

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 08.03.2019

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.NO.4505 OF 2019

AND

W.M.P.NO.5085 OF 2019

Roca Ranipet Labour Union
rep. By its Secretary, K.Raju
No.13A, Ambedkar Street
Navalpur, Vellore District.

.. Petitioner

- Vs -

1. Ranipet Labour Union
rep. By its Secretary
11, Mahatma Gandhi Road
Ranipet 632 401
Vellore district.

2. The Management of Roca Bathroom
Products Private Limited
Gandhi Road, Ranipet 632 401
Vellore District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the concerned records from the Industrial Tribunal, Tamil Nadu, Chennai, dated 5.2.2019 in I.A. No.6 of 2019 in I.D. Nos.3 & 29 of 2013 and quash the same as illegal, arbitrary and contrary to law and consequently direct the Industrial Tribunal, Tamil Nadu, Chennai 600104 to implead the petitioner Union as party respondent in I.D. Nos.3 & 29 of 2013.

For Petitioner : Mr.Balan Haridas

For Respondents: Mr.V.Prakash, SC, for
M/s.M.Karthikeyani for R-1
Mr.Anand Gopalan for
M/s.T.S.Gopalan & Co. for R-2

Reserved on	Pronounced on
05.03.2019	08.03.2019

ORDER

The petitioner, a Labour Union, aggrieved, by the order dated 5.2.19, passed by the Industrial Tribunal, Chennai, in I.A. No.6/19 in I.D. Nos. 3 and 29 of 2019, rejecting the interlocutory application for impleading the petitioner in the pending dispute, has filed the present petition.

2. The facts leading to the dispute are as under :-

The 1st respondent Union raised an industrial dispute on behalf of the workmen of the 2nd respondent factory at Ranipet and the same was referred for adjudication before the Industrial Tribunal, Chennai, in the abovesaid industrial disputes. According to the 1st respondent Union, the Management of the 1st respondent have been signing settlement with regard to wages and other conditions of service of the workmen for the last several decades and the last wage settlement was signed on 21.9.06, which had come to an end on 30.9.10. On coming to an end of the last wage settlement, a charter of demands was raised. It is relevant to point out that at the time when the charter of demands was raised, the 1st respondent was the only Union representing the workers of the 2nd respondent Management.

3. At that point of time, an election was held for electing the office bearers of the 1st respondent Union and in the election the present office bearers of the 1st respondent Union were elected. It appears that the newly elected office bearers did not continue the negotiations, but instead started litigating in order to press their demands against the 2nd respondent Management. However, many of the employees felt that the issue regarding wage revision, etc., could be settled through negotiations and amicably and, therefore, the conduct of the newly elected office bearers was questioned. Ultimately, the elected members of the 1st respondent Union did not like the dissent from its own members and, therefore, it resorted to expulsion of some employees from the membership of the 1st respondent Union. In the said circumstances, the expelled members formed their own Union and registered the Union under the Trade Unions Act bearing Registration No.1581/VLR. According to the newly formed Union, they had commanded a membership of 122 workers and on formation of the new Union, negotiated with the 2nd respondent Management and entered into a settlement dated 21.1.19 and the pending issues between the workmen and the 2nd respondent Management were settled on such settlement being reached. According to the petitioner Union, the majority of the employees accepted the terms of settlement.

4. While the matters stood thus, a charter of demands raised by the 1st respondent Union was pending consideration

before the Industrial Tribunal, Chennai, in the aforesaid industrial disputes and the petitioner Union, being concerned with the industrial dispute, as any outcome in the industrial dispute would affect the rights of the members of their Union, filed I.A. No.6/19 for their impleadment in the dispute. The 1st respondent Union opposed the impleading petition. The 2nd respondent Management did not file any counter. Ultimately, the Industrial Tribunal, by order dated 5.2.19, dismissed the impleading petition filed by the petitioner herein on the ground that the earlier I.A. No.4/18 was filed for impleading the same Union by the 2nd respondent Management, which was dismissed and, therefore, the second application for impleadment is not to be entertained. The Tribunal also found that the petitioner had not mentioned that their Union was recognised and how many members were there in their Union and, therefore, there was lack of bona fides on the side of the petitioner and on concluding so, the impleading petition came to be dismissed as not maintainable. As against the said order, the present writ petition has been filed by the petitioner Union.

