

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4230 OF 2015

National Union of Seafarers of India .. Petitioner
Vs.
Union of India & Ors. .. Respondents

Mr.V.P. Vaidya a/w. Mr. A.R. Belge I/b Salgaonkar & Co. for petitioner.

Mr.Jaydeep Deo, Advocate for respondent Nos.1 and 2.

Mr. Ankit Tripathi I/b FF and Associates for respondent No.3.

**CORAM : B.R. GAVAI &
N.J. JAMADAR, JJ.**

DATE : 23RD JANUARY 2019

P.C.

1 The petitioner has approached this Court being aggrieved by the order dated 13th August 2014 passed by respondent No.1 thereby rejecting the demand of the petitioner for referring the matter to the learned Central Government Industrial Tribunal for adjudication on the ground that there is no evidence with regard to the employer-employee relationship between the management and the contract workers, as stated in the Union's letter dated 21st January 2014, and as such, the dispute is devoid of merits and as such the dispute is not deemed fit for adjudication.

2 It is the case of the petitioner that though the members of their Union were, in fact, employed by respondent No.3, they were shown as

'contract employees' engaged through respondent No.4. It is also the contention of the petitioner that the work undertaken by them on the establishment of respondent No.3 was of perennial and permanent nature. The petitioner, therefore, vide letter dated 13th August 2013, raised a demand that the members of the Union, who were working for long period, should be regularized. Respondent No.3 rejected the claim of the petitioner vide communication dated 18th November 2013. The petitioner, therefore, addressed a letter dated 21st January 2014 raising the demand for regularization. The Deputy Commissioner of Labour admitted the conciliation proceeding for resolving the dispute. However, the conciliation proceeding failed. On failure of the conciliation proceeding, respondent No.1 has passed the impugned order.

3 The learned counsel for the petitioner submitted that by the impugned order, respondent no.1 has decided the dispute, observing that there does not exist any dispute. The counsel further submits that the said issue cannot be gone into by respondent No.1 and it has to be referred to the learned Central Government Industrial Tribunal ('CGIT') for adjudication. The learned counsel for respondent No.1 submits that respondent No.1 has rightly decided the matter and rejected the request for reference.

4 The issue is no more *res-integra*. It will be relevant to refer paragraph
13 of the judgment of the Apex Court in ***Telco Convoy Drivers Mazdoor
Sangh & Anr. Vs. State of Bihar & Ors.***¹.

“13 Attractive though the contention is, we regret, we are unable to accept the same. It is now well settled that, while exercising power under section 10(1) of the Act, the function of the appropriate Government is an administrative function and not a judicial or quasi-judicial function, and that in performing this administrative function the Government cannot delve into the merits of the dispute and take upon itself the determination of the *lis*, which would certainly be in excess of the power conferred on it by section 10 of the Act....”

5 We find that in the present case also, respondent No.1 has erred in deciding the dispute itself. It will be relevant to refer the observations in the communication, dated 13th August 2014, extracted below :-

“.....Therefore, the demand made by the Union cannot be said to be an industrial dispute between the management of SCI and the workers as there is total absence of any evidence of employer-employee relationship between the management and the contract workers named in the Union's letter dated 21st January 2014 and hence the dispute is devoid of merit and therefore the dispute is not deemed fit for adjudication.”

6 It could be seen that respondent No.1 has, rather than deciding as to whether there exist any industrial dispute between the management of SCI and the workers, has gone on to decide on the employer-employee relationship between the members of the petitioner Union and respondent No.3. We are of the considered view that this question could not have been

1 II CLR S.C. 699 dt. 28.04.1989

gone into by respondent No.1 as this issue can only be decided by the learned CGIT. We have taken into consideration the demands made by the petitioner before respondent No.3 and the reply of respondent No.3, and found that there exists a dispute between the parties and, as such, respondent No.1 ought to have made reference to the learned CGIT under Section 10(1) of the Industrial Disputes Act, 1947.

7 In view of above, the writ petition is allowed. The impugned order is quashed and set aside. Respondent No.1 is directed to refer the dispute in respect of the demands made by the petitioner by their letter, dated 21st January 2014 to the learned CGIT for adjudication in accordance with the provisions of Industrial Disputes Act, 1947. In view of the above facts, no order as to costs.

[N.J. JAMADAR, J.]

[B.R. GAVAI, J.]