

OD-1

ORDER SHEET

WPO/1298/2010

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

AXIS BANK
VERSUS
UNION OF INDIA & ORS.

BEFORE:
The Hon'ble JUSTICE ANIRUDDHA ROY
Date : 26th August, 2022.

Appearance:
Mr. Debashis Sarkar Adv.
..for the petitioner

Mr. Amitabha Nayak, Adv.
Mr. Tapan Bhanja, Adv.
..for the respondent nos.1, 2 and 5

Mr. Rajesh Upadhyay, Adv.
Mr. Ratul Das, Adv.
Mr. A. Shaw, Adv.
..for the respondent no.4

The Court: The respondent no.4 had filed its affidavit-in-opposition to which the petitioner had filed its reply.

This is a writ petition assailing the impugned order dated April 29, 2010 (for short, the impugned order) passed by the Desk Officer, Government of India, **Ministry of Labour/Shram Mantralaya, Annexure P-4** to the writ petition.

For the purpose of providing security towards its various offices, branches and ATM counters, the writ petitioner engaged a private security company, the fourth respondent herein. The fourth respondent in turn employed several individuals as security personnel. This arrangement had prevailed for a substantial period of time. The individual security personnel through their registered trade union raised grievances from time to time in writing, **Annexure P-1** to the writ petition, before the writ petitioner. Copies of such representations were also marked to the fifth respondent. The fifth respondent held a conciliation proceeding and the relevant conciliation proceeding ended with a failure, as would be evident from the communication dated November 4, 2008 issued by the fifth respondent, **Annexure P-3** to the writ petition. The relevant observations made by the fifth respondent in the said communication dated November 4, 2008 are reproduced hereinbelow:

“The joint discussion were held with the concerned parties on several dates to ascertain the facts and the circumstances with regard to the matter in dispute with a view to bring about the parties to a common understanding and to arrive at a settlement. The issues raised by the union is that the above two agencies, which have been awarded contract by the Axis Bank to provide security services at its branches and ATMS all over the West Bengal are bifurcating the amount of wages fixed by West Bengal Government under Minimum Wages Act 1948 for the employment in security services into various heads and components. The components/head under which the minimum wage is splitted are Basic Wage, House Rent allowances and other allowance such as conveyance allowance etc. As per union

by doing so the basic wage becomes much lower than the Minimum Wage and the other allowances being not counted for the purpose of PF contribution. Bonus, overtime allowance, the workmen are allegedly subjected to a major monetary loss on that account.

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The management of G4S Security Services (India) Private Limited though raised a preliminary issues vide its letter July 14, 2008(copy enclosed as per Annexure-B) with regard to the jurisdiction of the Conciliation Officer appointed by the Central Government, stating that G4S being a Private Limited Company, Central Govt. is not the appropriate Govt. and the present authority cannot entertain the complaint as not being the appropriate forum. However, without prejudice to above objection they attended the conciliation proceeding on several dates and made the submission that the sum head of the pay package paid to the employees is equal to the Minimum Wages, hence they are complying with the provisions of the Act. As regard the payment of PF contribution, the G4S Managements contended that the same is applicable only on basic wages as defined under section 2(b) of EPF Act 1952, which excludes HRA, Conveyance & washing allowances. It was also submitted that the company follow the same wage structure through out India which is in accordance with law and therefore it was not possible to accept the demand of the union. The detail contention of G4S is annexure B & B-1.

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The dispute was taken into conciliation finally on 3.11.08 and all efforts were made to bring about an amicable settlement but in spite of protracted discussion and persistent persuasion the parties maintained their stand rigidly and no hope and possibility of

settlement was seen and hence the conciliation ended in failure. A brief note on conciliation is Annexure C.

This report is submitted in terms of Section 12(4) of I.D Act, 1947. Regarding reference of dispute for arbitration there was no mutual agreement between the parties.”

From the above observations made by the fifth respondent, it was evident that the conciliation failed.