5. Mr. Balan Haridas, learned counsel appearing for the petitioner vehemently contended that the petitioner Union has a right to be heard in the matter when it seeks to represent a sizeable number of workers of the 2nd respondent factory. According to the learned counsel for the petitioner, any decision by the Industrial Tribunal would have a bearing on the working conditions of the members of the petitioner Union as well and in such circumstances, it is imperative that the petitioner Union ought to be made a party and heard. Learned counsel submitted that the earlier impleading application in I.A. No.4/18 at the instance of the 2nd respondent Management had been dismissed, in which the petitioner Union was not a party and, therefore, the petitioner Union cannot be denied the benefit of being a party to the dispute. According to the learned counsel for the petitioner, when a decision was taken in I.A. No.4/18, in the then prevailing circumstances, the petitioner Union found it was not in interest of the workers to precipitate the matter or delay any final award being passed in the dispute. Such concession extended at that point of time by the petitioner Union cannot be held against the petitioner Union from seeking impleadment as the question of res judicata cannot be applied in industrial adjudication.

6. Moreover, learned counsel for the petitioner submits that the Union has also entered into a settlement on 21.1.19 and in case any award being passed on the service conditions of the workers, the settlement, as entered into between the petitioner Union and the 2nd respondent Management would be undone and the members of the petitioner Union would be bound by such award being passed by the Industrial Tribunal. Therefore, the law

requires and mandates that all the workers to be heard by the Tribunal in order to effectively implement the proposed award of the Tribunal.

7. According to the learned counsel for the petitioner, it is open to the Industrial Tribunal to decide all the incidental questions u/s 10 (4) of the Industrial Disputes Act. It is further submitted by the learned counsel for the petitioner that in the course of adjudication the Tribunal could also decide matters incidental thereto. For better clarity, Section 10 (4) of the Industrial Disputes Act is extracted hereunder :-

"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."

8. Learned counsel for the petitioner heavily relied upon Section 18 (3) (d) of the Industrial Disputes Act and submitted that once the Industrial Tribunal passed an award, it is binding on all workmen and in such event, it becomes mandatory that the petitioner Union is impleaded and heard in the matter before passing of the award as that alone would guarantee effective implementation of the award. For useful reference, Section 18 (3) (d) is extracted hereunder :-

"18. Persons on whom settlements and awards are binding.-

(d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part."

9. In support of his contentions, learned counsel for the petitioner placed reliance on the judgment of the Hon'ble Supreme Court in Hochtief Gammon - Vs - Industrial Tribunal, Bhubaneshwar & Ors. (AIR 1964 SC 1746) wherein the Hon'ble Supreme Court, in para-12 of the said order, has held that it is open to the Tribunal to add such other Unions as it may deem necessary for effective adjudication of the industrial dispute. For better appreciation, the relevant portion is extracted hereunder :-

"12. Reverting then to the question as to the effect of the power which is implied in S. 18 (3) (b), it is clear that this power cannot be exercised by the Tribunal so as to enlarge materially the scope of the reference itself, because basically the jurisdiction of the Tribunal to deal with an industrial dispute is -derived solely from the order of reference passed by the appropriate Government under S. 10 (1). What the Tribunal can consider in addition to the disputes specified in the order of reference, are only matters, incidental to the said disputes; and that naturally suggests certain obvious limitations on the implied power of the Tribunal to add parties to the reference before it, purporting to exercise its implied power under S. 18 (3) (b). If it appears to the Tribunal that a party to the industrial dispute named in the order of reference does not completely or adequately represent the interest either on the side of the employer, or on the side of the employee, it may direct that other persons should be joined who would be necessary to represent such interest. If the employer named in a reference does not fully represent the interests of the employer as such, other persons who are interested in the undertaking of the employer may be joined. Similarly, if the unions specified in the reference do not represent all the employees of the undertaking, it may be open to the Tribunal to add such other unions as it may deem necessary. The test always must be, is the addition of the party necessary to make the adjudication itself effective and enforceable? In other words, the test well be, would the non-joinder of the party make the arbitration proceedings ineffective and unenforceable? It is in the light of this test that the implied power of the Tribunal to add parties must be held to be limited."

