

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

WRIT PETITION NO.13015 OF 2019

M/s Oil and Natural Gas Corporation Limited	...	Petitioner
Versus		
The President, Oil Field Employees Association And Others	...	Respondents

.....

Mr. S.K. Talsania, Senior Advocate a/w Mr. R.V. Pranjpe for the Petitioner.

Mr. Shaligram G. Mishra, President of Respondent No.1.

Mr. Sanjay Singhvi, Senior Counsel a/w Ms. Seema Chopda and Mr. F.R. Mishra for Respondent Nos.2 and 3.

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CORAM : S.C. GUPTE, J.

DATE : 30 JANUARY 2020

(Oral Judgement)

. This writ petition has been filed by the Petitioner - Oil and Natural Gas Corporation Limited (“ONGC”), challenging an award passed by the Central Government Industrial Tribunal-2 at Mumbai (“CGIT”) in a reference made to it by the Central Government under the Industrial Disputes Act, 1947.

2 The subject matter of the reference concerned a charter of demands made by one Oil Field Employees Association, whose

President is Respondent No.1 in the present petition. The demands concerned fixation of pay and other allowances of workmen, who were said to be working regularly for ONGC, but getting their salaries paid through contractors. Though the demands were raised by the union, whom Respondent No.1 herein purports to represent, the reference was participated in by two other unions, who are, respectively, Respondent Nos.2 and 3 to the present writ petition. These two unions were impleaded as parties to the reference on an application made in that behalf by them. By its impugned award dated 17 July 2019, CGIT accepted the demand of the unions to have uniform policy for all workers, irrespective of contracts under which they were engaged by ONGC, in the matter of wages and allowances and on that basis, their claim for revision in wages and allowances with effect from 1 January 2008 was found to be legal and justified. ONGC was directed accordingly to enter into an MoU with the second party unions and implement the same within two months. This order has been challenged in the present petition by ONGC on several grounds.

3 ONGC is a Public Sector Undertaking, established by the Government of India, its core activity being exploration and mining of hydrocarbons throughout the country. Its case is that it was engaging contractors to carry out miscellaneous jobs in its establishments at various places. Various Memoranda of Understanding (MoUs) were signed from time to time between ONGC and the unions representing workmen employed by it through contractors in the matter of fixation of wages and allowances and their revisions. These MoUs were signed

in the years 1992, 1995 and 2000. The last of these memoranda, executed on 29 December 2000, provided for a wage revision which was to apply till 31 December 2007. On expiry of this MoU, there was a demand from the unions for a fresh MoU, effective from 1 January 2008. Since no such MoU was entered into by ONGC with the unions, the matter was carried before the Labour Commissioner, as noted above, vide a charter of demands by the union represented by Respondent No.1 herein. The demands led to a reference, to which, as we have noted above, Respondent Nos.2 and 3 unions were joined as parties. The parties filed their respective pleadings and also led their respective oral and documentary evidence before CGIT. By its impugned award, CGIT held, firstly, that the reference was maintainable; it fell within the provisions of Section 2A of the Industrial Disputes Act, 1947 ("Act"). CGIT, secondly, held that the second party (represented by the three unions, as noted above) proved its case for renewal and revision of the MoU of 2000 with effect from 1 January 2008 and that the salaries and allowances claimed were justified. CGIT, in particular, noted that it was a matter of fact, and also an admitted position, that service conditions of the concerned workmen, including their wage scales, were governed by MoUs executed by ONGC from time to time, that is to say, since 1992, with the unions representing these workmen. It also observed that the first MoU was signed on the lines of settlement signed between Bombay Port Trust (BPT), now Mumbai Port Trust (MbPT), and its workmen; the original arrangement of signing of settlement on the basis of MbPT agreement/settlement in the year 1992 was continued as a matter of practice in the two settlements which followed, i.e. the

settlements of 1995 and 2000. CGIT, thirdly, went into the justification of various consequential reliefs sought by the unions on the basis of revision on the lines of the relevant settlement/s of MbPT in the matter of revision of wages in the reference before it, and accepted the unions' case.

