

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 1596 of 2018

Messrs Tata Chemicals Limited.
Vs.
State of West Bengal & Ors.

For the petitioner : Mr. Ranjay De

For the respondent no.4 : Mr. Salil Kumar Maity,
Ms. Jayatri Basu Ray

Heard on : 10.01.2023.

Judgment on : 15.03.2023.

Raja Basu Chowdhury, J:

1. The present writ application has been filed, *inter alia*, challenging the order dated 20th September, 2017, passed by the learned Third Industrial Tribunal, West Bengal, whereby the petitioner has been added as an additional party in case no. VIII-44 of 2015 arising out of an order of reference dated 16th November, 2015 made by the appropriate Government. It, however, appears that the learned Third Industrial Tribunal, West Bengal has been made a party in this proceedings. Since

the learned Third Industrial Tribunal could not have been made a party, let the name of the learned Third Industrial Tribunal as respondent no.1 be deleted from the cause title of the application: Leave is granted to the learned advocate for the petitioner to carry out necessary correction in the cause title and the prayer portion of the writ application.

2. At the interim stage when the matter had come up for hearing, this Court by order dated 27th September, 2022 while taking note of the submissions of the respective parties, *inter alia*, on the point of maintainability raised by the respondent no.3 was pleased to entertain the present writ application by overruling the objection on the point of maintainability, and while calling for the records, had stayed all further proceedings in case no. VIII-44/2015 pending before the Third Industrial Tribunal, West Bengal. Since then, records have been produced.
3. Despite service the respondent no.2 did not present itself for hearing and remained unrepresented.
4. As would appear from the record the petitioner claims to be a Public Limited Company incorporated under the provisions of Companies Act, 1956. The petitioner has from time to time entered into various agreements with service providers with the object of outsourcing certain activities which are not perennial in nature. The respondent no.2 happens to be one

of the service providers who has been engaged for loading and unloading of materials. The respondent no.3 is an employee of the respondent no.2 who has since been superannuated on 1st April, 2014.

5. Notwithstanding the petitioner not having any direct contractual relationship with the respondent no.3, the petitioner was served with a notice dated 22nd November, 2016 issued by the Third Industrial Tribunal enclosing therewith, an application filed by the respondent no.2. By such notice, the petitioner was called upon to show-cause why the petitioner shall not be brought on record in connection with the case pending before the Tribunal. The petitioner has since ascertained that pursuant to a dispute raised by the respondent no.3 against the respondent no.2, the appropriate Government by an order dated 16th November, 2015 had referred the dispute raised by the respondent no.3 to the Third Industrial Tribunal, West Bengal for adjudication by framing the following issues:

(i) Whether the superannuation of the workman, Sri Jamal Khan with effect from 1st April, 2014 is justified?

(ii) What relief, is he entitled to?

6. It is, in connection with the said proceedings that a summon in Form D-3 (in terms of Rule 20D (2) proviso) of the West

Bengal Industrial Disputes Rules, 1958 (hereinafter referred to as the said Rules), bearing memo no. 3960LT dated 22nd November, 2016 had been issued.

7. The petitioner had duly responded to the aforesaid summons and had duly objected to the aforesaid notice and by filing an appropriate objection had clarified that the petitioner was neither a necessary nor a proper party, in relation to adjudication of the dispute, *inter se* between the respondent no.2 and respondent no.3. The petitioner did not have any contractual relationship with the respondent no.3 and that no employee employer relationship subsists. The Tribunal, however, by overruling the objection raised by the petitioner, by an order dated 20th September, 2017 has added the petitioner, as a principal employer of the respondent no.3 as an additional party in the proceedings.
8. Challenging the aforesaid order, the present writ application has been filed.
9. Mr. De, learned advocate representing the petitioner, submitted that the Tribunal despite taking note of the fact that the petitioner had no contractual relationship with the respondent no.3 ordered the petitioner, to be added as an additional party, in its capacity as principal employer, to such proceedings, *inter alia*, on the ground that the presence of the petitioner may be necessary for effectually and completely

adjudicating upon and to settle all the questions and issues involved in the dispute. He reiterated that the aforesaid order passed by the Tribunal is perverse and is based on complete non-application of mind.