10. Learned counsel drew the attention of this Court to para-17 of the order passed by a learned single Judge of this Court in Hindustan Petroleum Corporation ltd. - Vs - The Presiding Officer, Central Government Labour Court cum Industrial Tribunal (2008 (4) CTC 819), wherein this Court, in para-17 of the said decision, has held that under Section 18 (3) of the Industrial Disputes Act, an award is binding on all parties, the Tribunal has power to implead any party, which is proper and necessary to the dispute. For better appreciation,

para-17 of the said decision is extracted hereunder :-

"17. In the affidavit filed in support of the writ petition, in paragraph 7, a contention was raised that the impleadment of the workmen by the CGIT was erroneous and the HPCL reserved its right to challenge the said order at an appropriate stage meaning, after the Award was passed. In view of the said averment, the learned Advocate General argued that the CGIT has no power to implead any party and the dispute is only between the Trade Union and the Management and the individual workers have no right of say in collective industrial dispute. But, however, it is found from the prayer made in the present writ petition no such attack is made against the order dated 14.7.2004 made in I.A. No. 69 of 2004 and the certified copy of the I.A. order has also not been filed. Hence, they cannot be permitted to raise such an issue without proper pleadings. Even otherwise, under Section 18 (3) of the I.D. Act, when an Award is binding on a party, the Tribunal has power to implead any party, who is proper and necessary to the dispute. The power of the Tribunal to implead a new party has been approved by the Supreme Court vide its judgment in Hochtief Gammon v. Industrial Tribunal, Bhubaneswar, Orissa & Ors. (1964 (2) L.L.J. 460)."

11. Learned counsel for the petitioner drew the attention of this Court to certain observations of the Division Bench of this Court in the case of TUCS Ltd., Madras - Vs - S.Loganathan & Ors. (1986 (2) LLN 286) and contended that the petitioner herein is a proper and necessary party to the dispute and in the absence of the petitioner being heard in the matter, any award to be passed by the Industrial Tribunal would be ineffective and unenforceable. The relevant portion of the order is quoted hereunder :-

"6. It cannot be disputed that the two petitioners are "the persons affected," and we cannot deny them the right to invoke the writ jurisdiction of this Court if there is a warrant for it, impeaching the award of the second respondent. Before us, submissions were made by both counsel with reference to the provisions of the Act enabling representations on behalf of workmen. We need not necessarily resort to the provisions of the Act enabling the parties to agitate their rights either individually or through union. Even within the Act individual

workmen are enabled to agitate for their cause without reference to the union. So far as powers of this Court are concerned, they shall always be available at the instance of persons who stand affected by the decisions of an authority like the second respondent."

12. It is therefore submitted that as held by the Supreme Court, the Tribunal has power to implead any party to the dispute for effective adjudication. In this case, admittedly, the petitioner has 122 employees as members and they have also entered into a settlement with the Management on 21.1.19. Therefore, it stands to reason and logic that the petitioner has to be heard before concluding the adjudication of the dispute by the Industrial Tribunal. According to the learned counsel, there cannot be dual conditions of service, for workmen who are the beneficiaries of the award and for certain other workmen who have entered into settlement with the 2nd respondent Management. Such scenario would only result in conflict among workmen and, therefore, the scheme of the Industrial Disputes Act would only point to the fact that all interested workmen be made parties to the industrial dispute.

13. Per contra, Mr.V.Prakash, learned senior counsel appearing for the 1st respondent submitted that at the time of reference in the year 2013, the 1st respondent was the only union espousing the cause of all the workmen of the 2nd respondent establishment. According to the learned senior counsel, the decision of the Hon'ble Supreme Court in Hochtief Gammon's case (supra), relied on by the petitioner would have application only when the power of the Tribunal is recognised to add parties to the reference at the time of reference and not at the time of adjudication. Therefore, the decision rendered by the Hon'ble Supreme Court must be read in that context and the same cannot be applied in the present factual situation, where the petitioner Union was formed only in the year 2017, much after the reference, which was made in the year 2013 itself.

