

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 13437 OF 2021

M/s Khambete Kothari Cans &
Allied Products Pvt. Ltd.
B-5, MIDC, Industrial Estate, Jalgaon
Through its Director,
Shri Prashant Dilip Kothari,
Aged 46, Occ- Business,
R/o; B-5 MIDC, Jalgaon.

...PETITIONER

V E R S U S

1. State of Maharashtra,
Through Secretary,
Industries Energy and Labour Department
Mantralaya Mumbai.
2. Deputy Commissioner of Labour
Nasik, 4th Floor, Udyog Bhavan,
Satpur Road, Nasik Dist. Nasik.
3. Prakash Amrut Pawar,
Age Major, Occ; Service
R/o; MSMRA, CITU Office,
Ashok Tower, 2nd Floor, Baliram Peth,
Jalgaon, Tq & Dist. Jalgaon.

...RESPONDENTS

AND

WRIT PETITION NO. 14065 OF 2021

M/s Khambete Kothari Cans &
Allied Products Pvt.Ltd.
B-5, MIDC, Industrial Estate, Jalgaon
Through its Director,
Shri Prashant Dilip Kothari,
Aged 47, Occ- Business,
R/o; B-5 MIDC, Jalgaon.

...PETITIONER

V E R S U S

1. Dnyandev Motiram Patil,
Age; 45 yeas, Occ; Service,
R/o MSMRA, CITU Office,
Ashok Tower, 2nd Floor, Baliram Peth,
Jalgaon Tal. And Dist. Jalgaon.
2. State of Maharashtra
Through Secretary,
Industries Enrgy and Labour Department
Mantralaya Mumbai.
3. Deputy Commissioner of Labour,
Nasik 4th Floor, Udyog Bhavan,
Satpur Road, Nasik, Dist. Nasik.

...RESPONDENTS**AND****WRIT PETITION NO. 14618 OF 2021**

M/s Khambete Kothari Cans &
Allied Products Pvt Ltd.
B-5, MIDC, Industrial Estate, Jalgaon,
Through its Director,
Shri Prashant Dilip Kothari
Aged; 46 yeas, Occ; Business,
R/o; B-5, MIDC, Jalgaon.

...PETITIONER**V E R S U S**

1. State of Maharashtra
Through Secretary,
Industries Enrgy and Labour Department
Mantralaya Mumbai.
2. Deputy Commissioner of Labour,
Nasik 4th Floor, Udyog Bhavan,
Satpur Road, Nasik, Dist. Nasik.
3. Anil Gopichand Mahajan,
Age; 45 years, Occ; Service,
R/o MSMRA, CITU Office,

Ashok Tower, 2nd Floor, Baliram Peth,
Jalgaon Tal. And Dist. Jalgaon.

...RESPONDENTS

AND

WRIT PETITION NO. 14630 OF 2021

M/s Khambete Kothari Cans &
Allied Products Pvt Ltd.
B-5, MIDC, Industrial Estate, Jalgaon,
Through its Director,
Shri Prashant Dilip Kothari
Aged; 46 yeas, Occ; Business,
R/o; B-5, MIDC, Jalgaon.

...PETITIONER

V E R S U S

1. State of Maharashtra
Through Secretary,
Industries Enrgy and Labour Department
Mantralaya Mumbai.
2. Deputy Commissioner of Labour,
Nasik 4th Floor, Udyog Bhavan,
Satpur Road, Nasik, Dist. Nasik.
3. Gopal Baban Dange,
Age; Major, Occ; Service,
R/o MSMRA, CITU Office,
Ashok Tower, 2nd Floor, Baliram Peth,
Jalgaon Tal. And Dist. Jalgaon.

...RESPONDENTS

AND

WRIT PETITION NO. 14640 OF 2021

M/s Khambete Kothari Cans &
Allied Products Pvt Ltd.
B-5, MIDC, Industrial Estate, Jalgaon,
Through its Director,
Shri Prashant Dilip Kothari
Aged; 46 yeas, Occ; Business,
R/o; B-5, MIDC, Jalgaon.

