

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1570 of 2018**

Krantikari Kamgar UnionPetitioner
versus
The Labour Enforcement Officer and anr.Respondents

Ms. Jane Cox i/b. Ms. Karishma Rao, advocate for the petitioner.
Mr. S. S. Deshmukh, advocate for respondent No.1.
Mr. Rahul Nerlekar, advocate for respondent No.2.

**CORAM : RANJIT MORE &
N. J. JAMADAR, JJ.**

DATE : 5th SEPTEMBER, 2019.

P. C. :

1. Heard learned counsel appearing for the respective parties.
2. By an order dated 3rd August, 2010, the Labour Commissioner, Dadra and Nagar Haveli, Silvassa, referred for adjudication to the Hon'ble Industrial Tribunal at Silvassa, the dispute concerning the workers employed in the factory of respondent No.2. The terms of reference was as under : -

“Whether the action of the Management of respondent No.2 in allegedly closing down its undertaking without observing the provisions of the Industrial Disputes Act, 1947 and subsequently refusing to concede the demands of workers, who have not accepted dues in full for reinstatement with full back wages and dues of

*R.2.00 Lakhs each for every completed year of service in lieu of reinstatement as per details contained in Annexure 'A' is legal and justified?
If not, to what relief the workman is entitled ?”*

3. Subsequently, the petitioner made representation dated 28th June, 2017, to the Labour Commissioner, Dadra and Nagar Haveli, Silvassa. In this representation, it was stated that the petitioner later on discovered that the 2nd respondent has re-started the same manufacturing activities in the same factory but with fresh workmen. In support of the contention of the petitioner, they relied upon a document annexed at “Exhibit-B” to the said representation.

4. In the above changed circumstances, it was the contention of the petitioner that it is necessary and in the interest of justice, that a corrigendum be issued to the original Terms of Reference so that this issue can be gone into and decided. It is the specific case of the petitioner that its grievance is a part of the same cause of action and the corrigendum to the earlier reference is required to avoid the multiplicity of proceedings and public expense. The petitioner, accordingly, requested respondent No.1 to amend the Terms of Reference in Reference Order dated 03.08.2010 and add the following :

“Whether M/s. Global Health Care Products has restarted manufacturing activities in the undertaking in

which the workmen concerned with the Reference were employed?

If so, whether the workmen concerned with the Reference should have been given an opportunity to the workmen whose services were terminated on the closure to offer themselves for re-employment have preference over other persons?

If so, to what relief are the workmen entitled?"

5. The Secretary of the petitioner received communication dated 28th September, 2017, from Labour Enforcement Officer. By the said communication, the petitioner was informed that the matter has already been referred to Industrial Tribunal and it is pending before it. The petitioner was further informed that it was open to the Union to approach the Hon'ble Tribunal and raise its grievances or/and challenge the jurisdiction and it is for the Industrial Court to decide as the matter has already been referred to the Court. This communication is challenged by petitioner in the present petition.

6. The simple grievance of the petitioner is that its representation requesting for issuance of the corrigendum and thereby amend and add the Terms of Reference in the earlier Reference Order was not gone into by respondent No.1-Labour Enforcement Officer and the representation was rejected on the ground that Industrial Tribunal has jurisdiction to deal with the issue raised in the petition.

7. Mr. Nerlekar, learned counsel for respondent No.2 opposed the petition. He submitted that the 1st Reference is at the stage of hearing and the reference sought under the impugned report is a fresh cause of action and, therefore that can be dealt with separately.

8. Mr. Deshmukh, learned counsel for respondent No.1, submitted that appropriate orders may be passed by this Court.

9. Having considered the rival submissions and having gone through the petitioner's representation and order passed thereon, we find merit in the petition. It was a simple request of the petitioner vide its representation to issue corrigendum to the earlier Terms of Reference. However, this request was rejected on the ground that the Industrial Tribunal has jurisdiction and that issue can be gone into by the Tribunal. The issue whether the reference has to be made or not is to be decided by respondent No.1. In the absence of reference by respondent No.1, the Industrial Tribunal cannot go into the merit of the issue. The order of respondent No.1-Labour Enforcement Officer that Industrial Tribunal has jurisdiction cannot be sustained. In our opinion, the Labour Enforcement Officer has not at all applied his mind to the facts and circumstances of the case. Whether reference can be made, corrigendum to the reference can be issued is purely the jurisdiction of respondent No.1-Labour

Enforcement Officer and, therefore, the impugned communication cannot be sustained.

10. In the light of the above, the impugned communication dated 28th September, 2017, passed by respondent No.1-Labour Enforcement Officer, is quashed and set-aside. The matter is remanded back to the Labour Enforcement Officer, who shall reconsider the petitioner's representation at Exhibit-F, page 39 to the petition and take appropriate decision in the light of the discussion made herein as expeditiously as possible and preferably within a period of four weeks from the date of receipt of this order. Ordered accordingly.

11. The writ petition stands disposed off.

[N. J. JAMADAR, J.]

[RANJIT MORE, J.]