4 In his challenge to the impugned award, Mr. Talsania, learned Senior Counsel appearing for ONGC, makes the following four submissions :

(i) Learned Counsel, firstly, submits that what was before CGIT cannot be termed as an industrial dispute within the meaning of Section 2A of the Act. Learned Counsel submits that an industrial dispute within the meaning of Section 2A *inter alia* envisages a dispute or difference between an employer and his workmen. Learned Counsel submits that, in the present case, the workmen, whose cause was espoused by the second party unions, were admittedly not employees of ONGC, but were employees of contractors engaged by ONGC. Referring to the cases of **Steel Authority of India Ltd Vs. National Union Waterfront Workers**¹ and **Mukand Ltd Vs. Mukand Staff & Officers' Association**², it is submitted that, in the premises, CGIT had no jurisdiction to adjudicate the reference. Learned Counsel submits that this issue

¹ (2001) 7 SCC 1

² (2004) 10 SCC 460

really goes to the root of the matter and even if the award of CGIT suggests that there were no specific submissions in that behalf, even as a matter of a new plea, such objection could still be entertained by the writ court. Learned Counsel refers to the cases of **Ratanlal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-Education) Higher Secondary School³** and **Kalyani Sharp India Ltd., Vs. Labour Court No.1, Gwalior⁴** in support of his submissions;

(ii) Learned Counsel, secondly, submits that in relation to its contract workmen, by way of a fair wage policy, ONGC had arrived at a tri-partite arrangement between itself, the unions and the contractors. Learned Counsel submits that this settlement was arrived at pending conciliation proceedings and was, in the facts of the case, a fair settlement, which the tribunal should have accepted. Learned Counsel submits that there was no basis for terming the settlement as unfair. Learned Counsel submits that the settlement gives fair wages to contract workmen and as against job security given to them, requires them to withdraw pending court cases filed by them or on their behalf. Learned Counsel, in this behalf, refers to the cases of **Herbertsons Limited Vs. The Workmen of Herbertsons Ltd⁵** and **ITC Ltd.**

³ (1993) 4 SCC 10

⁴ (2002) 9 Supreme Court Cases 655

⁵ (1976) 4 SCC 736

Workers' Welfare Associate Vs. Management of ITC Ltd.⁶ Relying on these judgments, it is submitted that nearly 77 per cent of the total number of contract workmen working for ONGC having accepted it, the MoS deserves to be accepted as a fair wage revision;

(iii) Learned Counsel, thirdly, submits that CGIT had required ONGC to enter into an MoU with the unions without reference to any basis for arriving at the commercial terms of such MoU. Learned Counsel submits that merely on the basis of a vague and general principle of “equal work equal pay”, the second party’s demand was accepted by the tribunal without stating any concrete basis or taking into account any particulars. Learned Counsel submits that under Rule 25 (ii)(v)(a) of Contract Labour (Regulation and Abolition) Central Rules, 1971, exclusive jurisdiction for adjudicating upon wages on the basis of work is with the Labour Commissioner. Learned Counsel, in this behalf, refers to the cases of **BHEL Workers Association, Hardwar Vs. Union of India**⁷ and **Uttar Pradesh Rajya Vidyut Utpadan Board Vs. Uttar Pradesh Vidyut Mazdoor Sangh**⁸ ;

(iv) Learned Counsel, fourthly, submits that even in the matter of actual revision, no basis has been

⁶ (2002) 3 SCC 411

⁷ (1985) 1 SCC 630

⁸ (2009) 17 SCC 318

indicated by the tribunal for arriving at the requisite terms of such revision and in the premises, the order cannot be termed an enforceable award. Learned Counsel, in particular, submits that there is no justification for individual wage revisions in cases of individual categories of workmen in the award.

5 Apropos the first objection of Mr. Talsania, which, according to him, goes to the root of the matter, it must be noted at the very outset that the jurisdiction of the tribunal in the present case to adjudicate the reference was never questioned by ONGC on the ground that the workmen represented by the second party were not ‘workmen’ within the meaning of section 2(s) of the Act, particularly, because they were employees of contractors and not of ONGC. If this issue was not part of the *lis* before the reference court, there was no way it could be raised before the writ court. The issue is, after all, a mixed issue of law and facts; it would have to be adjudicated first before the trial court upon foundational pleadings in that behalf being led before it, before the writ court, in its scrutiny of the order of the trial court, could be asked to go into it.