...PETITIONER

V E R S U S

1. State of Maharashtra
Through Secretary,
Industries Enrgy and Labour Department
Mantralaya Mumbai.
2. Deputy Commissioner of Labour,
Nasik 4th Floor, Udyog Bhavan,
Satpur Road, Nasik, Dist. Nasik.
3. Subhash Ramdas Devre,
Age; Major, Occ; Service,
R/o MSMRA, CITU Office,
Ashok Tower, 2nd Floor, Baliram Peth,
Jalgaon Tal. And Dist. Jalgaon.

...RESPONDENTS

WRIT PETITION NO. 14947 OF 2021

M/s Khambete Kothari Cans &
Allied Products Pvt Ltd.
B-5, MIDC, Industrial Estate, Jalgaon,
Through its Director,
Shri Prashant Dilip Kothari
Aged; 46 yeas, Occ; Business,
R/o; B-5, MIDC, Jalgaon.

...PETITIONER

V E R S U S

1. State of Maharashtra
Through Secretary,
Industries Enrgy and Labour Department
Mantralaya Mumbai.
2. Deputy Commissioner of Labour,
Nasik 4th Floor, Udyog Bhavan,
Satpur Road, Nasik, Dist. Nasik.
3. Rohidas Devram Patil,
Age; 45 yrs,, Occ; Service,
R/o MSMRA, CITU Office,
Ashok Tower, 2nd Floor, Baliram Peth,
Jalgaon Tal. And Dist. Jalgaon.

...RESPONDENTS

AND

WRIT PETITION NO. 14981 OF 2021

M/s Khambete Kothari Cans &
Allied Products Pvt Ltd.
B-5, MIDC, Industrial Estate, Jalgaon,
Through its Director,
Shri Prashant Dilip Kothari
Aged; 46 yeas, Occ; Business,
R/o; B-5, MIDC, Jalgaon.

...PETITIONER

V E R S U S

1. State of Maharashtra
Through Secretary,
Industries Enrgy and Labour Department
Mantralaya Mumbai.
2. Deputy Commissioner of Labour,
Nasik 4th Floor, Udyog Bhavan,
Satpur Road, Nasik, Dist. Nasik.
3. Rejendra Sitaram Patil,
Age; 50 yrs,, Occ; Service,
R/o MSMRA, CITU Office,
Ashok Tower, 2nd Floor, Baliram Peth,
Jalgaon Tal. And Dist. Jalgaon.

...RESPONDENTS

AND

WRIT PETITION NO. 207 OF 2022

M/s Khambete Kothari Cans &
Allied Products Pvt Ltd.
B-5, MIDC, Industrial Estate, Jalgaon,
Through its Director,
Shri Prashant Dilip Kothari
Aged; 46 yeas, Occ; Business,
R/o; B-5, MIDC, Jalgaon.

...PETITIONER

V E R S U S

1. Vikram Girdhar Jagtap,
Age; 56 yrs,, Occ; Service,
R/o MSMRA, CITU Office,
Ashok Tower, 2nd Floor, Baliram Peth,
Jalgaon Tal. And Dist. Jalgaon.
2. State of Maharashtra
Through Secretary,

Industries Enrgy and Labour Department
Mantralaya Mumbai.

3. Deputy Commissioner of Labour,
Nasik 4th Floor, Udyog Bhavan,
Satpur Road, Nasik, Dist. Nasik.

...RESPONDENTS

AND

WRIT PETITION NO. 209 OF 2022

M/s Khambete Kothari Cans &
Allied Products Pvt Ltd.
B-5, MIDC, Industrial Estate, Jalgaon,
Through its Director,
Shri Prashant Dilip Kothari
Aged; 46 yeas, Occ; Business,
R/o; B-5, MIDC, Jalgaon.