14. Learned senior counsel for the 1st respondent submitted that the petitioner Union is a puppet union of the Management and the union was setup in order to dilute the rights of the workmen and if the petitioner Union is impleaded as a party, it would only undermine the larger interest of the workmen of the 2nd respondent establishment. Besides, learned senior counsel for the 1st respondent submitted that once the petitioner union itself has undertaken before the Tribunal that they are not willing to be party in the proceedings in I.A. No.4/18 filed by the 2nd respondent Management, it is no more open to the same Union to file an application once again for their impleadment. According to the learned senior counsel, res judicata will also

operate in industrial adjudication and the parties cannot be allowed to go back on their own undertaking.

15. Learned senior counsel for the 1st respondent submitted that in fact, on behalf of the 2nd respondent Management, it was contended before the Industrial Tribunal that the settlement arrived at between the petitioner Union and the 2nd respondent Management dated 21.1.19 should be the basis for the award, in which event the right of the majority of the workers would be undermined, whose right, the 1st respondent Union has been espousing for over five decades. The facts and circumstances would clearly disclose that the petitioner Union is propped up and sponsored by the 2nd respondent Management and, therefore, they cannot be allowed to represent the workers in the dispute before the Industrial Tribunal.

16. Learned senior counsel for the 1st respondent also drew the attention of this Court that by entering into a settlement with the sponsored Union, viz., the petitioner herein, the 2nd respondent Management has committed unfair labour practice as envisaged u/s 25-T of the Industrial Disputes Act. He particularly drew the attention of this Court to the 5th Schedule, which enumerates unfair labour practice on the part of the employers and would draw reference to sub-section (c) of part-1 and sub-section (b) of part-2, which are extracted hereunder :-

"1. On the part of employers and trade unions
of employers

1. to interfere with, restrain from, or coerce, workmen in the exercise of their right to organise, form, join or assist a trade union or to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, that is to say-

* * * * *

(c) granting wage increase to workmen at crucial periods of trade union organisation, with a view to undermining the efforts of the trade union organisation.

2. To dominate, interfere with or contribute support, financial or otherwise, to any trade union, that is to say-

* * * * *

(b) an employer showing partiality or granting favour to one of several trade unions attempting to organise his workmen or to its members, where such a trade union is not a recognised trade union."

17. According to the learned senior counsel for the 1st respondent, such conduct on the part of the Management is liable to be taken to task towards penal action and in such circumstances, the petitioner Union, ought not to be made a party and rightly so the Industrial Tribunal rejected the application as being not maintainable.

18. Learned senior counsel relied on Section 18 (3) (b) and submitted that unless the parties are summoned to appear, the award is not binding on the petitioner Union. In the said circumstances, the right of the petitioner Union is not affected at all and, thus, the claim of the petitioner Union that they must have a say in the dispute is without substance and merit. For better appreciation, Section 18 (3) (b) is extracted hereunder :-

"18. Persons on whom settlements and awards are binding.-

* * * * *

[(3)] A settlement arrived at in the course of conciliation proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on--

* * * * *

(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] [Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause."

19. Learned senior counsel lastly relied upon the decision of a Division Bench of this Court in the case of MRF United Workers Union - Vs - Government of Tamil Nadu (2009 (4) LLJ 685 (Mad)) and submitted that unless an union is recognised, they have no right to be heard or call for negotiation. According to the learned senior counsel, the recognition of an union is provided under the 5th Schedule under sub-section (b), which is extracted above. In the absence of recognition, the Tribunal has rightly rejected the claim of the petitioner Union, which is not recognised at all and no proof of such recognition was admittedly placed before the Industrial Tribunal on behalf of the petitioner Union. This submission has been made by the learned senior counsel in response to the earlier submission made by the learned counsel for the petitioner that in private employment, the question of recognition of any union does not arise at all, since no such requirement, is provided under any

enactment for granting recognition. In the decision relied on by the learned senior counsel in MRF's case (supra), the Division Bench of this Court has held that the recognition of an Union could be seen in various statutory provisions, including u/s 25-T of the Industrial Disputes Act. Therefore, learned senior counsel submits that the petitioner Union is neither a necessary party, nor a proper party in the proceedings and, hence, the Industrial Tribunal has rightly rejected their application.

20. It is further submitted by the learned senior counsel that the timing of filing of the interlocutory application has also to be noted since the adjudication of the dispute has almost come to an end and if the proposed of impleadment is entertained, that will be opposed to the interest of the workmen as they have been waiting for an award to be passed in the dispute since 2013. In fine, learned senior counsel prays for the dismissal of the writ petition.