10. He says that the Tribunal did not appropriately take note the provisions of Rule 20D of the said Rules and by adding the petitioner as party has occasioned complete failure of justice. The petitioner is neither a necessary nor a proper party and there is, admittedly, no contractual relationship between the petitioner and the respondent no.3.

11. He says that an employee-employer relationship forms the basic foundation of an industrial dispute as defined in Section 2(k) of the Industrial Disputes Act, 1947 (hereinafter referred to as the said Act). The power to refer such disputes for adjudication is, thus, limited to disputes between the employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any persons: the same does not and cannot include a workman and a third party and for that sake the principal employer.

12. According to Mr. De, respondent no.1 committed jurisdictional error in adding the petitioner as party to the proceedings and this Court has the jurisdiction and authority

to correct such an error, in exercise of its high prerogative writ jurisdiction under Article 226 of the Constitution of India.

13. *Per contra*, Mr. Maity, learned advocate appearing for the respondent no.3, submits that the application for addition of party has not been filed by his client. The said application for addition of party had been filed by the respondent no.2, who is his employer. He says that unless the principal employer is brought on record, retrenchment compensation will not be available. He, however, questioned the jurisdiction and authority of this Court to entertain the present writ application.
14. I have heard the learned advocates appearing for the respective parties and have considered the materials on record.
15. I find that an industrial dispute has been raised by the respondent no.3 against the respondent no.2 and the appropriate Government by an order dated 16th November, 2015 has referred the same to the Third Industrial Tribunal for adjudication. It is in connection with such proceedings that the respondent no.2 has sought for addition of the petitioner as a party to such proceeding. I find that unlike the general law, the Industrial Disputes Act, provides for adjudication of disputes which are enumerated disputes, *inter se* between a particular class of person or persons which is

also enumerated in Section 2k of the said Act. For the sake of brevity, the Section 2k is extracted hereunder:

“Section 2k - *“industrial dispute” means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;”*

16. It would, however, appear that the application of the respondent no.2 has been filed in terms of Rule 20D of the said Rules. For appropriately appreciating the provisions of Rule 20D of the said Rules the same is extracted herein below:

“20D. Addition of issues or parties to the proceedings. –

(1) *After the parties have filed their statements, the Industrial Tribunal/Labour Court may fix a date for framing, if necessary, issues relating to and arising out of the point or points in dispute, as referred, and matters incidental thereto, as well as additional or subsidiary issues, not enlarging in any way the scope of the points referred for adjudication on the merits, nor adding to their number but required for dealing with extrinsic contentions raised by the parties about the reference and for its hearing.*

(2) *The Industrial Tribunal/Labour Court may at any stage of the proceedings, either upon or without the application of any party and on such terms as may appear to the Industrial Tribunal/Labour Court just,*

order that the name of any party who ought to have been joined in the reference or whose presence before the Industrial Tribunal/Labour Court may be necessary in order to enable the Industrial Tribunal/Labour Court effectually and completely to adjudicate upon and settle all questions involved in the dispute, be brought on the record :

Provided that no such party shall be brought on the record without being given an opportunity to show cause by proper notice why he should not be brought on the record. The notice to show cause shall be in Form D-3.

(3) *The Industrial Tribunal/Labour Court shall have power, when circumstances so require, to bring on record in the place and instead of a party to the reference, a party or parties to which the right or interest of the former has passed in the course of the proceeding before it.”*

17. As would appear from the Rule 20D(2) of the said Rules that the Industrial Tribunal/Labour Court has the authority to order that the name of any party who ought to have been joined in the reference and whose presence before the Industrial Tribunal/Labour Court may be necessary in order to enable the Industrial Tribunal/Labour Court to effectively and completely adjudicate upon and settle all questions involved in the dispute, be brought on the record.

18. Again, in Rule 20D(3) of the said Rules, additional powers have been conferred on the Industrial Tribunal/Labour Court

to bring on record in place and instead of a party to the reference, a party or parties to which the right or interest of the former has passed in course of proceeding before it.

19. A perusal of the aforesaid Rule would, thus, demonstrate that the Industrial Tribunal/Labour Court has the jurisdiction and authority to add a party provided such party is a necessary party or that the right of a former party has passed in course of the proceeding before it.