...PETITIONER

V E R S U S

1. Dhondu Parshuram Chaudhari,
Age; 50 yrs,, Occ; Service,
R/o MSMRA, CITU Office,
Ashok Tower, 2nd Floor, Baliram Peth,
Jalgaon Tal. And Dist. Jalgaon.
2. State of Maharashtra
Through Secretary,
Industries Enrgy and Labour Department
Mantralaya Mumbai.
3. Deputy Commissioner of Labour,
Nasik 4th Floor, Udyog Bhavan,
Satpur Road, Nasik, Dist. Nasik.

...RESPONDENTS

AND

WRIT PETITION NO. 1845 OF 2022

M/s Khambete Kothari Cans &
Allied Products Pvt Ltd.
B-5, MIDC, Industrial Estate, Jalgaon,
Through its Director,

Shri Prashant Dilip Kothari
Aged; 47 yeas, Occ; Business,
R/o; B-5, MIDC, Jalgaon.

...PETITIONER

V E R S U S

1. Shamkant Govinda Mahajan,
Age; 40 yrs,, Occ; Service,
R/o MSMRA, CITU Office,
Ashok Tower, 2nd Floor, Baliram Peth,
Jalgaon Tal. And Dist. Jalgaon.
2. State of Maharashtra
Through Secretary,
Industries Enrgy and Labour Department
Mantralaya Mumbai.
3. Deputy Commissioner of Labour,
Nasik 4th Floor, Udyog Bhavan,
Satpur Road, Nasik, Dist. Nasik.

...RESPONDENTS

.....
Shri Vikram A. Pawar, learned Advocate for Petitioners in all matters.

Shri K.N. Lokhande, learned AGP for State in WP 13437/2021 and
WP/14640/2021.

Shri A.S. Shinde learned AGP for State in WP 14065/2021, and WP
14947/2021.

Shri S.B. Yawalkar learned AGP for State in WP/14618/2021, WP
207/2022 and WP 1845/2022.

Miss. R.P. Gaur, learned AGP for State in WP/14630/2021,
WP/209/2022

Smt. Vaishali N. Patil (Jadhav) learned AGP for State in
WP/14981/2021.

.....
**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

DATE : 21.09.2022

JUDGMENT : [PER : SANDEEP V. MARNE, J.]

1. Rule. Rule made returnable forthwith. With the consent of

the learned Advocates for the respective parties, heard finally at the stage of admission.

2. By the present petitions, the petitioners are challenging the order dated 27.01.2020, passed by the Deputy Commissioner of Labour, Nashik, Division Nashik, referring the disputes of the respective respondents for adjudication to the Labour Court, Jalgaon. The disputes relates to reinstatement of the respondents with full back wages and continuity in service w.e.f. 29.06.2009.

3. The order of the Deputy Commissioner of Labour is assailed essentially on the ground of delay in raising the dispute. It is the case of the petitioners that on account of proceeding on strike, it issued letter dated 15.07.2009 to the concerned workmen calling them upon them to resume the duties within 72 hours, failing which it would be assumed that the workmen were not willing to work. Despite service of notice dated 15.07.2009, the concerned workmen not only failed to perform their duties but also did not raise any dispute with the petitioner Company. For the first time, on 16.10.2016 it received undated letters from the respondents demanding reinstatement with back wages. Thereafter, the respondents straight way approached the Conciliation Officer, vide letter dated 01.07.2017 along with justification statement. A notice dated 26.07.2017 was issued to the petitioners by the office of the Assistant Commissioner of Labour, Jalgaon for conciliation and the petitioner filed its detailed reply dated

24.07.2018, inter-alia raising the issue of delay, as well as non existence of any industrial dispute. The Conciliation Officer submitted a failure report dated 08.10.2018. The Deputy Commissioner, Labour, Nashik, thereafter issued notice dated 17.11.2018 to the Petitioner calling upon it to remain present for hearing. It submitted detailed reply dated 02.11.2018, once again raising the issue *inter alia* of delay/latches and non-existence of the industrial dispute. The Deputy Commissioner, Labour, Nashik has thereafter passed the impugned order dated 27.01.2020 referring the dispute for adjudication to the Labour Court, Jalgaon.

