

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE**

Present:
The Hon'ble Justice RAJA BASU CHOWDHURY

WPO/1047/2023

**M/S. THE HORIZON TRAVELS
-Versus-
THE STATE OF WEST BENGAL AND ORS.**

For the petitioner	:	Mr. Jayanta Dasgupta, Adv. Mr. Balaram Patra, Adv. Mr. Ritesh Maity, Adv.
For the State	:	Ms. Tapati Samanta, Adv.
For the respondent no.4	:	Mr. Ranjan Kali, Adv. Mr. Sobhan Kumar Pathak, Adv.
Heard on	:	22.06.2023.
Judgement on	:	22.06.2023

Raja Basu Chowdhury, J.:

1. The present writ application has been filed, inter alia, challenging the order dated 23rd March, 2023 passed by the learned First Industrial Tribunal, Kolkata, in Case No. VIII-18/2012 under Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the said Act).
2. It is the petitioner's case that the petitioner is a partnership firm registered under the provisions of the Indian Partnership Act, 1932. In usual course, the petitioner had engaged the respondent no.4 in the year 2001. The

petitioner claims that it supplies vehicles to the IOC/IBP on hire, for use of the officers of the Corporation and the respondent no.4 was posted at the office of IBP situated at 34A, Nirmal Chandra Street, Kolkata- 700 013, as a driver to ply the vehicles so supplied by its employer. Records would reveal that on or about 20th April, 2008 the service of the respondent no.4 was terminated.

3. Following the aforesaid, an industrial dispute was raised and the Government of West Bengal, Labour Department vide Memo No.410-IR dated 26th April, 2012 referred the disputes between the parties to the First Industrial Tribunal for adjudication by framing the following issues:

- “1. Whether the termination of service by way of refusal of employment of the worker Sri Bhoginder Thakur w.e.f. 20th April, 2008 by the management M/s. Horizon Travels is justified?*
- 2. What relief, if any, is he entitled to ?”*

4. It appears that sometimes in the year 2014 the petitioner had filed an application, inter alia, questioning the jurisdiction and authority of the State Government to make the reference and had by such application called upon the Tribunal to take up the same as a preliminary issue and decided the same first before entering into the merits of the case.
5. By order No.39 dated 28th August, 2014, the Tribunal was of the prima facie view that in order to dispose of the preliminary legal objection raised by the petitioner, elaborate evidence is not required for the purpose of ascertaining the appropriate Government, in respect of IOC and IBP Division, situated at IBP House, 34A, Nirmal Chandra Street, Kolkata – 700 013 where the respondent no.4 was engaged as a contract labourer. The

Tribunal further taking note of the fact that the objection raised by the petitioner goes to the root of the jurisdiction of the Tribunal, while allowing the application filed by the petitioner, fixed the matter for evidence on 15th October, 2014. After taking evidence on the aforesaid issue, by an order dated 23rd March, 2023, the Tribunal has returned the finding that the reference made by the Labour Department, Government of West Bengal is in order and consequentially placed the matter for evidence on merit. Challenging the aforesaid order dated 23rd March, 2023, the present writ application has been filed.

6. Mr. Dasgupta, learned advocate representing the petitioner, has drawn the attention of this Court to the order of reference, the application for taking up the preliminary issue, the order dated 28th August, 2014 passed by the Tribunal, the evidence adduced on behalf of the workman on 25th May, 2017 and the written statement filed by the respondent no.4. By referring to the aforesaid documents, he submits that from the aforesaid documents it would be apparent and clear that at the relevant point of time when the dispute first arose, the respondent no.4 used to ply the vehicle at the office of IBP having its office situated at IBP House, 34A, Nirmal Chandra Street, Kolkata – 700 013, which fact has been admitted by the respondent no.4 in his evidence.
7. It is still further submitted that since the respondent no.4 was a contract labourer employed under the petitioner and at the relevant point of time when the dispute first arose, was employed at the office of IBP House, 34A, Nirmal Chandra Street, Kolkata – 700 013, the appropriate Government in

relation to such dispute would be the Central Government and not the State Government.

