45	V Bhomia	VV Villigiri	01.01.1980	11400.00
46	SN Roy	Ram Vilas Roy	01.01.1981	12000.00
47	Baleshwar Tyagi	Babu Ram Tyagi	01.07.1981	11400.00
48	Anil Massey	Lt. Banne Massey	01.12.1982	11400.00
49	Mohan Kumar	Jagat Singh	03.03.1981	11400.00
50	Mohan Lal	Raj Kumar	15.06.1980	11400.00
51	Ashok Chopra	Shri SP Chopra	15.06.1980	11400.00
52	Vinod Kumar Sharma	Kishan Chand	15.06.1980	11400.00
53	M Silva Raj	Muttu Virappan	24.07.1998	11400.00
54	Naresh Kumar	Malkhan Singh	15.06.1996	11400.00
55	Raghvinder Singh	Shri Mishri Lal	15.06.1982	11400.00
56	Tajwar Singh	Trilok Singh Rawat	15.06.1980	11400.00
57	S. Pandian	Lt. Shri Shankaran	01.05.1995	11400.00

58	Bablu	Lt. Sh. Bachha Yadav	15.06.1979	11400.00
59	Sant lal	Lt. Shri Nath	01.05.1982	11400.00
60	Sneh Jain	Lt. Shri VK Jain	09.10.1979	11400.00
61	Ram Pal	Mahuya Ram	15.06.1983	11400.00
62	Mahender Singh	Chidha Lal	15.06.1982	11400.00
63	Kishan Gopal	Lt. Kalka Gopal	15.06.1982	11400.00
64	NB Joshi	Sh. Chinta Mani Joshi	15.06.1982	11400.00
65	Raj Kumar	Lt. Ram Pat	28.11.1982	11400.00
66	Vikram	Chander Pal Singh+D142	15.06.1980	11400.00
67	Narayan Singh	Hira Singh	18.01.1981	11400.00
68	Udaibir Singh	Lt. Babu Singh	15.06.1979	11400.00
69	Ashok Kumar	Sh. Shiv Charan Lal	15.06.1982	11400.00
70	Rajesh Kumar	Sh. Murgesh	15.06.1979	11400.00
71	Joginder Singh	Sh. Mange Ram	15.06.1970	11400.00
72	Jaswant Singh	Lt. Sh. Ved Ram	15.06.1982	11400.00
73	Jagdish Chander	Sh. Tara Dutt	15.06.1980	11400.00
74	Girjanand	Sh. Hira Lal Vishkarma	15.06.1976	11400.00
75	Nand Lal	Sh. Chetu Nishad	15.06.1980	11400.00
76	Akbar	Shekh Kalu	15.06.1979	12000.00
77	Shakeena	w/o Shekh Akbar	15.06.1983	11400.00
78	ML Yadav	Roshan Lal	15.06.1980	12000.00
79	Deepak Kumar Mahto	Lt. Gopal Mahto	15.06.1983	11400.00
80	Surender Singh	Sh. Babu Singh	15.06.1980	11400.00
81	Prem Pal	Lt. Sh. Bhupi Ram	15.06.1979	12000.00
82	Narain Singh Bahura	Ghanshyam Bahura	01.05.1982	12000.00
83	M Murgeshan	Lt. Sh. Muthuswami	15.06.1982	11400.00
84	Khudi ram	Lt. Sh. Panchanand	01.01.1979	11400.00
85	RS Tyagi	Lt. Sh. AS Tyagi	10.06.1982	12000.00
86	Shyam Raj	Lt. K. Bhaskaran	08.07.1982	12000.00
87	Sheikh Mohmd.	Shri Shekh Akbar	01.01.1981	11400.00
88	Gokul Chand	Sh. Dhamodar Padhi	01.01.1982	12000.00
89	Chander Pal	Lt. Tika Ram	01.01.1980	11400.00
90	Satyaner Dev Pawar	Lt. VD Paawar	15.06.1980	11400.00
91	Rajender Singh Bisht	Pan Singh	04.06.1981	11400.00

92	Parmesh Tyagi	Lt. S. Swroup	15.11.1981	11400.00
93	Siri Chand	Ganda Lal	01.05.1980	11400.00
94	Umed Singh	Dev Dass	02.04.1982	11400.00
95	Ashok Tyagi	Lt. Rajinder Singh	01.05.1982	11400.00
96	Prabhu Dayal	Ram Piye	01.01.1992	11400.00
97	Vijay Pal Singh	Ram Ratan	01.05.1990	11400.00
98	VS Murgan	V. Subramani	06.06.1981	11400.00
99	Ratan Pal	Prem Singh	02.02.1982	11400.00
100	Dayachand	Lt. Ratan Singh	01.05.1988	11400.00
101	Rakesh	Lt. Sumer Chand	01.01.1981	11400.00
102	Naresh Kumar	Lt. Sh. Laxmi Narayan	01.01.1982	11400.00
103	Shyoraj	Kripal Singh	01.05.1979	11400.00
104	Ram Babu	Krishan Pal	02.04.1982	11400.00
105	Garib Chand	Jodha Ram	02.01.1982	12000.00
106	Ram Kumar	RG Singh	01.01.1979	11400.00
107	Ram Lal	Pashu Ram Sharma	01.05.1995	11400.00
108	K Shanmugam	Shri Kandswamy	15.06.1980	11400.00
109	Liyak Ali	Asrafali	15.06.1980	11400.00
110	Kali Charan	Shri Sabdi Ram	15.06.1980	11400.00
111	M Laxmi	w/o Lt. S. Murugan	24.07.1998	11400.00
112	Kamla Devi	Nand Lal	15.06.1996	11400.00
113	Soran Singh	Sh. Sabdi Ram	15.06.1982	11400.00
114	Prem Singh Yadav	Sh. Kalyan Singh Yadav	15.06.1980	11400.00
115	Suresh Chand	Shankar Lal	01.05.1995	11400.00
116	Balwant Singh	Harbans	09.10.1979	11400.00
117	Kailash Chand	Chhitarpal	15.06.1983	11400.00
118	Baleshwar Dayal	Shri Jhandu Singh	15.06.1982	11400.00
119	ID Prasad	Ram Sahaay Mehto	15.06.1982	11400.00
120	Mahinder Singh	Shri Kishanchand	28.11.1982	11400.00
121	Kiran Pal Singh	Lt. Hari Ram Singh	15.06.1980	11400.00
122	Krishan Chand	Shri Hari Om	18.01.1981	11400.00
123	Sulekh Chand	Ghyasi Ram	15.06.1979	11400.00
124	Balbir Singh Rawat	Lt. Trilok Singh Rawat	15.06.1982	11400.00
125	Prem Singh Ranna	Hoshiyar Singh Rana	15.06.1979	11400.00
126	Rakesh	Sh. Gaina Singh	15.06.1982	11400.00
127	Ram Kishan	Shri Sanna Ram	15.06.1980	11400.00