4. Appearing for the petitioner Mr. Pawar, the learned counsel has submitted that there existed no industrial dispute which could have been referred by the Deputy Commissioner Labour, for adjudication to the Labour Court. He submitted that after receipt of the letter dated 15.07.2009, respondents did not raise any objection or dispute for a period of 7 long years. He further submits that there was gross delay/latches in approaching the Assistant Deputy Commissioner, Labour, on the part of the respondents, on account of which, the impugned reference ought not to have been made. He relies upon judgments of the Apex Court in **Prabhakar Vs. Joint Director Sericulture Department and another Vs. Joint Director Sericulture Department and another** 2015, DGLS SC 1213 and **State of Karnataka and Another Vs. Ravi Kumar** 2009 DGLS (SC) 1644. He also relies upon judgment of this Court, Bench at Nagpur in

Brij Bihari Singh s/o Bacchan Singh Vs. Western Coalfields Limited 2021 DGLS (Bom.) 1470.

5. The Ld. Additional/Assistant Government Pleaders have supported the reference order. Considering the nature of order that we propose to pass, we did not deem it necessary to issue notices to the respondents.

6. The entire thrust of submissions of Mr. Pawar is on the delay/latches in approaching the Assistant/Deputy Commissioner of Labour, thereby indicating non-existence of any industrial dispute. The provision for making a reference of a dispute to the Labour Court is to be found in Section 10 of the Industrial Disputes Act, 1947 which reads thus:

“10. Reference of disputes to Boards, Courts or Tribunals :-

*(1) Where the appropriate Government is of opinion that **any industrial dispute exists** or is apprehended, it may **at any time**, by order in writing,--*

(a) refer the dispute to a Board for promoting a settlement thereof; or

(b) refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or

[(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or

(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication:

(emphasis & underlining supplied)

7. Thus, existence of industrial dispute is a sine qua non for making an order of reference. Section 10 also uses the phrase '*at any time*'. It has been repeatedly held by the Apex Court that no period of limitation applies for reference of industrial disputes to the Labour Court. But then there are also decisions wherein it is held that in respect of very stale claims where the dispute no longer subsists, reference can be rejected.

8. Thus, in view of the scheme of the Act, it is for the Appropriate Government to form an opinion about existence or apprehension of an industrial dispute. The moment such opinion is reached, reference becomes mandatory. Mere delay cannot be a ground for refusing to make a reference. The only ground on which a reference can be refused is where the Appropriate Government arrives at a conclusion that the industrial dispute does not exist. In the instant case, we must bear in mind that the Government has arrived at a conclusion that industrial dispute does exist.

9. We have gone through the letter dated 15.07.2009, which according to Mr. Pawar, formed cause of action, if any, for the respondents to raise appropriate industrial dispute. He admits that by letter dated 15.07.2009 the services of the respondents were not

terminated. He would submit that on the basis of letter dated 15.07.2009 and the conduct of the respondents after receipt of the letter, an inference of abandonment of service is required to be drawn. By that letter, each of the respondents were called upon to resume duty within a period of 72 hours, failing which, it was to be assumed that they were not willing to serve. Admittedly, after receipt of letter dated 15.07.2009, no attempt was made by Petitioner to communicate to the respondents that their services stood terminated, on account of failure to join, in pursuance of the letter dated 15.07.2009. Whether the letter dated 15.07.2009 would by itself constitute termination of services of the respondents is something which can be decided at the time of final adjudication of the matter. Also, whether the conduct of the respondents would amount to abandonment of service, is also a disputed question of fact. This is clear from a specific submission made in the justification letter that the respondents attempted to join duties on 29.06.2009 but they were prevented by the security force from entering into the premises. It is the case of the respondents that the Company orally terminated them from 29.06.2009 onwards. All these aspects are required to be decided by way of adjudication.