8. By referring to Section 2(a)(ii) of the said Act, he says that the reference was made in the year 2012, when the State Government had no jurisdiction to refer the dispute in the given facts. The Tribunal, however, by its order dated 23rd March, 2023 did not consider the aforesaid issue at all. The above order is bad in law. The same cannot be sustained and should be set aside.
9. Per contra, Mr. Kali, learned advocate representing the respondent no.4, submits that the present reference is continuing for more than a decade. The petitioner not only participated in the proceedings, but had also permitted the respondent no.4 to lead evidence. The aforesaid objection has been belatedly raised by the petitioner. It is for this particular reason a Co-ordinate Bench of this Hon'ble Court by its order dated 14th February, 2019 while refusing to set aside the proceedings, directed the Tribunal to expeditiously dispose of the reference made by the State Government after deciding the issue of jurisdiction raised by the petitioner. He says that since a Co-ordinate Bench of this Court had earlier rejected the petitioner's application, the proceedings before the Tribunal should not be stalled. The petitioner should wait for the final outcome of the proceedings.
10. Ms. Samanta, learned advocate representing the State, submits that there is no irregularity in the order passed by the Tribunal. She says that the appropriate Government in relation to the aforesaid dispute is the State Government and the Tribunal cannot be faulted for continuing with the proceedings.

11. Heard the learned advocates appearing for the respective parties and considered the materials on record. The question that falls for consideration in the present application is whether the State Government or the Central Government is the appropriate Government. Obviously, therefore, such a question goes to the root of the jurisdiction of the Tribunal and is required to be decided at the threshold.
12. In order to appropriately appreciate the aforesaid, Section 2(a) of the said Act is reproduced hereinbelow :

“ 2. Definitions.- *In this Act, unless there is anything repugnant in the subject or context,- (a) “appropriate Government” means-*

- (i) *in relation to any industrial dispute concerning 3[***] any industry carried on by or under the authority of the Central Government, 4[***] or by a railway company 5[or concerning any such controlled industry as may be specified in this behalf by the Central Government 6[***] or in relation to an industrial dispute concerning 7[8[9[10[a Dock Labour Board established under Section 5-A of the Dock Workers (Regulation of Employment) Act, 1948 or 11[the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956 (1 of 1956)] or the Employees State Insurance Corporation established under Section 3 of the Employees State Insurance Act, 1948 (34 of 1948), or the Board of Trustees constituted under Section 3-A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948), or the Central Board of Trustees and the State Boards of Trustees constituted under Section 5A and Section 5B, respectively, of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), 1[****], or the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956), or 2[the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956 (1 of 1956) or the Deposit Insurance and Credit Guarantee Corporation established under Section 3 of the Deposit Insurance and Credit Guarantee Corporation*

Act, 1961 (47 of 1961), or the Central Warehousing Corporation established under Section 3 of the Warehousing Corporations Act, 1962 (58 of 1962), or the Unit Trust of India established under Section 3 of the Unit Trust of India Act, 1963 or the Food Corporation of India established under Section 3 or a Board of Management established for two or more contiguous States under Section 16 of the Food Corporations Act, 1964 (37 of 1964), or 3[the Airports Authority of India constituted under Section 3 of the Airports Authority of India Act, 1994 (55 of 1994)] or a Regional Rural Bank established under Section 3 of the Regional Rural Banks Act, 1976 (21 of 1976) or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Bank of India Limited], 4[the National Housing Bank established under section 4 of the National Housing Bank Act, 1987 (53 of 1987), or 5[6[an air transport service, or a banking or an insurance company], a mine, an oil-field], 7[a Cantonment Board], or a major port, the the Central Government, and]]

(ii) in relation to any other industrial dispute, the State Government”

13. From the undisputed facts gathered from the pleadings filed by the parties before the Tribunal, it would be apparent that the petitioner had employed the respondent no.4 sometimes in the year 2001 as a contract labourer. The petitioner is a contractor and in usual course had engaged the respondent no.4 to work as a contract labourer in his capacity as a driver with IBP/IOC, having its office situated at IBP House, 34A, Nirmal Chandra Street, Kolkata – 700 013. Admittedly, while the respondent no.4 was in employment with the petitioner and was engaged as the driver in his capacity as contract labourer, at the office of IBP/IOC situated at IBP House, 34A, Nirmal Chand Street, Kolkata – 700 013, the service of the respondent no.4 was terminated.