128	VS Murgan	V. Subramani	15.06.1980	11400.00
129	R. Nagenderan	Shri K. Ramaswamy	15.06.1983	11400.00
130	Gyan Singh	Shri. Khushyal Singh	15.06.1980	11400.00
131	Birender Kumar	Lt. Kidarnah	15.06.1982	11400.00
132	Nirakaar Dass	Lt. Birgidass	01.01.1979	11400.00
133	Ramesh Gupta	Lt. Moti Ram Gupta	10.06.1982	11400.00
134	Narayan Singh	Lt. Prem Singh	08.07.1982	11400.00
135	Bhuban Prasad	Lt. Raghu Singh	01.01.1981	12000.00
136	Umesh Kr. Singh	Lt. Chandeshwer	01.01.1982	11400.00
137	A.Mani	Lt. Rugam	01.01.1980	11400.00
138	Raj Pal Sehrawat	Lt. Rai Singh	15.06.1980	11400.00
139	Daya Ram	Ghenda Ram	04.06.1981	11400.00
140	Indira Lal	Ghasitasram	15.11.1981	11400.00
141	Chinta Mani	Lt. Gunanand	01.05.1980	11400.00
142	Ram Khiladi	Lt. Ram Dayal	02.04.1982	11400.00
143	Veer Pal	Lt. Chote Lal	01.05.1982	11400.00
144	MS Bhaskaran	Lt. S Satyar	01.01.1992	11400.00
145	Lakhi Ram	Lt. Bhadiya Ram	01.05.1990	11400.00
146	Raja Singh	Lt. Laxman Singh	06.06.1981	11400.00
147	Rajinder Singh	Lt. Khem Singh	02.02.1982	11400.00
148	Ramavtar	Sh. Chhatnu Ram	01.05.1988	11400.00
149	Harish Chand	Lt. Nanak Chand	01.01.1981	11400.00
150	Babu Lal	Lt. Kalidin	01.01.1982	11400.00
151	M Thriuvassugam	M. Muthumalayam	01.06.1980	11400.00
152	Jyanti	Naneh Lal	01.05.1979	11400.00
153	Somnath	Lt. Gathia	02.04.1982	11400.00
154	Veeru	Lt. VK Lal	02.01.1982	11400.00
155	Sukhveer Singh	Lt. Sukha Singh	01.01.1979	11400.00
156	Suresh	Chhantaru	01.05.1995	11400.00
157	Lalit Prasad	Girja Dutt	05.06.1982	11400.00
158	Ch. Mahinder Singh	Lt. Chaman Lal	01.01.1979	11400.00
159	Shashi Rawat	Lt. Shri Balbir Rawat	15.10.2001	11400.00
160	Davki Banola	Lt. Annat Singh Banola	20.10.2001	11400.00
161	Braham Pal	Lt. Shri Bhola Ram	18.10.1985	11400.00
162	Vinod	Shri Kashmiri Lal	01.01.1980	11400.00
163	Surender Pal Singh	Lt. Sh. Peetam Singh	03.03.1981	11400.00

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9. The petitioner submitted that vide this application, the Union had sought to delete the names of thirteen workers and to add seven workers in its place and this application was never allowed by the Conciliation Officer nor was there any amendment ever directed to be carried out. *Inter alia* the petitioner submitted that the application sought deletion in the list in which the name of one person Lalsa appeared twice and it was further submitted that in the amended list of workers submitted with the application for deletion/addition of names of the workers in the list of workers filed with the statement of claim serial no.73 was missing from the list and the name of Lalsa appeared at serial no.75 and 141 of the said list.

10. *Inter alia* the petitioner submitted that the President of the respondent's Union vide another application dated 23.03.2012 requested the Conciliation Officer to implead the names of the new contractors by the name of M/s. Aroon Aviation Services (Pvt.) Ltd. and M/s Oynx Management Services Pvt. Ltd. Through this application dated 23.03.2012, it was stated by the claimant/workers through Jagdish Prasad, President of the Delhi State General Workers Congress to the effect:

“It is stated that it is the BHEL who had initially engaged the claimant workers directly and after few years the workers were shown to have been engaged through its different agencies. It is also reiterated that the claimant workers were already working for the BHEL management when the present agencies of BHEL was engaged by the BHEL Management and the services of the claimant workers are continued without any break by the above management in-spite of the repeated change or the agents. After

the engagement of the present agencies by the management of BHEL, the claimant workers, who were earlier shown to have been engaged through the earlier agents i.e. M/s Goel Services are now shown to have been engaged through the new agencies namely M/s Aroon Aviation Services (Pvt.) Ltd. and M/s Oynx Management Services Pvt. Ltd., both c/o BHEL, BHEL House, Siri Forth, New Delhi-110049. (registered office)

That in order to facilitate the conciliation proceedings and to make it more meaningful, it is necessary that the present agencies of the BHEL through whom it has engaged the claimant workers, be also impleaded as party Respondents. Both the agencies have to be served at the address of the BHEL management.

In the premises mentioned above, it is most respectfully prayed that this Hon'ble commission be pleased to implead the present agencies of BHEL as party Respondents to the above conciliation proceedings."

and the petitioner submitted that the contractors are independent and have their own addresses as mentioned in the memo of parties of the present petition.

11. Vide notice dated 10.05.2012, the Assistant Labour Commissioner (Central) issued notice to the existing contractors i.e. M/s Oynx Management Services Pvt. Ltd. and M/s. Aroon Aviation Services (Pvt.) Ltd. apart from O.P. & Associates and M/s Goel Services.

12. M/s. Aroon Aviation Services (Pvt.) Ltd. submitted its written statement before the Assistant Labour Commissioner stating that it had recruited the claimant worker w.e.f. 01.07.2011 for the period of the contract. The petitioner has further submitted that the respondent

workmen vide their rejoinder dated 22.08.2012 submitted a further amended list of workers comprising 161 workmen.

13. The petitioner has further submitted that on a perusal of the records and after protracted discussion, the conciliation proceedings failed and the Office of the Regional Labour Commissioner thus submitted its report of failure of conciliation proceedings to the Secretary, Government of India, Ministry of Labour and Employment on 01.04.2013 and for the first time without allowing any application for deletion/addition of names of workmen, the cause title of the failure report was altered as follows:

"Sub: Industrial Dispute raised by Shri Udaibir Singh, Deepak Kumar etc. through Shri Jagdish Prasad, President, Delhi State General Workers Congress against the management of Bharat Heavy Electricals Limited and its contractors."

It has been submitted by the petitioner that such material alteration could not have been made in the final report without allowing addition/deletion of names and without accepting any particular list as the conclusive list before the Conciliation Officer. The petitioner further submitted that an office memorandum no.L-42011/55/2013 – IR(DU) dated 10.06.2013 was issued by the Under Secretary, Government of India, Ministry of Labour stating therein that upon consideration of the facts and circumstances of the case and the contention of the parties, it was proposed to refer the dispute to the Industrial Tribunal for adjudication on the following terms of reference:

"Whether the action of the management of B.H.E.L in not regularizing the employment of Shri Udaibir Singh and 163 others and engagement of the said workers through M/s. Aroon

Aviation Services Pvt. Ltd. and M/s. Oynx Management Services Pvt. Ltd., as per annexures, is legal and justified? To what relief the workmen are entitled to?”