21. Mr. Anand Gopalan, learned counsel appearing for the 2nd respondent Management submitted that as far as the Management is concerned, it is imperative and fair that all the workmen are heard so that any award, which is to be passed by the Industrial Tribunal, could be effectively and uniformly implemented. Learned counsel for the 2nd respondent Management submitted that although on behalf of the Management, previously an attempt was made for impleading the petitioner union, in view of the then existing situation, the same was dismissed on the basis of the submission on behalf of the petitioner Union and that by itself cannot act as res judicata against the present attempt by the petitioner Union to get itself impleaded in the dispute.

22. Heard Mr. Balan Haridas, learned counsel appearing for the petitioner, Mr. V. Prakash, learned senior counsel appearing for the 1st respondent and Mr. Anand Gopalan, learned counsel appearing for the 2nd respondent and perused the materials available on record, as also the impugned order of the Tribunal and the provisions of the Industrial Disputes Act and the various decisions of this Court and the Hon'ble Supreme Court to which this Court's attention was drawn.

23. The point for consideration in this writ petition is -

"Whether the petitioner Union is entitled to be impleaded as a party to the dispute pending before the Industrial Tribunal, Chennai, in terms of the scheme of the Industrial Disputes Act and also the decisions rendered by the Hon'ble Supreme Court and this Court".

24. Although it is a fact that at the time of reference of the dispute in the year 2013, the 1st respondent was the only union espousing the cause of interest of the workers of the 2nd respondent Management, it appears that in the year 2017, there was a rift among the members of the 1st respondent Union, which led to the formation of the petitioner Union and a sizeable number of workmen had joined the petitioner Union as members. Although there is a dispute as to the exact number of workmen, who joined as members of the petitioner Union after its formation in the year 2017, yet, the admitted position is that atleast more than 90 workmen are members of the petitioner Union, which is quite sizeable and substantial. Whilesso, the Management, at some point of time, thought it fit to enter into a settlement with the petitioner Union and indeed a settlement was arrived at between the petitioner Union and the Management on 21.1.19 in regard to wage revision. The primary and principal objection to the impleadment of the petitioner Union by the 1st respondent is that the petitioner Union, being propped up and sponsored by the Management and, therefore, they need not be impleaded as party in the dispute, as their impleadment would undermine the legitimate right of the entire body of workmen employed by the 2nd respondent Management.

25. The first objection raised by the learned senior counsel on behalf of the 1st respondent is that the petitioner Union itself had, at a particular point of time was not willing to be impleaded as a party and to that extent given an undertaking before the Tribunal with regard to the Management's move for their impleadment in I.A. No.4/18 and in such event, it was not open to the petitioner Union to file another interlocutory application for the same relief, which was rightly considered and rejected by the Industrial Tribunal.

26. Although there appears to be some force in the contention advanced by the learned senior counsel for the 1st respondent, nevertheless, ultimately what is to be seen by this Court is whether the adjudication would be effective and enforceable when sizeable chunk of workmen were not heard by the Tribunal and any award to be passed in the matter would be binding on them as well. No doubt, when the petitioner Union had expressed its disinclination to be made a party in the dispute at a particular point of time, at the same time, the petitioner Union cannot be estopped from staking a claim to be a party in the proceedings when there is change of circumstances according to its perception. Ultimately, this Court has to find out whether the petitioner Union is representing a sizeable number of workmen in order to establish its rights to get impleaded in the dispute pending before the Industrial Tribunal. In this case, admittedly, more than 90 workmen are members of the petitioner Union in which case it is fair and reasonable for

the petitioner Union to approach the Tribunal seeking their impleadment in order to be heard by the Tribunal on the charter of demands raised before the Tribunal.

27. The contention of the learned senior counsel on behalf of the 1st respondent that the decision relied on by the learned counsel for the petitioner in Hochtief's Gammon's case (supra) could be made applicable only when the Tribunal was of the view that at the time of reference, whether the entire body of workmen had been represented, it could make orders for impleadment of parties, cannot be an acceptable piece of argument for the simple reason that ultimately the Hon'ble Supreme Court has held that for effective adjudication, the Tribunal or the Labour Court can add parties to the dispute. In this case, the adjudicatory process is not yet over and when the body of workmen feels aggrieved that they were not being heard, the doors of the Tribunal cannot be shut on them stating that at the time of reference the petitioner Union was not in existence at all. Such an argument advanced on behalf of the 1st respondent does not carry much conviction in this Court under the scheme of the Industrial Disputes Act.