6 Mr. Talsania, however, submits that the fact that these workmen were employees of contractors is not really in dispute; the reference itself termed them as workmen engaged through contractors. The question is not whether the workmen were engaged through contractors. That may indeed be an apparent position. The question is whether, by reason of perennial nature of the work at the premises of

the principal employer, and having regard to the circumstances bearing on their service and service conditions, whether the workmen could be said to be in reality employees of the principal employer despite the apparent position that they were engaged through contractors. Indeed, there was a clear statement on the part of the workmen in the statement of claim of the second party that they were in fact and in reality workmen of ONGC and not of the contractors. No doubt, in its written statement, ONGC contested this position, and in their rejoinder second party No.2 union reiterated its statement that the contract/s was/were sham and bogus. It is apparent from the impugned award of the tribunal, however, that this issue was not pressed by ONGC at the hearing. The issue anyway reflected on the jurisdiction of CGIT to adjudicate the reference and ONGC did not choose to contest the jurisdiction on the issue. Had the issue been pressed by ONGC before the reference court, the second party would have led appropriate evidence in support of its case in this behalf. It obviously chose not to do so, because this question was not debated by ONGC before the reference court. Could the second party be then visited with the consequence of having to deal with this issue merely on the basis of the material available before this court at the stage of a scrutiny under Articles 226 or 227 of the Constitution of India. The answer would be an emphatic “no”. The second party would most certainly be seriously inconvenienced if it were now required to sustain its plea in the statement of claim of the workmen being in reality employees of ONGC, without having had an opportunity to lead evidence in support of such case before trial court. For whatever reasons, ONGC found it worth its while not to contest the

jurisdiction of the tribunal in the reference and this court, sitting as a writ court, must leave the matter at that and not scrutinize it any further.

8 In **Steel Authority of India Ltd** (Supra), the Supreme Court, in the first place, did not agree with the extreme stand taken by Counsel for workmen in that case that on a contractor engaging contract labour in connection with the work entrusted to him by a principal employer, the relationship of master and servant between him (the principal employer) and the contract labour so engaged was established. The court also found no substance in the submission that a combined reading of the definition of the terms “contract labour”, “establishment” and “workman” supported creation of a legal relationship between a person employed in an industry and the owner of the industry irrespective of the fact as to who has brought about such relationship. After analysing cases of labour engaged through contractors discussed so far by courts, the Supreme Court noted that they fell in three classes : (i) where the contract labour was engaged in or in connection with the work of an establishment, in case of which employment of contract labour was prohibited either through abolition of contract labour by an industrial adjudicator or court, or by virtue of a notification of the appropriate government under Section 10(1) of the Contract Labour (Regulation and Abolition) Act, 1970; (ii) where the contract was found to be a sham or a nominal contract, or a camouflage; and (iii) where in discharge of a statutory obligation of maintaining a canteen, the establishment of the principal employer availed of the services of a contractor, through whom labour

was engaged for running the canteen. In cases covered by (i), there was no automatic absorption of contract labour working in the establishment of a principal employer as employees of the latter. In cases covered by (ii) and (iii) above, the contract labour was treated as employees of the principal employer. Mr. Talsania cannot make much use of this judgment, since, in our case, there was a clear indication that the workmen concerned in the reference were claiming to be falling within category (ii) described above. This issue, in the facts of the case, did not arise in the context of a case of absorption or regularization in the service of the principal employer, but merely went to the jurisdiction of CGIT to adjudicate the reference. It was for ONGC, as the principal employer, to contest the status or category of the concerned workmen and thereby, the jurisdiction of the tribunal to adjudicate the reference. It chose not to do so. The tribunal, in the premises, had no occasion to rule on the category of these workmen – whether they fell within (i), (ii) or (iii) above. In that case, as I have explained above, the employer cannot make use of the judgement of **Steel Authority of India Ltd.** (supra) to question the status of the workmen; the judgement does not rule out their status as workmen of the principal employer; it merely rules out the extreme propositions noted above and indicates the contours of the judicial inquiry expected in this behalf. The workmen here are not canvassing any such extreme propositions, and, as for the judicial inquiry into their status, the tribunal was not invited to make any.