20. A combined reading of Rule 20D(1), 20D(2) and 20D(3), would show that although the Tribunal has the power to adjudicate not only the issues which are referred to itself for adjudication but also can adjudicate matters incidental thereto, as also additional or subsidiary issues, not enlarging any way, the scope of the points referred for adjudication on the merits, nor adding to their number but required for dealing with extrinsic contentions raised by the parties about the reference and for its hearing and in this context the Tribunal can also when it appears just, order the name of any party who ought to have been joined in the reference and whose presence before the Industrial Tribunal/Labour Court may be necessary in order to enable the Industrial Tribunal/Labour Court to effectually and completely adjudicate upon and settle all questions involved in the dispute, to be brought on record, *inter alia*, including party, or

parties, to which the right or interest of the former has passed in course of the proceeding before it.

21. Thus, although the aforesaid power exists in the Tribunal, the Tribunal can only consider in addition to dispute specified in the order of reference, matters incidental to the said dispute and that naturally suggests, certain obvious limitations on the implied power of the Tribunal to add parties to the reference before it, while purporting to exercise its powers under Rule 20D of the said Rules.

22. It necessarily follows that if it appears to the Industrial Tribunal that party named in the order of reference, does not completely or adequately represent the interest either of the employer or of the employee it may direct the joining of other persons necessary to represent such interest. Similarly, if the unions specified in the reference does not represent all the employees, it may be open to the Tribunal to add such other unions as it may deem necessary. It is, thus, always a must that the addition of party is necessary to make the adjudication itself effective and enforceable. It is, in the light of the aforesaid provisions that the power of the Tribunal to add parties must be held to be limited.

23. I find that the petitioner has been added by holding the petitioner to be a principal employer. The question whether the petitioner is the principal employer and qualifies as an

employer within the meaning of Section 2g of the said Act is, however, a substantial dispute. If the appropriate Government desired that such question should be determined, a reference to that effect could have been brought. The aforesaid question cannot be considered as an incidental matter especially when the appropriate Government did not think it fit to refer such disputes for adjudication.

24. It, however, does not appear from the order impugned that the petitioner had been added as a party, only for the purpose of enforcing the award against the respondent no.2. As such, Tribunal cannot be permitted to enlarge the scope of the reference by adding the petitioner as a party, in its capacity as a principal employer when the order of reference does not provide for the same.

25. I find that the order passed by the learned Judge suffers from jurisdictional error. This Court has already at the interim stage held that where there is a jurisdictional error committed by the Tribunal or a quasi-judicial body, such an error is amenable to writ jurisdiction and can be corrected by this Court by issuing a writ of certiorari. A jurisdictional error may be from failure to observe the limits of its jurisdiction or may arise from procedural irregularity adopted by the Tribunal, after validly assuming jurisdiction. It may also be on account of violation of principles of natural justice. There may be other

instances where writ of certiorari can be issued. In the instant case, it is apparent from the records that the dispute as referred to the Tribunal by the appropriate Government is between the respondent nos. 2 and 3 and relates to employee-employer relationship. In a dispute limited to an employee-employer relationship, which does not also concern a dispute under Contract Labour (Regulation and Abolition) Act 1970, the petitioner has been added as a party. Such a decision, in my view, is an error of exercise of jurisdiction not vested in him. Although the Tribunal at the first instance, had the jurisdiction to decide upon the dispute between the respondent no.2 and respondent no.3, the Tribunal had exceeded his jurisdiction, while adding the petitioner as an additional party, in its capacity as principal employer, notwithstanding the petitioner having no contractual relationship (employee-employer) with the respondent no.3.

26. In view thereof, the order of addition of the petitioner as an additional party is set aside.
27. The records be sent back immediately, to the Third Industrial Tribunal, West Bengal, for adjudication of the disputes referred to the Tribunal by the appropriate Government vide its order dated 16th November, 2015.

28. The writ application being WPA 1596 of 2018 is accordingly disposed of.

29. There shall be no order as to costs.

30. Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis upon completion of requisite formalities.

(Raja Basu Chowdhury, J.)

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