Since the conciliation failed, resultantly the impugned reference, ***Annexure P-4*** to the writ petition, dated April 29, 2010 was made in exercise of power under Section 10(2A) of the Industrial Disputes Act, 1947 for necessary adjudication before the Central Government Industrial Tribunal-cum-Labour Court, Kolkata. The scope of reference was mentioned in the schedule which is reproduced hereunder:

SCHEDULE

“Whether the action of the management of G4S Security Services (India) Private Ltd. in relation its office at Kolkata in splitting the “Minimum Wage” fixed by the appropriate Government under Minimum Wage Act, 1948 under various components and heads viz. Basic Wage, House Rent Allowance, Conveyance Washing Allowance and not taking into account the amount splitted out against HRA Conveyance & Washing Allowance for the purpose of computation of overtime allowance, bonus, provident fund, gratuity etc., is legal and justified? If not, to what relief the workmen are entitled for?”

After the said reference was made, it was registered as Reference No.25 of 2010 before the Central Government Industrial Tribunal at Kolkata,

who in turn on May 13, 2010, **Annexure P-5** to the writ petition, issued a notice/summon upon the petitioner to attend the hearing for necessary adjudication.

The said order of reference dated April 29, 2010 and the consequential notice dated May 13, 2010 were challenged through this writ petition.

Mr. Debashis Sarkar, learned counsel appearing for the petitioner, pursuant to the directions made by this Court from time to time caused several notices to have been served upon the respondent nos.3 and 6, the Trade Unions. All such notices issued from time to time at the behest of the petitioner intimating the dates of hearing or the information that the matter would be taken up for hearing, were duly served upon the respondent nos.3 and 6. The affidavits of service were respectively affirmed on November 1, 2009; March 17, 2022; June 27, 2022 and July 19, 2022 were already on record in this regard. From all such affidavits of service, it would be evident that despite notices, the Trade Unions, namely, the third and sixth respondents chose not to be represented at the time of hearing of the writ petition. Today also none appeared for respondent nos.3 and 6 while the matter was taken up for hearing. Such facts would clearly depict that the respondent nos.3 and 6 were no more interested to be represented in this writ petition. Despite several opportunities being granted by the Court they thought it fit not to be represented at the time of hearing.

This Court, in this fact situation, thought it fit to proceed with this long pending writ petition in absence of the said respondent nos.3 and 6 and accordingly, the same was taken up for hearing.

Learned counsel for the petitioner relying upon the communication dated November 4, 2008, **Annexure P-3** to the writ petition, submitted that, the sole grievance for bifurcation of the amount of wages fixed by West Bengal Government under the Minimum Wages Act, 1948 was a cause for which the industrial dispute arose, the same relates to the domain of the State Government being the **“appropriate Government”** within the meaning of Section 2(a) of the Industrial Disputes Act, 1947. As such, it was contended on behalf of the writ petitioner that the relevant jurisdictional authority of the Central Government had no jurisdiction or authority to receive and proceed with the said conciliation proceeding which though resulted in a failure, as would be evident from **Annexure P-3** to the writ petition. According to the learned counsel for the petitioner, it should have been the State Government being the **“appropriate Government”** within the meaning of Section 2(a) of the Industrial Disputes Act to receive such conciliation proceeding and to come to its logical conclusion thereof. As such, the Central Government Industrial Tribunal did not have jurisdiction either to receive and entertain any adjudication on the issue or to issue the said notice/summon dated May 13, 2010, **Annexure P-5** to the writ petition. In support, Mr. Sarkar had relied upon a judgment of a Co-ordinate Bench of

this Court rendered in the matter, **WP 9628(W) of 2018, CAN 4841 of 2018 : HDFC Bank Limited Vs. Union of India.**