It was also stated in the said adjudication proposal dated 10.06.2013 to the effect:

“M/o Heavy Industries & Public Enterprises are requested kindly to advise the management to settle the dispute amicably by discussion with the concerned union/workmen and/ or furnish their comments to this Ministry within a period of 30 days, failing which it will be presumed that they have no objection to the dispute being referred for adjudication.”

14. Vide order dated 25.07.2013 as already adverted to elsewhere hereinabove, the Central Government opined that an industrial dispute exists between the employers in relation to the management of BHEL House and their workmen and referred the matter to adjudication as already adverted to elsewhere hereinabove to the CGIT-cum-Labour Court.II.

15. The petitioner further submitted that apart from the factum that it was not served with any statement of claim with the notice calling upon him to appear before the CGIT, the cause title of the claim read as:

*“Shri Udaibair Singh & 163 others
C/o Sh. Jagdish Prasad,
President, Delhi State General Workers Congress,
8/425, Trilok Purl
Delhi-110091*

Versus

*1. The CMD
Bharat Heavy Electricals Ltd.,
BHEL House, Siri Fort, ,
New Delhi-49*

2. *M/s Arron Aviations Services Ltd.,
C/o Bharat Heavy Electricals Ltd.,
BHEL House, Siri Fort,
New Delhi-49*

3. *M/s Oynx Management Services Pvt. Ltd.
C/o Bharat Heavy Electricals Ltd.,
BHEL House, Ski Fort,
New Delhi-49.”*

16. The petitioner further submitted that whereas this first title at the stage of conciliation read as ‘Shri Udaibir Singh & 163 others’, the notice issued by the CGIT was issued to the petitioner in the name of Jagdish Prasad and Others. The petitioner submitted that the letter of authority filed along with the statement of claim does not bear the signatures of the workmen alleged to have been parties to the proceedings and the list of names furnished as claimants do not bear any particulars of the claimants, the nature of the jobs performed by them and the name of the contractor who was the employer of such workmen and there was material alteration and random deletion/addition of names resulting in huge variation even in the name of the workmen from the list that was submitted by the workmen/union which was annexed as Annexure-P to the petition with the names of the workmen at serial nos.1 to 164 being to the effect:

S.No	Name
.	
1	Udaibir Singh
2	Raju
3	Ramesh Chand (15)
4	Ramesh (Sup.)
5	Ram Niwas

6	Vinod Kumar (CC)
7	Radhey Lal Ranga
8	Lallan Tiwari
9	Bhogi Lal
10	Virender Singh
11	Jagdir Singh
12	Ali Jan
13	Bal Mukand
14	VS Ganeshan
15	Shesh Pal
16	Kali Charan
17	Naresh Kumar
18	Ram Prasad
19	Shiv Shankar
20	Hari Kishan
21	Ganga Das
22	Padam Singh
23	Vijay Kumar
24	Ashok Kumar
25	Ranbir Singh
26	Kishan Pal
27	SP Singh
28	AP Singh
29	Ranbir Singh Ch.
30	Manoj Kumar
31	S Andawar
32	Satish Kumar Suri
33	Shankar
34	Hari Singh
35	Ram Veer
36	BP Singh
37	Bhule Ram
38	Kanta
39	M Kandaswamy
40	Mani Ram
41	Mahesh Babu
42	Naresh Panwar

43	Panchi Lal
44	Yasoda
45	V Bhomia
46	SN Roy
47	Baleshwar Tyagi
48	Anil Massey
49	Mohan Kumar
50	Mohan Lal
51	Ashok Chopra
52	Vinod Kumar Sharma
53	M Silva Raj
54	Naresh Kumar
55	Raghvinder Singh
56	Tajwar Singh
57	S. Pandian
58	Bablu
59	Sant lal
60	Sneh Jain
61	Ram Pal
62	Mahender Singh
63	Kishan Gopal
64	NB Joshi
65	Raj Kumar
66	Vikram
67	Narayan Singh
68	Jagdish
69	Ashok Kumar
70	Rajesh Kumar
71	Joginder Singh
72	Jaswant Singh
73	Jagdish Chander
74	Girjanand
75	Nand Lal
76	Akbar
77	Shakeena
78	ML Yadav
79	Deepak Kumar Mahto

80	Surinder Singh
81	Prem Pal
82	Narain Singh Bahura
83	M Murgeshan
84	Khudi ram
85	RS Tyagi
86	Shyam Raj
87	Shekh Mohmd.
88	Gokul Chand
89	Chander Pal
90	Satyaner Dev Pawar
91	Rajender Singh Bisht
92	Parmesh Tyagi
93	Siri Chand
94	Umed Singh
95	Ashok Tyagi
96	Prabhu Dayal
97	Vijay Pal Singh
98	VS Murgan
99	Ratan Pal
100	Dayachand
101	Rakesh
102	Naresh Kumar
103	Shyoraj
104	Ram Babu
105	Garib Chand
106	Ram Kumar
107	Ram Lal
108	K Shanmugam
109	Liyakan Ali
110	Kali Charan
111	M Laxmi
112	Kamla Devi
113	Soran Singh
114	Prem Singh Yadav
115	Suresh Chand
116	Balwant Singh

117	Kailash Chand
118	Baleshwar Dayal
119	ID Prasad
120	Mahinder Singh
121	Kiran Pal Singh
122	Krishan Chand
123	Sulekh Chand
124	Balbir Singh Rawat
125	Prem Singh Ranna
126	Rakesh
127	Ram Kishan
128	VS Murgan
129	R. Nagenderan
130	Gyan Singh
131	Birender Kumar
132	Nirakaar Dass
133	Ramesh Gupta
134	Narayan Singh
135	Bhuban Prasad
136	Umesh Kr. Singh
137	A. Mani
138	Raj Pal Sehrawat
139	Daya Ram
140	Indira Lal
141	Chinta Mani
142	Ram Khiladi
143	Veer Pal
144	MS Bhaskaran
145	Lakhi Ram
146	Raja Singh
147	Rajinder Singh
148	Ramavtar
149	Harish Chand
150	Babu Lal
151	M Thriuvassugam
152	Jyanti
153	Somnath

154	Veeru
155	Sukhveer Singh
156	Suresh
157	Lalit Prasad
158	Ch. Mahinder Singh
159	Shashi Rawat
160	Davki Banola
161	Braham Pal
162	Vinod
163	Surender Pal Singh
164	Harish Kumar

17. The petitioner submitted that it filed an application dated 19.03.2014 before the CGIT for furnishing of better particulars including that of authorization by the listed persons in their favour and also sought therein that the claimant be directed to suitably amend the list of claimant workers in the statement of claim as filed in the conciliation proceedings. It was further submitted on behalf of the petitioner that however, the CGIT directed the workmen to file reply to the said application but directed the petitioner herein to file its written statement and in the absence of any detail being furnished by the respondent workmen, thus the petitioner was left with no option but to file a provisional written statement dated 30.04.2014 and sought to file a detailed written statement at an appropriate stage.