9 The case of **Mukand Ltd** (supra), cited by Mr. Talsania, also does not take his case any further. There is no quarrel here with the

proposition of law laid down in **Mukand Ltd.**, on which reliance was placed by Mr. Talsania, namely, that disputes could only be raised under the Act against their employer by workmen and not by non-workmen except in a case where there was a community of interest between workmen and non-workmen, when workmen could espouse the cause of such non-workmen. The second party unions, in the present case, were claiming to espouse the cause of those they termed as workmen and the first party employer never questioned such espousal on the ground that they were non-workmen.

10 In **Rattan Lal Sharma** (supra), the Supreme Court did countenance raising of a plea and its consideration for the first time in the writ court, if the plea, though not specifically raised before the sub-ordinate tribunal or administrative or quasi-judicial authority, as the case may be, went to the root of the matter. But that was on the footing that such plea was based on admitted and uncontroverted facts and did not require any investigation into questions of fact. That is far from our case. In our case, there are no admitted or uncontroverted facts to sustain such plea; and deciding of such plea would call for a full-fledged investigation into several questions of fact.

11 So also, in **Kalyani Sharp India Ltd** (supra), the argument (that termination challenged therein was not affected by Section 25F of the Act), though raised for the first time before the Supreme Court, was considered by the court, as it emerged from the documents relied upon before the labour court by the opponent in support of his

employment and wrongful termination, and no fresh investigation of facts was required in the matter. It was a case of simple application of law to undisputed facts. This case has no relevance in the facts of our case.

12 Coming now to the question of the status of the Memorandum of Settlement (MoS) of 19 September 2016, namely, whether it could be termed as a settlement within the meaning of sub-section (3) of Section 18 of the Act, it is pertinent to note that merely because it was arrived at when conciliation proceedings were pending before the Commissioner of Labour, it cannot be said that it was a settlement arrived at in the course of conciliation proceedings. In fact, as noted by a Division Bench of our court (B.R. Gavai & N.J. Jamadar, JJ.) in its order dated 29 January 2019 in Writ Petition No.5054 of 2018, which had challenged the very same reference, initially a notice was issued by the union represented by Respondent No. 1 herein on 26 August 2016 for direct action, i.e. work as per rules, demonstrations, protests, strike, etc. under the Act. After this notice, ONGC addressed a communication to the Chief Labour Commissioner pointing out therein that it had been declared as a Public Utility Service and in the premises, sought initiation of conciliation proceedings. The Conciliation Officer, vide his notice dated 15 September 2016, kept the matter for conciliation on 19 September 2016 at 12:30 hours, directing the representatives of ONGC and the unions, espousing the cause of workmen, to make compliances. On the same day, i.e. 19 September 2016, at 15:00 hours, the subject MoS was entered into by (i) some representatives union/s, (ii) ONGC and (iii) 57 contractors of

ONGC, in a companion conciliation before another conciliation officer. The Conciliation Officer in the proceedings taken on the demand of the union represented by Respondent No.1 was not informed about any such purported settlement, and, in any event, there was no compliance with Section 12(3) of the Act. Though these questions were left open, the Division Bench, in its order dated 29 January 2019, did observe that it was not possible, on the basis of the record of the case, to say that the MoS of 19 September 2019 was a settlement arrived at between the concerned parties in the course of a conciliation proceeding. In any event, as noted above, even legal formalities of settlement in the course of conciliation proceedings were not complied with in the present case. Mr. Singhvi, learned Senior Counsel appearing for the Respondent unions, rightly refers, in this behalf, to Rules 9 and 10 of Industrial Disputes (Central) Rules, 1957. The matters provided in these Rules were obviously not complied with and it could not be urged with any seriousness that MoS of 19 September 2016 was in fact a settlement within the meaning of Section 18(3) of the Act.

