

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 6402 OF 2019

All India Reporter Private Limited,
a Company incorporated and registered
under the Companies Act having its
registered office at Meadows House, Nagindas Master Road,
Fort, Mumbai – 400023 and its industrial
establishment at Congress Nagar, Nagpur,
through its Managing Director – Shri Sumant Widyadhar Chitaley
(Original Party No.1).

PETITIONER

.....VERSUS.....

1. The State of Maharashtra,
through the Secretary,
Department of Industries, Energy and Labour,
Mantralaya, Mumbai.
2. The Additional Commissioner of Labour (Admn),
Vidarbha Region, Nagpur.
3. All India Reporter Karmachari Sangh,
A Trade Union, bearing registration No. NAG/2572,
having its office at C/o K.B. Ambokar, 15/2, Somwari Peth,
Nagpur – 440009, through its Secretary K.B. Ambokar
(Original Party No.2).

RESPONDENTS

Shri H.V. Thakur, Advocate for the petitioner.
Shri A.S. Fulzele, Additional Government Pleader for respondent Nos. 1 and 2.
Shri V.P. Marpakwar, Advocate for respondent No.3.

CORAM : A. S. CHANDURKAR AND M.W. CHANDWANI, JJ.

ARGUMENTS WERE HEARD ON : OCTOBER 13, 2022

JUDGMENT IS PRONOUNCED ON : NOVEMBER 17, 2022

JUDGMENT : (PER : A.S. CHANDURKAR, J.)

Rule. Rule made returnable forthwith and heard the learned
Counsel for the parties.

2] The petitioner is a Company incorporated under the Companies Act, 1956. It is engaged in the business of publication of law journals. The journals published by the petitioner have been held to be newspapers and the provisions of the Working Journalists And Other Newspaper Employees (Conditions Of Service) And Miscellaneous Provisions Act, 1955 (for short “Act of 1955”) are applicable to the petitioner. It is the case of the petitioner that the Majithia Wage Board Award has been made applicable with effect from 11/11/2011 and its employees are getting wages in accordance with that award. The third respondent – a Trade Union comprising of employees working at the petitioner Company sought to raise a dispute based on its monetary demands. An application under Section 17 of the Act of 1955 came to be moved before the Additional Commissioner of Labour. On 23/7/2018, the Additional Commissioner of Labour in exercise of powers conferred under Section 17(2) of the Act of 1955 made a reference for being adjudicated by the Labour Court. As per the terms of reference, classification of the petitioner’s establishment was sought to be got adjudicated. On reference being made, the same was considered by the Labour Court, Nagpur. The Union filed its statement of claim dated 27/9/2018. According to the Union, its members were entitled to difference of wages payable as per the Majithia Wage Board Award. Difference of such wages from 1/7/2010 was claimed therein. In response, the petitioner filed its written statement

and raised an objection to the reference of the dispute. It was stated that the Additional Commissioner of Labour had no jurisdiction to refer the dispute under Section 17(2) of the Act of 1955. The claim as made was also denied on various grounds as raised in the written statement. The petitioner also filed an application raising a preliminary objection to the tenability of the proceedings based on the provisions of Section 17(2) of the Act of 1955. This was replied to by the Union on 19/3/2019. The learned Judge, 4th Labour Court, Nagpur decided the preliminary objection on 8/8/2019 and held that the Court had jurisdiction to consider and adjudicate the reference as made by the Additional Commissioner of Labour. In the light of this adjudication, the petitioner has challenged the notification dated 11/5/2016 issued by the Industries, Energy and Labour Department of the State Government by which the work of referring any question to the Labour Court under Section 17(2) of the Act of 1955 was conferred on the Additional Commissioner of Labour. According to the petitioner, this notification had been relied upon by the Labour Court while turning down the preliminary objection. A challenge has also been raised to the order of reference dated 23/7/2018 as made by the Additional Commissioner of Labour on the ground that it is without jurisdiction. Consequently, the order dated 8/8/2019 passed by the learned Judge, 4th Labour Court, Nagpur is also under challenge.

3] Shri H.V. Thakur, learned Counsel for the petitioner submitted that the notification dated 11/5/2016 purported to be issued in exercise of powers conferred under Section 17(2) of the Act of 1955 was without jurisdiction. Inviting attention to the provisions of Section 17 of the Act of 1955, it was submitted that under Section 17(1), if an application made to the State Government for recovery of any amount due to a newspaper employee, the State Government or such authority as the State Government specifies in that behalf shall issue a certificate for such amount to the Collector. The power to delegate its power was conferred on the State Government under Section 17(1) of the Act of 1955. However, it was urged that under Section 17(2), no such power of delegation had been conferred on the State Government to refer any question as regards the amount due under the Act of 1955 to any Labour Court. In absence of any such power, it was not permissible for the Industries, Energy and Labour Department of the State Government to allocate the work of referring any question to the Labour Court for adjudication. Inviting attention to the decision in *M. Chandru Vs. Member-Secretary, Chennai Metropolitan Development Authority And Another* [(2009) 4 SCC 72] it was submitted that delegation of power was permissible only if there existed a provision in the Principal Act. In absence of any such power conferred by Section 17(2) of the Act of 1955, it was not permissible for the State Government to allocate the work of

referring such question to the Additional Commissioner of Labour. Such question was required to be referred by the State Government itself. On this count, the notification dated 11/5/2016 was liable to be set aside.