10. In the instant case, considering the peculiar circumstances where there is no specific order of termination and there is dispute as to whether the employees were prevented from attending the duties. It is therefore difficult to arrive at a firm opinion, at least at this stage, that the dispute, if any, ended on account of inaction of the

Respondents in not responding to the letter dated 15.07.2009, when they were called upon to join the duties. In fact, if the defence of the employees is to be believed, it could well be argued that the dispute continued as the employer did not permit the employees to join the duties. All these aspects will have to be considered and decided at the time of final adjudication of the dispute.

11. In the light of situation emerging before us, the issues that arise for consideration is whether to shut the doors of the respondents for adjudication of their alleged disputes or whether to permit such adjudication of the dispute which allegedly suffers from delay/latches. According to us, the former would permanently bar the remedy of the respondents, whereas latter would result in subjecting the petitioners to litigation in respect of alleged stale claim. We would prefer the latter course of action considering the fact that the respondents are workmen and their remedy should ordinarily not be barred, at least at this stage, without giving them an opportunity of explaining the circumstances by leading evidence on the aspect of delay. We, therefore, are not in agreement with Mr. Pawar that the impugned order referring the dispute for adjudication to the Labour Court, deserves to be set aside.

12. Mr. Pawar has strenuously relied upon the judgment of the Apex Court in **Prabhakar** (supra), however, in that judgment also the Apex Court has held as under :

"40. In the alternative, the labour Court/Industrial Court can also hold that there is no industrial dispute within the meaning of Section 2(k) of the Act and therefore, no relief can be granted.

*41. **We may hasten to clarify that in those cases where the Court finds that dispute still existed, though raised belatedly, it is always permissible for the Court to take the aspect of delay into consideration and mould the relief.** In such cases, it is still open for the court to either grant reinstatement without back wages or lesser back wages or grant compensation instead of reinstatement. We are of the opinion that the law on this issue has to be applied in the aforesaid perspective in such matters."*

13. Therefore, the judgment in **Prabhakar** (supra) does not lay down a strict law that if the dispute is found to be delayed, this Court must set aside the order of reference. Also in the case of **Prabhakar** (supra), the dispute in respect of termination was raised after 14 years. In the present case, there is no termination from service and the case involves disputed question as who was responsible for respondents' non-attendance of duties. The delay is also comparatively shorter. Therefore, the decision in **Prabhakar** (supra) is clearly distinguishable.

14. In **Ravi Kumar** (supra) again, there was delay of 14 years in filing Writ Petition before the High Court to seek declaration that the termination was bad in law. While dismissing the Writ Petition as not maintainable, the workmen were given an opportunity to make representation to the State Government for making reference to Labour Court. After reference being made, final adjudication thereof was made by the Labour Court and the legality of the award of the Labour

Court was under challenge before the Apex Court. Thus, the judgment did not involve the issue of delay in making reference order. In **Brij Bihari Singh** (supra) the issue was about the correction of date of birth and therefore, the said decision has no remote application to the facts and circumstances of the present case.

15. We may make profitable reference to the judgment of the Apex Court in **Raghubir Singh Vs. General Manager, Haryana, Roadways, Hissar** (2014) 10 SCC 301, in which it is held that

“15. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate Government in exercise of its statutory power under Section 10(1) (c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in Avon Services case⁶ referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1) (c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services⁶ and Sapan Kumar Pandit⁷ cases referred to supra.”