18. The petitioner has submitted that the claimants had deliberately manipulated the documents and had gone to the extent of even changing the names of the workmen in the conciliation proceedings and in the present reference and that the irregularities and illegalities were so manifest and arise out of an administrative order of which there can be no positive directions issued by the Labour Court and thus the petitioner

had filed the present petition in as much as the reference is patently illegal in the light of the conciliation proceedings which forms the very basis for initiation of an industrial dispute and there is an error apparent on the records of the failure report filed by the Conciliation Officer, wherein an incorrect list of workmen had been furnished, some of whom were never a party to the conciliation proceedings and that even the cause title of the Reference had been altered at the behest of the workmen without any rhyme or reason. The petitioner has thus submitted that the illegality is not only apparent but is bound to culminate in miscarriage of justice if the order of reference is not set aside.

19. The respondent no.166 arrayed to the present petition i.e. M/s Oynx Management Services Pvt. Ltd. who stated that it was an independent contractor of the petitioner supported the claim of the petitioner and submitted that there was an alteration in the name of workmen in the Memo of Parties in the original memorandum submitted before the ALC in the conciliation proceedings and the final list of names submitted by the ALC to the appropriate government with the failure report for making a reference and that the Conciliation Officer had not passed any order in favour of the workmen to amend the memo of parties and names of workmen and submitted that such alteration could not have been made in the final report without allowing deletion/addition of the names and without accepting any particular list as the conclusive list before the Conciliation Officer.

20. The counter affidavit of the respondent no.165 M/s Aroon Aviation Services Pvt. Ltd. was to similar effect and likewise supported

the contention of the petitioner to similar effect as of the respondent no.166 M/s Oynx Management Services Pvt. Ltd.

21. The respondent nos.167 to 168 to the present petition i.e. Union of India and the Secretary, Government of India, Ministry of Labour and Employment through the counter affidavit of Shri SK Das, Regional Labour Commissioner (Central) who is working with respondent no.168 stated vide para 1 & 2 of the counter affidavit to the effect:

“1. The workmen numbering 167 engaged by two contractors of Bharat Heavy Electricals Ltd. raised an industrial dispute against the management of BHEL on 13.09.2011 through Delhi State General Worker's Congress under the Industrial Disputes Act, 1947 before the-then Assistant Labour Commissioner(C) and Conciliation Officer claiming regularisation in the services of Bharat Heavy Electricals Ltd.

2.Although the list of the workmen raising the dispute contained the name of Sh. Jagdish Prasad at Sl. No. 1, the representation was signed by four workmen namely Sh. Udaybir Singh, Sh. Deepak Kumar, Sh. Mahendra Singh and Sh. Ramesh Kr. Gupta, all belonging to the Union, Delhi State Workers Congress. As such the title of the dispute was subsequently changed from Jagdish Prasad and others Vs. BHEL' to 'Udaibir Singh and others Vs. BHEL', as the same did not materially change the dispute or claim of the workmen in any way.”

and further submitted to the effect that:

5. The union thereafter submitted two applications both dated 23.03.2012 addressed to Conciliation Officer, which was received in the office on 23.03.2012, under the signatures of Sh. Udaibir Singh and 3 others. In one application the union requested for deletion of 13 workmen on the ground that they no more owed allegiance to the union and simultaneously requested to add 7 workmen on the ground that it was a typographical mistake on the part of the union not to have included their names in the list earlier

submitted by them. However, the consolidated list of workmen submitted by the union marked as 'Annexure A' to their application contained 164 names of the workmen. This is to add that in the list submitted by the union to the Conciliation Officer along with their application, the details of 164 workmen including their father's names, dates of joining and salary drawn were mentioned.

The Second application contained a request from the union to implead two contractors namely M/s Aroon Aviation Services (P) Ltd. and M/s Oynx Management Services Pvt. Ltd. as additional parties.

6. However, the conciliation officer had already issued a notice to M/s Aroon Aviation Services (P) Ltd. amongst others on 23.02.2012. Taking cognizance of the request of the union as mentioned above, the conciliation officer issued a notice also to M/s Oynx Management Services Pvt. Ltd. on 10.05.2012 amongst others.

22. *Inter alia* the counter affidavit for the respondent nos.167- 168 vide para-7, 8 & 9 states to the effect:

“7) Although it is not clear from the conciliation proceedings as to whether the union's application along with the list of 164 workmen were passed on to the management, generally during the conciliation proceedings the communications made by the parties are exchanged between them.

8) M/s Oynx Management Services Pvt. Ltd and M/s Aroon Aviation Services (P) Ltd. submitted their respective written statements in response to which the union submitted rejoinders enclosing there with a list of 161 workmen.

9) It is observed from the proceedings and the concerned file maintained by the then conciliation officer, different lists of workmen consisting of names of 167,164, 162, 163, 161 workmen have been submitted.”

23. *Inter alia* through the said counter affidavit submitted for respondent nos.167 & 168 vide para-10 thereof it was submitted to the effect that :

“10) Although there is no specific proceeding in regard to allowing the union for amendment of the list of 167 workmen initially submitted by them, the facts of the mention of the no. of workmen as 164 in the proposed terms of reference as well as in the 'subject' on the body of the report and also the submission of the list of 164 workmen with the report on FOC by the Conciliation Officer to the Government imply that the request of the union in this regard was acceded to by the Conciliation Officer. It may be mentioned here, that there was no other list submitted by the Conciliation Officer to the govt. which consisted 164 names. The objective of conciliation proceeding is to persuade both the parties to arrive at an amicable settlement. During the course of conciliation, the parties submit their respective points of view both in writing as well as orally. The Conciliation Officer is often not in a position to record each and every statement made by the parties during conciliation. There is no specific proceeding about impleading additional parties in the dispute, but having taken cognizance of the request of the union, the two contractors namely M/s Oynx Management Services Pvt. Ltd. and M/s Aroon Aviation Pvt Ltd. had been included as parties and notices were issued to them.”