It was then submitted that as per the statement of claim, the members of the Union sought resolution of the dispute pertaining to the qualification of their services. While according to the petitioner the establishment fell under Class - VII, it was the case of the members of the Union that the establishment was covered under Class - V. There was thus an industrial dispute in existence between the parties. Referring to the decision in *New India Assurance Co. Ltd. Vs. Bandliben Ravidas Gamit & Anr.* [2009 III CLR 788] it was submitted that the Union could not have taken recourse to the provisions of Section 17 of the Act of 1955 for resolution of such dispute. It was not a case of implementation or execution of any award passed by the Wage Board. In that context, reference was made to the provisions of Section 3 of the Act of 1955. The learned Counsel also referred to the decision in *Sanjay Shalikram Ingle Vs. Lokmat, Proprietors, Lokmat Newspapers Pvt. Ltd., Nagpur* [2010(3) Mh.L.J. 549] in that regard.

It was thus submitted that the learned Judge of the Labour Court without considering the fact that the Additional Commissioner of

Labour was not an authority under the Act of 1955 erred in turning down the preliminary objection raised by the petitioner. Since the entire exercise was without jurisdiction, the order of reference dated 23/7/2018 as well as the order dated 8/8/2019 passed by the learned Judge, 4th Labour Court, Nagpur were liable to be set aside.

4] Shri A.S. Fulzele, learned Additional Government Pleader for respondent Nos. 1 and 2 referred to the affidavit-in-reply filed on behalf of the said respondents and opposed the Writ Petition. According to him, the Additional Commissioner of Labour was empowered to make the order of reference dated 23/7/2018 in view of the power conferred by the notification dated 11/5/2016. It having been found that the dispute was liable to be referred to the Labour Court, the Additional Commissioner of Labour was justified in making the order of reference.

Shri V.P. Marpakwar, learned Counsel for respondent No.3 also opposed the Writ Petition. He submitted that the challenge as raised to the notification dated 11/5/2016 was belated in view of the fact that the Writ Petition had been filed only in September-2019. The petitioner having participated in the conciliation proceedings before the Additional Commissioner of Labour, it was not now permissible for it to challenge the order of reference and consequentially the notification dated

11/5/2016. The Additional Commissioner of Labour having noticed the need for resolution of the dispute was justified in making the reference to the Labour Court on 23/7/2018. It was also submitted that the proceedings under Section 17(1) of the Act of 1955 were akin to the proceedings under Section 33(C)(2) of the Industrial Disputes Act, 1947. The learned Judge of the Labour Court had rightly considered the relevant provisions and had found that there was no substance in the preliminary objection raised by the petitioner. It was thus submitted that there was no reason to interfere in writ jurisdiction.

5] In reply to the aforesaid, the learned Counsel for the petitioner submitted that the reference to the notification dated 11/5/2016 was made for the first time in the order of reference dated 23/7/2018 by the Additional Commissioner of Labour. There was no occasion for the petitioner to challenge the said notification at any earlier point of time. There was no delay in preferring the Writ Petition as the petitioner had raised a preliminary objection to the tenability of the proceedings and on adjudication of that preliminary objection on 8/8/2019, the Writ Petition had been filed immediately on 16/9/2019. The challenge therefore ought to be adjudicated on merits.

6] In the light of the rival submissions, the question that deserves consideration is whether it is open for the State Government to

delegate its power of referring a question arising under the Act of 1955 to any authority or whether such power has to be exercised by the State Government itself. To consider the said question, it would be necessary to refer to the provisions of Sections 17(1) and (2) of the Act of 1955, which read thus :

“17. Recovery of money due from an employer.- (1) Where any amount is due under this Act to a newspaper employee from an employer, the newspaper employee himself, or any person authorised by him in writing in this behalf, or in the case of the death of the employee, any member of his family may, without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the amount due to him, and if the State Government, or such authority, as the State Government may specify in this behalf, is satisfied that any amount is so due, it shall issue a certificate for that amount to the Collector, and the Collector shall proceed to recover that amount in the same manner as an arrear of land revenue.

(2) If any question arises as to the amount due under this Act to a newspaper employee from his employer, the State Government may, on its own motion or upon application made to it, refer the question to any Labour Court constituted by it under the Industrial Disputes Act, 1947 or under any corresponding law relating to investigation and settlement of industrial disputes in force in the State and the said act or law shall have effect in relation to the Labour Court as if the question so referred were a matter referred to the Labour Court for adjudication under that Act or law.”