16. In **Sapan Kumar Pandit V. U.P. Electricity Board and Ors.** (2001) 6 SCC 222, the appellant was terminated on 17.07.1975 but failed to raise any industrial dispute. The dispute was raised only in the year 1992, relying upon the decision in the case of his cohorts. The order making reference by the State Government in these

circumstances was quashed by the High Court, citing delay of 15 years in making it. Allowing the appeal, the Supreme Court held that,

“Only authority which can form an opinion about the existence of dispute is the State Government and that such decision would not depend upon the opinion of the employer. ”

It is further held that

“Once the government decides to make the reference there is a presumption that in the opinion of the government there existed such a dispute. ”

The Court held in paragraph Nos. 8, 9, 10 and 15 as under :

“8. *The above section is almost in tune with Section 10 of the Industrial Disputes Act, 1947, and the difference between these two provisions does not relate to the points at issue in this case. Though no time-limit is fixed for making the reference for a dispute for adjudication, could any State Government revive a dispute which had submerged in stupor by long lapse of time and rekindle by making a reference of it to adjudication? The words “at any time” as used in the section are prima facie indicator to a period without boundary. But such an interpretation making the power unending would be pedantic. There is inherent evidence in this sub-section itself to indicate that the time has some circumscription. The words “where the Government is of opinion that any industrial dispute exists or is apprehended” have to be read in conjunction with the words “at any time”. They are, in a way, complementary to each other. The Government’s power to refer an industrial dispute for adjudication has thus one limitation of time and that is, it can be done only so long as the dispute exists. In other words, the period envisaged by the enduring expression “at any time” terminates with the eclipse of the industrial dispute. It, therefore, means that if the dispute existed on the day when the reference was made by the Government, it is idle to ascertain the number of years which elapsed since the commencement of the dispute to*

determine whether the delay would have extinguished the power of the Government to make the reference.

9. Hence the real test is, was the industrial dispute in existence on the date of reference for adjudication? If the answer is in the negative then the Government's power to make a reference would have extinguished. On the other hand, if the answer is in positive terms the Government could have exercised the power whatever be the range of the period which elapsed since the inception of the dispute. That apart, a decision of the Government in this regard cannot be listed (sic) on the possibility of what another party would think, whether any dispute existed or not. The section indicates that if in the opinion of the Government the dispute existed then the Government could make the reference. The only authority which can form such an opinion is the Government. If the Government decides to make the reference, there is a presumption that in the opinion of the Government, there existed such a dispute.

10. In considering the factual position whether the dispute did exist on the date of reference the Government could take into account factors, inter alia, such as the subsistence of conciliation proceedings. It is of no consequence that conciliation proceedings were commenced after a long period. But such conciliation proceedings are evidence of the existence of the industrial dispute. It is an admitted fact that on the date of reference in this case the conciliation proceedings were not concluded. If so, it cannot be said that the dispute did not exist on that day.

15. There are cases in which lapse of time had caused fading or even eclipse of the dispute. If nobody had kept the dispute alive during the long interval, it is reasonably possible to conclude in a particular case that the dispute ceased to exist after some time. But when the dispute remained alive though not galvanised by the workmen or the union on account of other justified reasons, it does not cause the dispute to wane into total eclipse. In this case, when the Government has chosen to refer the dispute for adjudication under Section 4-K

of the U.P. Act the High Court should not have quashed the reference merely on the ground of delay. Of course, the long delay for making the adjudication could be considered by the adjudicating authorities while moulding its reliefs. That is a different matter altogether. The High Court has obviously gone wrong in axing down the order of reference made by the Government for adjudication. Let the adjudicatory process reach its legal culmination."

17. We are therefore of the opinion that no case is made out by the petitioners for interference by this Court in the reference order in exercise of extraordinary writ jurisdiction. Several disputed questions of facts are involved in the case and it is appropriate that both the parties get the same adjudicated before the Labour Court. We therefore find that petitions are devoid of merit. They are dismissed, without any orders as to the costs. However, it is clarified that the Labour Court would not be influenced by the observations made by us in the present judgment while adjudicating the dispute raised before it. All contentions on delay and merits are left open. Rule is discharged.

(SANDEEP V. MARNE)
JUDGE

(MANGESH S. PATIL)
JUDGE