28. This is more evident when a situation is visualised by this Court that at the time of reference the union, which was instrumental for such reference is reduced to a minority union during the period of adjudication, could it be said that the minority union alone could prosecute the dispute without the other unions or the workers to be made parties to the dispute. The answer would be plain 'No'. Therefore, the argument advanced by the learned senior counsel for the 1st respondent does not merit serious consideration and, therefore, the same is rejected.

29. The other argument advanced by the learned senior counsel on behalf of the 1st respondent about the unfair labour practice adopted by the 2nd respondent Management is a matter of dispute, which dispute cannot be resolved by this Court exercising its extraordinary jurisdiction under Article 226 of the Constitution of India. In any case, the learned Tribunal did not reject the claim of the petitioner Union on that ground. In fact, the learned Tribunal has hardly given any reasons, which can be countenanced in law for rejecting the claim of the petitioner. The learned Tribunal, though has concluded that it was not satisfied that the presence of the petitioner herein was necessary to adjudicate the dispute effectively and completely, however, no detailed reasons were spelt out in support of such a conclusion. It was primarily actuated by the dismissal of the

earlier petition filed by the Management in I.A. No.4/18 and held that in view of the dismissal of the earlier interlocutory application, it was not open to the petitioner to seek their impleadment once again.

30. Moreover, the contention raised by the learned senior counsel on behalf of the 1st respondent about the recognition of the union cannot be applied to the factual matrix of the present case, since for impleadment the concept of recognition or not is not relevant, since it is always open to the Tribunal/Labour Court to implead any workmen, who are interested in the dispute. Recognition or no recognition, the Tribunal has power to implead any party in order to give effect to its award for securing the larger industrial peace in the establishment. Therefore, the contention that non-recognition of the petitioner union may not be correct for the purpose of deciding the claim of the petitioner union for their impleadment in the dispute. In the said circumstances, the decision relied on by the learned senior counsel does not help in advancing the case of the 1st respondent.

31. The next contention raised by the learned senior counsel on behalf of the 1st respondent is about the right of the petitioner being not affected at all since the members of the petitioner would be bound by their settlement dated 21.1.19 and not the award to be passed by the Tribunal, as the said award would not be binding on them. Such contention cannot be countenanced in law in view of the specific provision contained u/s 18 of the Industrial Disputes Act. Any award passed by the Tribunal/Labour Court is binding on the workmen u/s 18 (3) of the Industrial Disputes Act and as rightly contended by the learned counsel for the petitioner, there cannot be any dual conditions of service for the workmen in the same establishment.

32. The next contention of the learned senior counsel for the 1st respondent that the petitioner union was not summoned by the Industrial Tribunal and, therefore, it is not binding appears to be a desperate argument advanced on behalf of the 1st respondent.

33. The argument advanced regarding the application of principles of res judicata, even assuming such an argument is valid in industrial adjudication, the same cannot be applied in the present situation for the reason that in the earlier round, it was at the instance of the Management, an application was moved for impleadment of the petitioner union and the same was rejected in different set of circumstances. However, the petitioner Union has moved the present interlocutory application for their impleadment and the earlier decision by the Industrial Tribunal cannot operate as res judicata since the petitioner

union was not a party in the earlier proceedings. Therefore, even assuming for a moment that principles of res judicata would have application in industrial adjudication, the same cannot be pressed into service in the present set of circumstances.

34. In any event, the right of the majority union, viz., the 1st respondent will not be affected if the petitioner Union is also heard in the dispute. No doubt, impleadment of the petitioner Union at this point of time, when the adjudication of the dispute has almost come to an end, would prolong the dispute, but at the same time, it cannot be gainsaid that the award would have to be necessarily passed without hearing the necessary and proper parties. Admittedly, more than 90 workmen are members of the petitioner Union and they have a considerable say in the conditions of service binding on the workmen for years to come and such say, on the part of the workmen belonging to the petitioner Union, cannot be shut out on the ground that the resolution of the dispute may get prolonged. Ultimately, the Industrial Tribunal has to see that the award passed by it is effectively implemented and becomes enforceable against all workmen. In such situation, it is fair and reasonable that all necessary and proper parties need to be heard before the resolution of dispute between the labour and the Management.