14. The order of reference in this case appears to have been issued on 26th April, 2012. For the State Government to assume jurisdiction to make a reference, it was necessary that the State Government had control over the industrial establishment where the respondent no.4/contract labourer was employed. Admittedly, in this case, the respondent no.4/contract labourer was employed at the office of IBP/IOC, having its office situated at IBP House, 34A, Nirmal Chandra Street, Kolkata – 700 013. It would be apparent from reading of the definition of the appropriate Government, as provided under Section 2(a) of the said Act that it is the Central Government which is the appropriate Government and has controlled over the establishment of IBP/IOC where the dispute first arose.
15. Having regard to the aforesaid, it can safely be said that the State Government was not the appropriate Government for making the reference dated 26th April, 2012. I, however, find that Mr. Kali, learned advocate representing the respondent no.4, has strenuously argued that the petitioner had not only participated in the proceedings but had also permitted the respondent no.4 to lead evidence and, as such, at this stage, the petitioner should not be permitted to raise an objection as to the jurisdiction of the Tribunal. In this context, I must note that after reference was made, in the year 2014 itself, the petitioner had questioned the authority and jurisdiction of the State Government to make the reference in its capacity as the appropriate Government and had also filed an application for framing a preliminary issue in that regard.
16. It is, in relation to such application that the order dated 28th August, 2014 was passed by the learned Tribunal permitting the parties to lead limited

evidence, for the limited purpose of adjudicating as to who would be the appropriate Government in respect of IOC/IBP Division, situated at IBP House, 34A, Nirmal Chandra Street, Kolkata – 700 013.

17. From the tenor of the said order, it would be apparent and clear that there was no dispute as to where the dispute had first arisen. The only question that was required to be considered was who was in control of IBP/IOC Division situated at IBP House, 34A, Nirmal Chandra Street, Kolkata – 700 013, when the dispute first arose.
18. It is, in pursuance of such an order that the parties were permitted to lead evidence. In this context, I must add that mere participation does not amount to waiver of a right nor does it clothe an authority with a jurisdiction which it inherently lacks. In fact, consent of the parties also cannot confer jurisdiction on a Court/Tribunal which otherwise lacks inherent jurisdiction to try a cause.
19. In this case, I find that the Tribunal, however, in its order dated 23rd March, 2023 did not pose unto itself the correction question. The Tribunal on an incorrect appreciation of law and fact by causing a jurisdictional error, had concluded that the case was rightly referred by the Labour department of the State Government for adjudication to the Tribunal. For reasons more fully indicated hereinabove, it is clear that State Government was not the appropriate Government and as such lacked the jurisdiction to make the reference.
20. I thus declare that the reference made by the State Government dated 26th April, 2012 is without jurisdiction. As a result, the order dated 23rd March, 2023 cannot be sustained, the same is, accordingly, set aside and quashed.

However, at the same time the respondent no.4 cannot be left high and dry. In the circumstances, I permit the respondent no.4 to make an appropriate representation to the labour department of the Central Government. If such a representation is made within a period of four weeks from date, the labour department of the Central Government shall treat the pendency of this proceedings before the First Industrial Tribunal, Kolkata, as compliance of all formalities for making a reference and shall prima facie treat the long pendency of the proceedings before the First Industrial Tribunal, as an existence of a dispute, for it to take an appropriate decision in the matter as regards reference of dispute. Such a decision shall be taken as expeditiously as possible preferably within a period of three weeks from the date of making the representation as noted above. It is made clear that the procedure for conciliation may not be necessary in view of the fact that the parties had been litigating for more than a decade and the aforesaid reference has failed only on account of technical reasons. The aforesaid direction is being passed in the peculiar facts of this case.

21. With the aforesaid observations/directions, the writ petition is disposed of.
22. There shall be no order as to costs.
23. Urgent photostat certified copy of this order if applied for be make available to the parties upon compliance of all formalities.

(RAJA BASU CHOWDHURY, J.)