Mr. Sarkar, learned counsel for the petitioner, referring to the meaning of **“Industrial Dispute”** as defined under Section 2(k) of the Industrial Disputes Act submitted that, the dispute sought to be canvassed by the Trade Union was really a dispute between the said individual security personnel who were employed by the fourth respondent on the one hand and the fourth respondent itself on the other and the petitioner was in no way connected thereto. He submitted that, to connect the petitioner in this industrial disputes proceeding, the jurisdictional authority first had to come to a logical conclusion and finding that the fourth respondent either was no more there or had failed to discharge its obligation to pay the wages towards the said individual security personnel who had rendered services for the ultimate benefit of the petitioner. Such finding had not been arrived at. In absence of such finding, the petitioner could not have been embraced in the dispute.

Mr. Amitabha Nayak, learned counsel being ably assisted by Mr. Tapan Bhanja, learned advocate appearing for the respondent nos.1, 2 and 5, submitted that, there was no irregularity or illegality in the proceeding. The proceeding was conducted in compliance of the relevant provisions of law.

After considering the submissions made by the learned counsel appearing for the parties and upon perusal of records, it appeared to this

Court that, it was evident from the observation made in the communication dated November 4, 2008 recording failure of conciliation, ***Annexure-P-3*** to the writ petition, that the grievance for bifurcating the amount of wages which was raised by the Trade Unions, as discussed above, was fixed by the West Bengal Government in terms of the Minimum Wages Act, 1948. So, prima facie, it appears from the said conciliation failure communication that the Central Government had no role to play as an **“appropriate Government”** as defined under the Industrial Disputes Act.

From the records of the conciliation proceeding, it was also evident that, no adjudication was made by the relevant jurisdictional authority under the Industrial Disputes Act, that the fourth respondent, the immediate employer of the wage-earners, had failed to perform its obligation for paying up their wages or had disappeared from the entire scenario for whatever reason, so that the principal employer being the writ petitioner could be embraced into the proceeding. No material was available on record before this Court, to negate the contentions raised on behalf of the writ petitioner as mentioned above.

It is also the settled law that, the Labour Tribunal under the Industrial Disputes Act has a limited authority and jurisdiction to proceed only with the reference arose from the conciliation proceeding and cannot travel beyond the scope of reference. The tribunal does not have jurisdiction also to adjudicate the validity, correctness and legality of the reference. Therefore, the irregularities and infirmities, as alleged by the writ petitioner

in the conciliation proceeding could not be assailed before the Central Government Industrial Tribunal. Since the issues raised by the writ petitioner were the jurisdictional issues strike at the root of the matter, the same need to be decided first before proceeding any further in the matter.

In view of the foregoing discussions and reasons, the order of reference dated April 29, 2010, **Annexure-P-4** to the writ petition and the notice/ summons issued by the Central Government Industrial Tribunal at Kolkata dated May 13, 2010, **Annexure-P-5** to the writ petition, stand set aside and quashed.

In the premises, the **respondent no. 5** is directed to revisit the issue on the basis of the available materials and records before it including the jurisdictional issues raised by the writ petitioner, as discussed above, after giving at least a seven days prior hearing notice to the **writ petitioner, the respondent no. 3, the respondent no. 4 and the respondent no. 6** and then after hearing the parties, to come to its logical conclusion with a reasoned decision/ order in accordance with law.

The entire exercise as directed above shall be carried out and completed by the **respondent no. 5** within a period of eight weeks from the date of communication of this order. The **respondent no. 5** then shall communicate its reasoned order/decision, to the **writ petitioner, respondent no. 3, respondent no. 4 and respondent no. 6** within a further period of two weeks from the date of the said reasoned order/ decision to be passed.

It is made clear that, this Court has not gone into the merits of the disputes raised by the Trade Unions on behalf of the security personnel. All the concerned parties shall be free to urge all points available to them before the **respondent no. 5**.

On the above terms, this writ petition, **WPO/1298/2010** stands allowed.

There shall, however, be no order as to costs.

(ANIRUDDHA ROY, J.)

bp./sg.