13 That brings us to the question as to whether the MoS of 19 September 2016, even if it were to be termed as a settlement in the course of a conciliation proceeding, could be said to be a fair settlement so as to bind workmen who were not party to it. The tribunal, in the present case, has arrived at an unequivocal finding that the settlement could not be termed as fair. It, particularly, has taken into account the fact that the MoS of 19 September 2016 required the workmen concerned to withdraw their legitimate disputes

and complaints on the issues of regularization, etc. as a condition of settlement. It is important to bear in mind in this behalf that when the reference was made, there were about 1300 workmen, covered by the earlier MoU 29 December 2000, who were originally sought to be protected as against about 2000 of total number of contract employees with ONGC working in Mumbai, Panvel, Uran and Nhava. The other employees were not covered by the MoUs executed earlier by ONGC with the unions. If these other workmen and their union/s were to agree to a fair wage policy, which is not on the basis of the earlier MoUs executed between ONGC and the unions, such policy, on the basis of such agreement, cannot be termed as a fair policy for the workmen covered by the earlier MoUs and whose references or complaints for their legitimate demands were pending before various industrial adjudicators. Anyway, on the facts available before this court, the conclusion of the Tribunal that the MoS of 19 September 2016 could not be termed as a fair settlement, particularly, for the workmen covered by the earlier MoUs, cannot be termed as perverse. This court cannot bring itself to hold that no reasonable person could have given any such finding. The finding is clearly supported by some evidence; it does take into account all relevant and germane circumstances and materials; and it does not consider any non-germane or irrelevant circumstance or material. It must, in that case, pass muster as a possible conclusion, which is not amenable to judicial scrutiny either under Article 226 or 227 of the Constitution of India.

14 In **Herbertsons Limited** (supra), the Supreme Court was

considering whether the settlement, accepted by a majority of workmen, was to be considered as just and fair. The contest to the justness or fairness of the settlement was raised in that case by a rival union (second respondent before the court); not a single worker of the company had claimed before the tribunal to be a member of the second respondent or asserted that the settlement was not fair or just. All workers of the company had accepted the settlement and also received arrears and emoluments in accordance with the same. In the context of these facts, the Supreme Court observed in **Herbertsons Limited** that when a recognized union negotiates with an employer, workers, as individuals, do not come into the picture. It is not necessary that each individual worker should know the implications of the settlement, since a recognized union was expected to protect the legitimate interests of labour. The court held that this would be the normal rule, though one could not altogether rule out exceptional cases where there might be allegations of mala fides, fraud or even corruption or other inducements. Nothing of that kind had been suggested against the recognized union in that case (third respondent before the court). That being the case, the court held that *prima facie* the settlement was in the course of collective bargaining and entitled to be accorded due weight and consideration. The court also considered the particular settlement in that case in the light of the conditions that were in force at the time of the reference. The court was of the view that having regard to the nature of the dispute, which was raised long time ago, the very fact of the existence of a litigation with regard to the same matter, which was bound to take some time, must have influenced both the parties to come to the

settlement. The court, in the premises, considered the settlement to be a package deal. It observed that when labour had gained in the matter of wages, if there was some reduction in dearness allowance, so far as the award was concerned, it could not be said that the settlement as a whole was unfair or unjust. The court further observed that the question of adjudication had to be distinguished from a voluntary settlement. The settlement could not be judged on the touchstone of the principles laid down by courts for adjudication. The court observed that there could be several factors that might influence the parties to come to a settlement as a phased endeavour in the course of collective bargaining. Once cordiality was established between the employer and labour in arriving at a settlement, which operated well for the period that was in force, there was always likelihood of further advances in the shape of improved emoluments by voluntary settlement, avoiding thereby friction and unhealthy litigation. The court held that this was the quintessence of a settlement, which courts and tribunals should endeavour to encourage; it was in this spirit that the settlement had to be judged and not by the yardstick adopted in scrutinising an award in an adjudication. The court was of the view that the tribunal in that case fell into an error in invoking principles that should ordinarily govern an adjudication of a dispute regarding dearness allowance, in judging whether the settlement was just and fair. These observations do not call for a different view of the matter on the justness or fairness of the particular settlement in the present case. As we have noted above, the settlement, particularly having regard to different circumstances of the workmen who were party to the settlement and those that were

not, the latter being governed by the earlier MoUs and having filed disputes and complaints on issues such as regularization, was not found by the tribunal to be just or fair for these latter set of workmen. As we have noted above, this view of the tribunal is clearly a reasonable and possible view and does not exhibit any perversity.