35. Finally, when the Hon'ble Supreme Court, in Hochtief Gammon's case (supra) has recognised the right of the Industrial Tribunal to add any party to the dispute for effective adjudication and enforceability, this Court does not see any reason as to why the petitioner Union should be denied their participation in the industrial dispute. The decision taken by the Industrial Tribunal in rejection the claim of the petitioner does not meet the legal standards of acceptability and, hence, the same calls for interference at the hands of this Court.

36. for the reasons aforesaid, the impugned order, dated 5.2.19, passed by the Industrial Tribunal, Chennai, in I.A. No.6/19 in I.D. Nos. 3 and 29 of 2019 is hereby set aside. The Industrial Tribunal is directed to implead the petitioner Union as party to the dispute and consider the plea of the petitioner Union as well before concluding its adjudication and pass award on the disputes referred for adjudication before it. It is informed that the adjudication by the Industrial Tribunal has almost come to an end. In such circumstances, the Industrial Tribunal, Chennai, is directed to commence the process of adjudication after impleading the petitioner Union and conclude the adjudication as expeditiously as possible, in any event not beyond the period of six months from the date of impleadment of the petitioner Union.

37. In the result, the writ petition is allowed with the aforesaid directions. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

GLN

To

The Industrial Tribunal
Chennai.

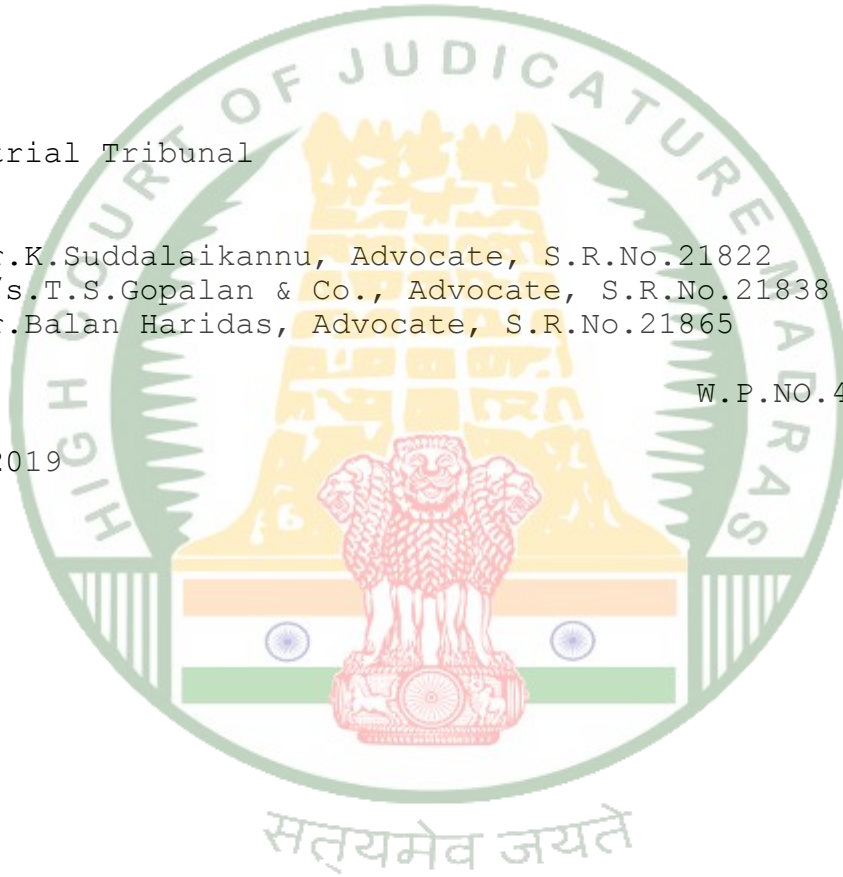
+1cc to Mr.K.Suddalaikannu, Advocate, S.R.No.21822

+1cc to M/s.T.S.Gopalan & Co., Advocate, S.R.No.21838

+1cc to Mr.Balan Haridas, Advocate, S.R.No.21865

W.P.NO.4505 OF 2019

CS/12/03/2019



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