24. The respondent nos.167 to 168 had further submitted through parawise reply to the petition to the effect that:

“The allegations levelled by the petitioner in this paragraph are true only to a very limited extent. The dispute between the management of BHEL and its workmen revolves around the issue of regularization of their services in the company as they have been working in the organization through contractors for years. The moot question to be decided in the dispute is whether the workmen deserve to be regularized. On this core issue the petitioner did never come out with clear submissions either during the course of conciliation or afterwards in the CGIT in as much as in this instant writ petition there is no whisper from the side of the petitioner about the claim of the workmen for regularization. Assuming but not admitting that the list of 164 workmen submitted by the-then Conciliation Officer to the Government with the report on Failure of Conciliation (FOC)

and thereafter by the Government to the CGIT is wrong, the petitioner has not mentioned anywhere in this W.P. as to what exactly was wrong in the list of workmen or as to what should have been the correct number of workmen with their details. The petitioner also preferred not to provide the correct list it wanted to rely on even to the CGIT. Further, in the instant petition the petitioner has pointed out just two irregularities observed by it in the list of workmen that the name of one workman has been mentioned twice at SI. No. 75 & 141 in the list containing the names of 168 workmen and further that the SI. No. 73 is missing in the same list. However, as this list was not considered finally by the Conciliation Officer as is evident from the report on Failure of Conciliation submitted by the Conciliation Officer to the Government, there appears to be no reason for the Petitioner to raise this issue. Thus it is crystal clear that the petitioner has not come with clean hands in filing this Writ Petition before this Hon'ble Court. It is also clear that the petitioner did not deliberately want the lapse, if any, on the part of the conciliation officer to be corrected and as such refrained from submitting the correct list of workmen to the conciliation officer. Had the petitioner submitted the same before the conciliation officer, this litigation would not have at all arisen.

The Government before referring the dispute for adjudication to Industrial Tribunal had even vide their letter no.L- 42011/55/2013-IR(DU) dated 10.06.2013 (marked as Annexure P-10 in the W.P. by the Petitioner) conveyed the proposed terms of reference to the petitioner for their comments meaning thereby the petitioner had an opportunity to raise the issue as has been raised in this petition at that point of time which could have prevented this litigation from arising. The list of workmen not being objected to by not communicating anything whatsoever to the Government at that time, the list was genuinely deemed to have been accepted by the petitioner. The illegalities and irregularities as alleged to have been perpetuated by the respondents do not hold base as through submissions, depositions, etc. and by leading evidence in the tribunal the discrepancies, if any, could have been removed. The

CGIT is well within its powers to change only a few of the names say 2 or 3 in a list of about 164 workmen through depositions and evidences while deciding the moot terms of reference on the issue of regularization of such a huge no. of workmen. Such a small change on the part of the Tribunal would not have amounted to changing the terms of reference. The whole exercise by the petitioner through this petition appears to have been done only in order to deviate from the main issue and delay dispensation of justice to the poor workmen.”

25. The said respondent nos.167 to 168 have further placed reliance on the verdict of this Court in WP (C) 12602/2006 dated 24.09.2008 to contend that a mere reference under Section 10(1) of the ID Act, 1947 does not affect anyone's right and no writ petition ordinarily can be entertained against the mere reference under Section 10(1) of the ID Act, 1947 and as such the petition is premature and that a writ petition lies only when the rights of some party had been adversely affected. Reliance was also placed on behalf of the respondent nos.167 to 168 on the observations of the Hon'ble Surpeme Court in the case ***DP Maheshwari Vs. Delhi Administration and Ors. AIR 1984 SC 153*** wherein it was observed to the effect that:

“It was just the other day that we were bemoaning the unbecoming devices adopted by certain employers to avoid decision of industrial disputes on merits. We noticed how they would raise various preliminary objections, invite decision on those objections in the first instance, carry the matter to the High Court under Art. 226 of the Constitution and to this Court under Art. 136 of the Constitution and delay a decision of the real dispute for years, sometimes for over a decade. Industrial peace, one presumes, hangs in the balance in the meanwhile. We have now before us a case where a dispute originating in 1969 and referred for adjudication by the Government to the Labour

*Court in 1970 is still at the stage of decision on a preliminary objection. There was a time when it was thought prudent and wise policy to decide preliminary issues first. But the time appears to have arrived for a reversal of that policy. We think it is better that tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. **Nor should High Courts in the exercise of their jurisdiction under Art. 226 of the Constitution stop proceedings before a Tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under Art. 226 of the Constitution nor the jurisdiction of this Court under Art. 136 may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill afford to wait by dragging the latter from Court to Court for adjudication of peripheral issues, avoiding decision on issues more vital to them. Art. 226 and Art. 136 are not meant to be used to break the resistance of workmen in this fashion.***

(emphasis supplied)

26. Apart from refuting the contention of the petitioner that the claim of the workmen was barred by *res judicata*, the respondent nos.167-168 denied that the statement of claim of the workers was not submitted with due authority submitting to the effect that the workmen vide letter dated 02.09.2011 in the letterhead of the Delhi State General Worker Congress authorized their union represented by Shri Jagdish Prasad to espouse their case. The respondent nos.167-168 had further stated that the oral cause title before the Conciliation Officer qua the dispute was 'Sh. Jagdish & Others' and the cause title mentioned in the FOC was 'Udaibir Singh & Others' which cause title was changed by the Conciliation Officer as signatories to the initial application and

subsequent correspondences bore the signature of Shri Udaibir Singh and two others although the name of Shri Jagdish Prasad was mentioned at serial no.1 in the list of workmen and it was submitted on behalf of the respondent nos.167-168 that the change of the cause title as mentioned did not materially change the substance of the dispute in any manner whatsoever.

27. *Inter alia* the respondent nos.167-168 further stated through the counter affidavit that the proposed terms of reference along with all enclosures was sent to the petitioner by the Ministry of Labour, Union of India vide letter no.L-42011/55/2013-IR(DU) dated 10.06.2013 and there was an opportunity to the petitioner to raise objection, if any, by responding to that letter and by the fact that the petitioner did not at that stage avail of the opportunity this aspect could not be now availed vide the writ petition.

28. *Inter alia* it was submitted by the Regional Labour Commissioner (Central) vide his affidavit dated 05.12.2014 submitted on behalf of the respondent nos.167-168 to the effect that the terms of the reference were not needed to be changed and what may be required to be changed to a very limited extent is the list of workmen and such a minor change in the list of workmen is well within the powers of the Labour Court to carry out by leading evidence.

29. The respondent nos.1-164 through the counter affidavit of the respondent no.51 Shri Ashok Chopra refuted the contentions of the petitioner submitting to the effect that the petition is barred by laches in as much as the impugned reference had been made on 10.06.2013 and

the petition had been filed after gap of a year after completion of proceedings before the industrial adjudicator.

30. *Inter alia* the respondent nos.1-164 submitted that even M/s. Aroon Aviation Services (Pvt.) Ltd., one of the agencies of the petitioner management had not raised any dispute as regards the discrepancies in the list of workmen filed with the statement of claim. The respondent nos.1-164 thus submitted that there was duplication of names in the list of workmen filed with the statement of claim and with the permission of the ALC, the workmen had filed the correct list as under:

Name of the person	Father's name	Serial Nos.	Submission
B.P. Singh	Lal Mohar Singh	37 & 137	S.No.137 was duplicate
Birendra Kumar	Kedar Nath/ Kidarnath Gupta	86 & 135	S.No.135 was duplicate therefore deleted in the amended list and correct workman name is at S.No.131
Ishwar Deen	Devi Charan/Devicharan	95 & 163	Deleted in the amended list as not interested
Ram Babu	Krishan Lal/Kishori Lal	104, 142 & 76	S.No.142 & 76 deleted in the amended list.
Krishan Chand	Hari Ram	102 & 153	S.No.153 deleted in amended list & S.No.102 correct name at S.No.122
D.K. Tyagi/Devender Kumar Tyagi	Salekh Chander/Chandra	99 & 150	Both the names have been deleted in the amended list.
I.D. Prasad/Inder Dev Prasad	Ram Saneh/ Saney Mahato	98 & 160	S.No.160 deleted in the amended list.
Baleshwar Dayal	Late Jhandu Singh	97 & 161	S.No.161 was duplicate therefore deleted in the amended list.