(Emphasis supplied)

7] A perusal of Section 17(1) of the Act of 1955 indicates that without prejudice to any other mode of recovery, it would be open for a newspaper employee to seek recovery of amount due to him by making an application to the State Government. On the State Government or such authority that the State Government may satisfy in this behalf being satisfied that any amount is so due, a certificate for such amount can be issued to the Collector who can then proceed to recover that amount in the same manner as an arrear of land revenue. It is clear from the said provision that the State Government has been conferred the power of delegating the task of determining whether any amount is due as claimed by a newspaper employee. The State Government can either itself or through such authority as specified issue a certificate as provided. In contrast, when the provisions of Section 17(2) of the Act of 1955 are analyzed, it becomes clear that no such power of delegation has been conferred on the State Government. Thus, if any question arises as to the amount due under the Act of 1955, it is for the State Government either on its own motion or on upon an application made to it to refer the question to any Labour Court as permitted. In other words, the State Government has not been conferred any power to delegate the task of referring such question to any Labour Court. There is thus a clear distinction contained in the provisions of Sections 17(1) and 17(2) of the Act of 1955 inasmuch as the power of delegation conferred on the State

Government under Section 17(1) is missing in Section 17(2) of the Act of 1955.

In this regard, the learned Counsel for the petitioner is justified in relying upon the decision in *M. Chandru (supra)* wherein the Hon'ble Supreme Court has observed in clear terms that delegation of power is permissible if there exists such provision in the Principal Act. The power to delegate being a statutory requirement must find place in the Principal Act itself. It is thus clear that in the absence of any such power of delegation being conferred upon the State Government under Section 17(2) of the Act of 1955 to refer any question as to whether any amount is due under the Act of 1955 to a newspaper employee, such reference has to be made by the State Government itself.

8] The Additional Commissioner of Labour has relied upon the notification dated 11/5/2016 issued by the Industries, Energy and Labour Department of the State Government and has thereafter made the order of reference. This notification states that the State Government has been pleased to allocate the work to refer the question to any Labour Court within the meaning of Section 17(2) of the Act of 1955 to the officers mentioned in Schedule thereto. We find that in the absence of any power of delegation being conferred on the State Government under Section 17(2) of the Act of 1955, the notification dated 11/5/2016 would not

have any force of law. In the absence of any enabling power to delegate the task of referring any question to the Labour Court, it would have to be held that exercise of such power by the officers mentioned in the Schedule to the notification dated 11/5/2016 would amount to usurping the authority conferred only on the State Government. The notification dated 11/5/2016 therefore does not have any statutory support of Section 17(2) of the Act of 1955. It is therefore held that it was not permissible for the Additional Commissioner of Labour to have referred the dispute to the Labour Court under Section 17(2) of the Act of 1955. Such reference under Section 17(2) ought to have been made by the State Government itself. Consequently, the Labour Court was not empowered to proceed further with the reference as made.

9] It was also submitted by the learned Counsel for the petitioner that since the members of the Union sought determination of their entitlement to higher wages, remedy under Section 17 of the Act of 1955 was not available. What was required to be resolved was an industrial dispute and therefore the members of the Union ought to have invoke appropriate jurisdiction in that regard. Reliance was placed on the decision in *Sanjay Shalikram Ingle (supra)*. However, since it has been found that the Additional Commissioner of Labour was not empowered to make the reference under Section 17(2) of the Act of 1955 to the Labour

Court, it would not be necessary at this stage to consider the said aspect of the matter. If a reference is made by the State Government under Section 17(2) of the Act of 1955, the said aspect can be considered at that stage.

10] It was urged by the learned Counsel for the Union that the challenge to the notification dated 11/5/2016 was raised belatedly since the present Writ Petition was filed on 16/9/2019. It is found that reference to the said notification has been made for the first time in the order of reference dated 23/7/2018. After the Additional Commissioner of Labour made the order of reference to the Labour Court, the petitioner raised a preliminary objection to the tenability of the reference proceedings on 17/1/2019. That objection came to be rejected on 8/8/2019. In these facts therefore it cannot be said that the challenge to the notification dated 11/5/2016 was belated. Needless to state that in addition to a challenge to the said notification, the order of reference dated 23/7/2018 as well as the order passed by the learned Judge, 4th Labour Court, Nagpur below Exh.11 on 8/8/2019 are also under challenge in this Writ Petition. We therefore do not find that the Writ Petition has been filed belatedly for it to be not entertained on merits.

11] Hence, for the aforesaid reasons, it is held that the notification dated 11/5/2016 issued by the State Government delegating

its power under Section 17(2) of the Act of 1955 to the Additional Commissioner of Labour to make a reference to the Labour Court does not have any statutory support. There is no power conferred on the State Government to delegate the power conferred upon it to refer any dispute to the Labour Court for determining whether any amount is due to the members of the Union under the Act of 1955. Consequently, the notification dated 11/5/2016 is struck down as having been issued without there being any power conferred on the State Government in that regard under Section 17(2) of the Act of 1955. Consequently, the order dated 8/8/2019 passed below Exh.11 in Reference (IDA) No. 10/2018 is also set aside and it is declared that the said reference is not maintainable before the Labour Court in view of the notification dated 11/5/2016 being struck down. The Union is free to agitate its claim in accordance with law. It is clarified that this Court has not examined the claim on merits and all questions in that regard are kept open.

12] Rule is made absolute in the aforesaid terms with no order as to costs.

(M.W. CHANDWANI, J.)

(A.S. CHANDURKAR, J.)

Sumit