15 In **ITC Limited Workers' Welfare Association** (Supra), the court observed that the issue as to justness or fairness of a settlement arrived at under Section 12(3) has to be examined, keeping in view the presumption that is attached to the settlement. It was not in dispute in that case that the settlement was arrived at in the course of conciliation and, therefore, covered under Section 12(3) of the Act. As we have noted above, that has not been the case here. Here, the settlement could not be said to be a settlement arrived at in the course of conciliation.

16 Coming now to the merits of the tribunal's award, Mr. Talsania is not in right in submitting that there was no basis for the award. The statement of claim of Respondent No.2-union (page 86 of the petition) categorically averred (at page 90) that in the very first MoU, i.e. the MoU of 15 January 1992, the ONGC management had agreed to pay scales and allowances to workers of ONGC (at 12 Victoria Dock and Nhava) in accordance with what was paid to workmen of the Port Trust; and so far as the other workers were concerned, they were to be paid consolidated wages accordingly. The statement of claim further went on to say that this practice (of

basing revisions on the settlement with MbPT workmen) was followed even in the next MoUs signed on 12 July 1995 (for the period from 1 April 1994 to 31 December 1997) and on 29 December 2000 (for the period from 1 January 1998 to 31 December 2007). The statement of claim averred that it was fair for the management of ONGC to have followed the same practice and signed the next MoUs, that is to say, MoUs for the periods (i) from 1 January 2008 to 31 December 2011, (ii) from 1 January 2012 to 31 December 2016 and (iii) even thereafter, accordingly, on the lines of related MbPT settlements. The statement of claim then gave particulars of what the workmen represented by it would have got, had the management kept to this formula, that is to say, the formula of MbPT settlement. The individual wages of workmen were worked out in Annexure-D to the statement of claim for the period between from 1 January 2008 to 31 December 2011, and in Annexure-E for the period from 1 January 2012 to 31 December 2016. As against this, in its written statement, what ONGC stated was that wage revision for Port and Dock workers was not applicable to the first party and in a broad brush manner, rejected the workmen's case. (Incidentally, the question is not whether the wage revision for port and dock workers is applicable to ONGC as a matter of law; the question is whether, in the face of its uniform practice ever since 1992, which was reflected in as many as three earlier settlements covering the whole length of period between 1992 and 2007, was it not fair to adopt the same policy and accordingly revise the wages of workmen covered by the reference.) In response, it was submitted by second party No.2 union in its rejoinder that the first party (ONGC) was agreed to have pay scales at

part with pay scales applicable to dock workers (as defined in Section 2(4) of the Dock Workers Act, 1948) in all ports of India for those workers who were working at 12 VD of Mumbai Port Trust and Nhava Port; and that this was a matter of record, which could be verified from the MoUs and wage agreements of Port and Dock workers signed from time to time. Consolidated wages, on the other hand, were decided for those workers, who were not working in these areas, but working in the city of Mumbai, Panvel and Uran. There was, thus, a clear basis, for the principle of revision determined in the award, in the pleadings.

17 When we come to the evidence led by the parties, it is important to note that the witness of the second party unions, Suryakant Bagal, who was the General Secretary of the second party union No.2 and who was party to the MoUs ever since the first MoU of 1992 was made, has categorically deposed that ONGC had accepted that pay scales of MbPT as well as other allowances applicable to its employees (allowances in paragraphs C, D, E, F, G and H of MoU of 1992) would be given to workmen working at 12 Victoria Docks and Nhava Supply base of ONGC. (These workmen were not entitled to other allowances of MbPT workers, since particular allowances mentioned in paragraph 'J' of the MoU were made applicable to them.) As against these workers, consolidated wages were fixed for other workers working at different locations including Mumbai, Panvel and Uran. The witness has further testified that even thereafter, ONGC had religiously followed the practice of basing wage revisions of these workmen on MbPT pay scales and allowances and that this