			Workman name is at S.No.118
Lalsa/Lalsah	S.N. Upadhay	75 & 141	Both numbers deleted in the amended list.
Ram Kumar	Raghvinder Singh/ Late Raghuv Singh	87 & 125	S.No.125 was duplicate therefore deleted in the amended list and correct workman name is at S.No.106
Mahinder Singh/ Mahender Singh	Kishan Chand	100 & 151	S.No.151 was duplicate therefore deleted in the amended list and the name now exist at No.120

31. The respondent nos.1-164 thus submitted that errors in the original list were thus rectified in the amended list that was filed on 23.03.2012 with 163 names of workmen and since there was a photocopying error in the list, the workmen were compelled to file another correct list and since the name of Harish Kumar had erroneously got deleted while preparing the list dated 23.03.2012, the fresh list had been filed including that name also thus totalling to 164 workmen and thus it was submitted by the respondent nos.1-164 that there was no illegality in the said list. *Inter alia* the respondent nos.1-164 also submitted that the notice dated 13.09.2011 referred to the name of Jagdish as having the first workman in the statement of claim and Shri Udaibir Singh was also a party at S.No.92 and that in the reference dated 25.7.2013 the name of Udaibir Singh was mentioned only because Udaibir was the first signatory amongst the five workmen who were authorized to sign the statement of claim.

32. To the counter affidavit of the respondent no.167-168, the petitioner submitted that the core issue remains that there was a gross

discrepancy in the names in the various lists as a consequence of which the authenticity of the claimants cannot be determined which was brought forth through the counter affidavit of the respondent no.166 M/s Oynx Management Services Pvt. Ltd. The petitioner also submitted that the factum of irregularities and inconsistency in the various list of workmen with varying stages showing names of workmen to be 167, 164, 162, 163, 161 itself indicated the irregularities and inconsistency in the reference and that the theory of implication is not permissible to contend that the Conciliation Officer had taken the amended list impliedly on the record and it was thus submitted on behalf of the petitioner that a deliberate fraud had been perpetuated by the workmen and sought to place reliance on the verdict of the Hon'ble Supreme Court in ***Chengalvaraya Naidu (Dead) by LR's Vs. Jagannath (Dead) by LR's and Ors. AIR 1994 SC 853*** to contend that fraud or concealment of facts by a party at whatever stage vitiates the entire proceedings. *Inter alia* reliance was also placed on behalf of the petitioner on the verdict of Hon'ble Supreme Court in ***MCD Vs. State of Delhi & Anr. 2005 SCC (Crl.) 1322*** to submit that where a litigant withholds a vital document or suppresses the material facts in order to get an advantage in the case, the case can be summarily thrown out at any stage and that thus the respondent nos.1-164 were not entitled to any relief. The petitioner has further submitted that discrepancies in the list of workmen are to the effect:

“CHANGE OF CAUSE TITLE

Notice from the RLC in conciliation proceedings dated 13.9.2011 bears the cause title Jagdish & Ors. Vs. BHEL &

Ors.. Annexure PI to the Statement of Claim bears a list of Petitioners with SI. No. 1-16 Report of failure of conciliation dated 1.4.2013 (Page 93), Office Memorandum dated 10.6.2013 (Page 107) and notice and Statement of Claim in ID No. 94/2013 (page 110-124) reads as Udaibir Singh & 163 Ors. Vs. CMD BHEL & Ors. (Page 110).

b. In the first list attached with the conciliation proceedings, LIST-A, at Page 42 of the present petition, SI. No. 73 is missing. Thus, total number of claimants is 167 and not 168.

c. In LIST -A, there are various names that appear twice or even thrice. The names of such persons with the SI. No. is mentioned as under:

Name of the person	Father's name	Serial Nos.
B.P. Singh	Lal Mohar Singh	37 & 137
Birendra Kumar	Kedar Nath/ Kidarnath Gupta	86 & 135
Ishwar Deen	Devi Charan/Devicharan	95 & 163
Ram Babu	Krishan Lal/Kishori Lal	104, 142 & 76
Krishan Chand	Hari Ram	102 & 153
D.K. Tyagi/Devender Kumar Tyagi	Salekh Chander/Chandra	99 & 150
I.D. Prasad/Inder Dev Prasad	Ram Saneh/ Saney Mahato	98 & 160
Baleshwar Dayal	Late Jhandu Singh	97 & 161
Lalsa/Lalsah	S.N. Upadhay	75 & 141
Ram Kumar	Raghvinder Singh/ Late Raghuveer Singh	87 & 125
Mahinder Singh/ Mahender Singh	Kishan Chand	100 & 151

d. Since, there are Twelve names that repeat itself in LIST A, the effective number in the List remains as $167-12=155$.

e. In the application filed by the Claimants for addition/deletion of names of workers at Annexure P-4, no order allowing impleadment was passed. The application was never allowed. This has been admitted by the Respondent in the Counter Affidavit. Yet, the I.D. bears the names of such persons. Thus, the Reference is not maintainable in its present form.

f. Together with the application at Page 60, two amended lists were filed which is denoted as LIST-B. First list has SI. 1-163 and the Second list has SI.1-164 (Page 62-67) and typed list (Page 68-74).

g. As per the list for deletion at Page 60, the name of 13 persons was requested for deletion, but, effectively, it relates to 12 persons. The name Lalsa/Lalsha appears twice, as pointed out earlier.

Thus, $155 - 12 = 143$

h. As per the list requesting for addition, at Page 60, the name of 7 persons was requested for addition. Thus, the total number of claimants in the event of application for deletion/addition having been allowed would have been $143 + 7 = 150$.

i. In the two amended lists referred at Page 62 to 67, Five additional names have been included, which was not even a part of the amendment application.