was reflected in the further MoUs signed in 1995 and 2000. The witness has, thereafter, deposed to the particulars of wages applicable to the concerned workmen on the basis of the formula of MbPT settlement. Incidentally, MbPT settlements of 2007 onwards were available as part of the evidence placed before the tribunal. In cross examination, the only question directed towards the unions' witness was that it was not true to suggest that settlement of MbPT had any relevance for ONGC. In its own evidence, on the other hand, all that the ONGC's witness, Rajendra Jadhav, Senior HR Executive of ONGC, deposed to was two one-liners, namely, (i) that ONGC disputed and did not accept the calculations given by the second party unions (Annexures 'D', 'E', 'F' and 'G' of the statement of claim) and (ii) that the wage revision for Port and Dock workers was not applicable to ONGC. If it was ONGC's case that the earlier MoUs were not based on MbPT settlements and their justification came from some other source, it was for it to point out such source and justification in its evidence. It never attempted any such thing. In the face of all this evidence, if the Industrial Tribunal were to come to the conclusion that the MoUs signed so far were on the lines of settlements between MbPT and its workers and this practice was followed between 1992 and 2000, could it be termed as perverse? Could it be said that the conclusion was not supported by any evidence? Could it be said that any irrelevant or non-germane material or circumstance was considered by the tribunal for arriving at its conclusion? Or could it be said that it took into account any non-germane or irrelevant material or circumstance? The answers, to my mind, to all these questions are obviously in the negative. The

conclusion is clearly a reasonable and possible conclusion and cannot be termed either as unreasonable or perverse.

18 The case of **BHEL Workers Association, Hardwar** (supra), cited by Mr. Talsania, involved a dispute under Payment of Wages Act raised by contract labour. There was no dispute that the Payment of Wages Act applied as much to contract labour as to the labour directly employed by the principal employer of an establishment. The contract labour was, accordingly, entitled to the same wage rates, holidays, hours of work and other conditions as applicable to the workmen directly employed by the principal employer of the establishment for the same or similar kind of work; they were entitled to recover their wages and insist on conditions of service in the same manner as workers employed by the principal employer under appropriate industrial and labour laws. In keeping with this statement of law, the court noted that, if there was any dispute with regard to the type of work, such dispute had to be decided by the Chief Labour Commissioner (Central). This statement of law does not support Mr. Talsania in his submission that the jurisdiction to decide parity of work so as to translate into parity of wages can only be exercised by the Commissioner of Labour and not by the tribunal whilst adjudicating a reference. It was submitted by the second party unions that the employer, historically and as a matter of an established practice, was always determining wage revisions of concerned workmen on particular lines, namely, by the settlements of MbPT with its workmen and that, in the premises, it was just and fair to fix the present wage revision on the same lines, i.e. in

accordance with the settlement of MbPT for the period in question. There is no case of ousting of the jurisdiction of the tribunal to do so on the ground of exclusive jurisdiction of the Labour Commissioner under Rule 25(ii)(v)(a) of the Contract Labour (Regulation and Abolition) Central Rules, 1971. It was this jurisdiction of the Commissioner which was considered in that case. The controversy in **BHEL Workers Association** concerned whether or not the workmen employed by the contractor in that case performed the same or similar kind of work as the workmen directly employed by the principal employer of the establishment, so that wage rates, holidays, hours of work etc of the former workmen would be the same as applicable to the latter. In these facts, the Court held that in case of any disagreement with regard to the type of work, the same would be decided by the Chief Labour Commissioner (Central), whose decision was to be final. That was purely and squarely an application under Rule 25(ii)(v)(a) and was decided accordingly by the Supreme Court. These observations have no bearing on the facts of our case.

19 In **Uttar Pradesh Rajya Vidyut Utpadan Board's** case, the same Rule was invoked and the same conclusion was arrived at by the court. The Rule was considered by the court to have been premised on the principle of "equal pay for equal work". The court noted that the degree of skill and various dimensions of a given job have to be gone into to reach a conclusion as to parity of nature of duties. The court observed that often the difference might be of a degree and it was well settled that nature of work could not be judged by the mere volume of work; there might be qualitative

differences as regards reliability and responsibility. These observations were also made in the context of an adjudication, made under Rule 25(2)(v)(a) of the State Rules (which were on the similar lines as the Central Rules), before the Labour Commissioner, Kanpur. These observations clearly have no bearing on the facts of our case.

20 Coming now to the reliefs formulated by it, it is but apparent that the tribunal does not appear to have applied its mind to individual revisions that may have to be made. As we have noted above, there is no infirmity in the conclusion of the tribunal that wage revisions had to be on the lines of MbPT settlement for the relevant period, but then based on related MbPT settlements, the court had to work out individual wage revisions for different categories of workmen, whose cause was espoused by the second party unions in the present case. The tribunal, firstly, had to work out individual revised wage scales and allowances for workmen at 12 Victoria Dock and Nhava Supply Base; it, then, had to formulate reasonable consolidated wages for workmen other than those working in 12 Victoria Dock and Nhava Supply Base. This the tribunal appears to have clearly failed to do. It left it to the parties to work out the individual revisions. That I am afraid is not possible. It is one thing to say that the basis of wage revision is available in a document and quite another to apply that basis to the individual facts of the case. For example, it is one thing to say that workmen other than those working in 12VD and Nhava Supply Base were to be paid wages, that is, consolidated wages, worked out on the basis of minimum basic wages of the concerned categories of MbPT workers

plus adjustments towards allowances, and quite another to actually provide for and stipulate such consolidated wages so calculated and adjusted. This was obviously for the tribunal to do and not for the parties to work out. The tribunal appears to have clearly missed this point. To that extent, the matter must go back to CGIT for determination of actual wage scales/allowances of workmen working in 12VD and Nhava Supply Base (based on MbPT scales/allowances) as well as other workmen covered by the reference (for consolidated wages based on MbPT scales and allowances).

21 The question then is of interim relief to be granted to these workmen pending consideration of the matter on remand by CGIT. It is a matter of fact, and probably a sad commentary on the times that we live in, that the last wage revision of these workmen occurred as far back as in 2000. That wage revision was applicable only till 31 December 2007 and till date, there has been no further revision in sight, though at least three revision periods have gone by. On these facts, this court is of a considered view that it would be in the interest of justice to at least direct ONGC to pay wages to the workmen concerned on the basis of what was agreed in the settlement of 19 September 2016 minus its condition of withdrawal of proceedings against ONGC. These would indeed be minimum wages that might in any case be payable to the concerned workmen, that is to say, even if the unions were wrong in the matter of calculation of wages in accordance with the particulars submitted with the statement of claim. If, on the other hand, they were right that the workmen were entitled to get wages in accordance with the particulars

submitted by them, these interim revised wages could then be adjusted against such wages.

22 The writ petition is, accordingly, disposed of by setting aside the operative order passed by CGIT and remitting the reference, being Reference No.CGIT-2/40 of 2017, to CGIT-2, Mumbai for a fresh decision on (i) individual wage scales and (ii) consolidated wages payable, respectively, to the contract workmen of ONGC working at (i) 12 Victoria Dock and Nhava Supply Base and (ii) the other workmen covered by the reference. It is made clear that such determination must be in the light of what has been observed above, in particular that the wage revision/s of these workmen has/have to be on the lines of the wage revision/s applicable to workmen of MbPT, which are placed before the court (i.e. MbPT settlements applicable for the periods from 2007 to 2011 and from 2012 to 2016).

23 The tribunal is requested to accord top priority to this determination and dispose of the reference as expeditiously as possible and preferably within a period of eight months from the date this order is pointed out to the tribunal. To that end, either party may appear before the tribunal with notice to the other side and produce an authenticated copy of this order. The tribunal may thereupon fix the schedule of hearings and decide the reference accordingly.

24 Pending hearing and final disposal of the reference on remand, interim wages shall be paid to the concerned workmen by ONGC for

the whole of the period of revision in accordance with MoS of 19 September 2016 and also prospectively from the month of March 2020.

25 Since the operative part of the award of CGIT has been set aside, pending criminal proceedings for non-implementation of the award shall not be proceeded with.

(S.C. GUPTE, J.)

Rajesh V.
Chittewan

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