At SI. No. 73 - Jagdish Chander

At SI. No. 75 - Nandlal

At SI. No. 141- Chinta Man

At SI. No. 163- Surender Pal Singh

At SI. No. 164- Harish Kumar

j. The application seeking addition/deletion is dated 23.3.2012 (Page 60) and the rejoinder filed by Claimant is dated 22.8.2012. Even in the rejoinder, certain names have been altered. Admittedly, therefore, since no Order for addition/deletion was passed, an attempt was again made for manipulation of names. Together with this rejoinder, a third list was filed, namely, LIST-C which contains SI.No.1- 161. There is again a difference of names between LIST-A, B & C as follows:-

LIST -A	LIST- B	LIST-C
Sl.Nos.	Sl.Nos.	Sl.Nos.
35. Hari Singh	34. Hari Singh	Name Absent
145. Naresh Kumar	54. Naresh Kumar	Name Absent
98. I.D. Prasad	119. I.D. Prasad	Name Absent
113. A. Mani	137 A. Mani	Name Absent
Name Absent	Name Absent	134. Ajay Prakash
118. Chinta Mani	141. Chinta Mani	Name Absent
Name Absent	Name Absent	160. Ram Lal
48. Thakur Das	Name Absent	161. Thakur Das

k. As per the application at Page 60, the prayer was for addition of the following names, which was never allowed, however, these names also appear in the I.D.

66. Vikram

157. Lalit Prasad

158. Ch. Mahinder Singh

159. Shashi Rawat

160. Devki Banola

161. Brham Pal

162. Vinod

l. The name Udaibir Singh at SI. No. 92 of LIST-A (Page 42), SI. No. 68 LIST-B (Page 66) has been named as the Petitioner

No.1 in the ID and the name of Jagdish, i.e. the original Petitioner has been put at Sl. No. 68 of ID.

m. Thus, there is a difference of about 27-30 names in the present I.D from that of the List that was filed by the Claimants along with the Statement of Claim for Conciliation (page 41-44), which also is full of irregularities as pointed out above.”

33. *Inter alia* it has been submitted on behalf of the petitioner that there can be no amendment/rectification of the list before the CGIT because it is a settled legal principle that neither the Labour Court nor the Tribunal can amend or alter the terms of reference in any manner and it was immaterial whether the amendment sought in the term of reference was big or small and it is also a settled legal principle that no prejudice or bias can be caused to any party to the dispute in the name of dispensation of justice and it was submitted by the petitioner that the list of incorrect workmen was being attempted to be thrust upon the petitioner in any manner whatsoever without even verification of the list which was a gross illegality which needs to be redressed. *Inter alia* the petitioner denied that any list or enclosure was sent with letter dated 10.06.2013 to it with the proposed terms of reference.

34. Vide order dated 09.10.2014, the proceedings before the CGIT had been stayed till further orders.

35. During the course of present proceedings, CM APPL.47013/2017 was filed on behalf of the respondent nos.1-164 under Section 151 of the CPC, 1908 seeking directions to the petitioner to pay the wages of respondents/workers which were withheld from 01.07.2017 and to continue to pay the same during the course of the pendency of the industrial dispute submitting to the effect that the matter being reserved

in the present petition, the respondents/workers have been unable to get any relief from the Labour Officer vide their proceedings dated 25.09.2017 and 16.11.2017. *Inter alia* it was submitted through the said application on behalf of the respondent nos.1-164 that during the last 40 years, the petitioner/management had changed its contractor and it had ensured that the incoming contractor did not terminate the services of the workmen and that a clause had been inserted in the tender to the effect that the successful contractor would have to retain all existing contract workers under new job contracts but that in the tender floated on 19.04.2017 for Delhi and Noida offices, the clause pertaining to retention of the services of the respondent workmen had been maliciously deleted and the new contractor who had come to the work site w.e.f. 01.07.2017 did not allow the workers to join as they were asked to sign on a set of papers including an application for temporary appointment addressed to the new contractor namely Orion Security Solutions Pvt. Ltd. which contained various clauses which were totally contrary to the present terms and conditions of their service and were not only adverse to the interest of the workmen but were also illegal. It was sought through the said clauses by new contractor that:

- a. That the workmen are agreeable to get minimum wages only despite the fact that these workmen are working for over 3-4 decades continuously and are presently getting more than the minimum wages;*
- b. That the workmen are asked to give an undertaking that their appointment is purely temporary for a period of 6/3 months, despite the fact that these workmen are working for the last many decades for BHEL despite repeated change of contractor.*

36. *Inter alia* it was submitted on behalf of the respondent nos.1-164 that the workmen were not allowed to sign the said papers after making the necessary deletions therefrom and also after recording that they were signing without prejudice to their rights and contentions raised in different Court cases. It is also submitted by the said respondents that some of the workmen i.e. 10, 64, 73, 105, 108-118, 120-126 and 129 could not arrange for funds and were thus forced to agree for the purpose of their survival. The respondent nos.1-164 thus submitted that this action of the petitioner/management of changing the terms and conditions of services of the respondents/workers and by not allowing them to work and by making them work on holidays was illegal, malafide and motivated to frustrate the respondent/workers and thus sought the relief or direction to the BHEL to pay the wages of the workers allegedly withheld illegally w.e.f. 01.07.2017 and to continue to pay the same. The said application was vehemently opposed on behalf of the petitioner submitting to the effect that no such order can be passed thereon.

37. On a consideration of the rival submissions, though undoubtedly, it is apparent as brought forth through the counter affidavit/ counter reply filed on behalf of the respondents No. 167 and 168 i.e. the Union of India, through the Office of the Regional Labour Commissioner (Central) and the Secretary, Government of India, Ministry of Labour and Employment, respectively, as submitted through the counter affidavit of Mr. S.K.Das, Regional Labour Commissioner (Central), dated 5.12.2014 that there are some discrepancies in the list of workmen as submitted initially to the Conciliation Officer and the

subsequent list of 164 workmen with a report on the FO(C) by the Conciliation Officer, coupled with the factum that it has been stated as indicated vide paragraph 9 of the said affidavit of the Regional Labour Commissioner (Central) vide paragraph 9 thereof that different lists of workmen consisting of names of 167/164/163/162/161 workmen had been submitted, yet it cannot be overlooked that in the subsequent reference of the dispute to the Industrial Tribunal as had been proposed vide letter No. L-42011/55/2013- IR(DU) dated 10.6.2013 submitted as annexure P-10 to the writ petition also by the petitioner, the Government had put forth the annexure to the proposed reference and that the petitioner thus had liberty to raise the issue as raised in the present petition. The list of workmen with the proposed terms of reference having not been objected to by the petitioner at that stage as has rightly been contended by the respondent No. 167-168 is deemed to have been accepted by the petitioner.

38. In any event as brought forth through the counter affidavit submitted on behalf of the respondents No.1 to 164 as well as submitted on their behalf by the respondent No. 51 Sh. Ashok Chopra as has already been adverted to elsewhere herein above, the final list before the Conciliation Officer had 164 names and the list attached to the reference also has 164 names. As regards the contention of the petitioner as per ground m of the rejoinder to the counter affidavit of the respondents No. 1 to 164 through paragraph 3 that there is a difference of about 27 to 30 names in the present industrial dispute from that of the list that was filed by the claimants along with the statement of the claimant for conciliation, taking into account the factum that the

workmen had filed an application for amendment of the list of workmen on record though no formal order on the same was passed by the ALC, admittedly, the final reference made by the Government i.e. respondent No. 167 is on the basis of the amended list. As rightly contended on behalf of the respondents No. 167 and 168, the veracity of the claims of the respondents now arrayed to the writ petition as 1 to 164 as being those workmen in relation to whom the reference was made vide order dated 25.7.2013 of the Central Government under Section 10(1) (d) (2A) of the ID Act, 1947, relates to the reference made as per the schedule to the said order dated 25.7.2013 as to whether the action of the management of the BHEL in not regularizing the employment of Sh. Udaibir Singh and 163 others and engagement of the said workers through M/s Aroon Aviation Services Pvt. Ltd. And M/s Onyx Management Services Private Limited as per the annexure annexed to the said reference was legal and justified and to what relief the workmen are entitled has undoubtedly to be adjudicated by the Industrial Tribunal and all objections in relation to their claims as raised by the petitioners can be adjudicated upon by the Industrial Tribunal. The factum that the petitioner is aware of the list annexed as the annexure to the reference made by the Central Government, thus provides, ample opportunity to the petitioner to raise its contentions before the Industrial Tribunal in relation thereto.

39. Undoubtedly, in terms of Section 10 (4) of the Industrial Disputes Act 1947, it has been provided to the effect:

(4) Where in an order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this

section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, the Labour Court or the Tribunal or the National Tribunal, as the case may be shall confine its adjudication to those points and matters incidental thereto.”

40. It is thus ordained that the Labour Court or the Tribunal or the National Tribunal, as the case may be, has to confine its adjudication to those points and matters incidental thereto in a reference made of an Industrial dispute or in a subsequent order where the appropriate Government has specified the points of dispute. The contention submitted on behalf of the petitioner that the varying lists submitted by the workmen before the Conciliation Officer taking into account the factum that the application for amendment had not been explicitly allowed vide a written order by the ALC cannot be taken into account by the Industrial Tribunal, cannot be accepted, for ultimately the reference that has been made to the Industrial Tribunal is in relation to the annexures annexed to the reference made.

41. ***Apparently and essentially the Industrial Tribunal would thus confine itself to the reference made in relation to the list attached to the reference made and not beyond. Since it is the final list annexed with the reference, the amendments sought by the workmen before the Conciliation Officer have essentially to be deemed to have been allowed.***

42. The other aspect that cannot be overlooked significantly is that it is not that the scope or ambit of the reference made to the Industrial Tribunal vide the order dated 25.7.2013 that is sought to be expanded

by the Central Government in any manner and rather all that has been done is that the proposed amended lists submitted by the workmen as being the list of 164 persons i.e. Sh. Udaibir Singh and 163 others as per the annexure attached to the reference is the dispute that has been referred to the CGIT-cum-Labour Court-II and the said details in view of the proposed reference having already been sent to the petitioner, the petitioner has not been taken by any surprise despite the contention of the petitioner that there was no annexure attached to the proposed office memorandum dated 10.6.2013 in as much as nothing prevented the petitioner from seeking that the annexure attached to the proposed reference be supplied.

43. Furthermore, in the facts and circumstances of the instant case where the reference was made on 20.7.2013 with the number of years that have elapsed therefrom, as rightly contended on behalf of the respondents No.1 to 164 they would be put to great prejudice if the aspect of determination of the list of workmen is now remanded back to the Conciliation Officer. **In the facts and circumstances of the instant case thus it is the reference which has been made by the appropriate authority, i.e., the Central Government, vide order dated 25.7.2013 with the annexure annexed thereto that is the scope and ambit of the reference that has been made which is to be adjudicated upon by the CGIT-Labour Court-II and the list attached to the reference shall be deemed to be the list of workmen in relation to which the dispute has been referred to in the facts and circumstances of the instant peculiar case as also taking into**

account the lapse of time since the date of the reference i.e. 25.7.2013.

44. As laid down by the Hon'ble Supreme Court in *D.P.Maheshwari V. Delhi Administration & Ors*; AIR 1984 SC 153, *Cooper Engineering Ltd. v. P.P. Mundhe* (1975) II LLJ 379 SC and in *National Council for Cement and Building Materials v. State of Haryana & Ors.*; (1996) II AD SC 594, pendency of the preliminary issues which take long years to settle with proceedings in the reference being stayed and thus the proceedings in the reference lying dormant for a long time in relation to a preliminary issue getting held up, - is an unhealthy and injudicious practice which delays the adjudication of the industrial disputes for the resolution of which an informal forum and a simple procedure has been devised for by the Industrial Disputes Act, 1947, with an object to keep them away from the dilatory practices of the Civil Courts.

45. **In view of the spirit of the judgments of the Hon'ble Supreme Court in *D.P. Maheshwari (Supra)*, *Cooper Engineering Limited (Supra)* and *National Council for Cement and Building Material (Supra)*, it is held that the substantial reference made vide order dated 25.7.2013 by the Central Government is the aspect where the action of the management or the BHEL in not regularizing the employment of the workmen engaged through M/s Aroon Aviation Services Pvt. Ltd. And M/s Onyx Management Services Private Limited which workmen have been described through the annexure attached to the reference was legal and justified and as to what relief they were entitled to. As to whether the workmen in the list**

attached to the reference are entitled to any such claim and whether they fall within the ambit of engagement through M/s Aroon Aviation Services Pvt. Ltd. And M/s Onyx Management Services Private Limited would be an aspect within the domain of the CGIT concerned.

46. In the facts and circumstances of the instant case, there is no ground for granting the prayers sought by the petitioner vide the writ petition No. 4119/2014 and consequently thus there is no ground for quashing the reference referred vide office memo dated 25.7.2013 No. L-42011/55/2013-IR(DU) as issued by the Under Secretary, Government of India, Ministry of Labour (Shram Mantralay) nor for quashing any consequential proceedings in ID No. 94/13 pending adjudication before the CGIT-cum-Labour Court-II. The petition and the accompanying applications filed with this petition are thus dismissed. The interim stay of proceedings before the CGIT-cum Labour Court-II directed vide order dated 9.10.2014 in relation to the ID No.94/13 is thus vacated.

47. The CGIT concerned is thus directed to proceed with the Industrial Dispute referred to it vide order dated 25.7.2013 and in the facts and circumstances of the instant case to deal with the dispute to be in relation to the workmen who are listed in the annexure to the said reference.

48. The parties to the present petition are thus directed to appear before the CGIT concerned in relation to ID No. 94/13 on 21.1.2019 at 2:30 p.m.

CM APPL.47013/2017

49. As regards the prayer made by the workmen vide CM No.47013/17 seeking a direction to the petitioner to pay to the respondent's workers i.e. respondent nos.1 to 164 wages allegedly withheld from July, 2017, the said determination also falls within the ambit of the Industrial Tribunal and the prayers in relation thereto as raised by the workmen through CM No.47013/17 filed before this Court may be raised before the CGIT, i.e., the appropriate forum in relation thereto, in view of the vacation of the stay of proceedings before the CGIT as directed herein above.

ANU MALHOTRA, J.

DECEMBER 29th, 2018/vm/SV/mk

