

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8163 OF 2015

Oil and Natural Gas Corporation Ltd.

.. Petitioner

Versus

ONGC General Kamgar Sanghatana & Ors.

.. Respondents

WITH
REVIEW PETITION NO.87 OF 2023
IN
WRIT PETITION NO.8163 OF 2015
WITH
WRIT PETITION NO.7012 OF 2012

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- Mr. S. C. Naidu a/w. Mr. G. D. Talreja i./by Gobindram D. Talreja & Associates, Advocates for Petitioner.
 - Mr. Shaligram Mishra in-person for Respondents – workers.
 - Mr. Y. R. Mishra a/w. N. R. Prajapati, Advocate for Respondent No.5 (UOI) in W.P.No.8163 / 2015.
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CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 07, 2023

P.C.:

1. Heard Mr. Naidu, learned Advocate for Petitioner, Mr. Y. R. Mishra, learned Advocate for Respondent No.5 – Union of India in Writ Petition No.8163 of 2015 and Mr. Shaligram Mishra appearing in-person and representing the cause of Respondent – workers.

2. The present Writ Petition takes exception to the impugned Award dated 27.02.2015 passed by the learned Central Government Industrial Tribunal (for short ‘CGIT’), Mumbai in respect of reference No.2/2 of 2003 referred by the Government of India, Ministry of

Labour to CGIT for adjudication as under in respect of the following three issues.:-

- (1) Whether the Contract between Oil and Natural Gas Corporation Limited (for short '**ONGC**') and the existing contractor/s is a sham and bogus one and is camouflage to deprive the concerned employee represented by the Petitioner herein of benefits available to permanent workmen of ONGC?
- (2) Whether the workmen represented by Petitioner – Union herein, employed through the contractor/s by ONGC should be declared as permanent workmen of ONGC?
- (3) What are the wages and consequential benefits to be paid to the concerned employees?

3. Mr. Naidu, learned Advocate appearing for the Petitioner would submit that the Government of India referred three specific issues for adjudication of the reference. He would submit that Tribunal after considering these three issues which were referred for adjudication, amalgamated the same and framed a completely different issue namely, “whether employees concerned are employees of the first party (Petitioner – ONGC) or whether they are employees

of the Contractor?” He would submit that though three specific issues were referred to the CGIT, CGIT chose to rephrase the three issues into one and that too a issue which was not directly germane to the *lis* between the parties. He would submit that under Section 10(4) of the Industrial Disputes Act, 1947 it is stated that when any order referring an industrial dispute to a Tribunal by the appropriate Government has specified points of disputes for adjudication, the Tribunal is required to confine its adjudication to those points only and matters incidental thereto. He would submit that reference by the Government to the Tribunal confines its jurisdiction and the Tribunal cannot override or substitute the issues and points of reference by its own issues while deciding the reference.

4. He would submit that in the present case three specific points for determination / issues have been referred to the Tribunal. He would submit that if the three issues are perused carefully and the issue framed by the Tribunal is juxtaposed, it is evident that issue No.1 and issue No.3 referred by the Government are not at all considered by the Tribunal. He would submit that in so far as issue No.2 is concerned, the Tribunal has partly considered the said issue and rephrased the said issue into the issue which has been freshly framed and decided by the Tribunal. He would submit that merely deciding the issue as to whether the employees in the present case are

employees of the Petitioner or whether they are employees of the contractor cannot decide reference, much less the issue whether existing Contractor appointed by the Petitioner – Corporation is sham and bogus or whether such contractor was employed for depriving the concerned employees of the benefits available to the permanent workmen in ONGC. He would therefore submit that the Tribunal does not have the power and jurisdiction to reframe / rephrase the issues for adjudication as the provisions of Section 10(4) of the said Act require the Tribunal to confine its adjudication to only those points and issues which are referred to it in the order of reference.

5. For the sake of reference and convenience Section 10(4) of the Industrial Disputes Act, 1947 is reproduced hereinunder:-

“10.(4) Where in an order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, the Labour Court or the Tribunal or the National Tribunal, as the case may be, shall confine its adjudication to those points and matters incidental thereto.”

6. Though it has been argued vehemently by Mr. Mishra appearing in-person on behalf of Respondents that the point of determination framed by the Tribunal is interwoven in point No.2 of the reference order it would not be correct to say that the entire point No.2 as specifically referred to the Tribunal has been considered by the learned CGIT. It is seen that there is a radical change in the issues

which were referred in the order of reference and the issue framed by the Tribunal.

7. Mr. Mishra appearing in-person for the Respondents would submit that despite the fact that three specific issues / points were referred to the Tribunal, the Tribunal did not lose sight of the principal issue involved with respect to determination of whether the contract between ONGC was sham and bogus and / or rather that whether the Contractors appointed were also sham and bogus. He would agree that determination of these issues would answer the basic question referred to by the Central Government to the Tribunal. He would however submit that the Tribunal has made no mistake or error on rephrasing the three issues into a single issue for determining whether the employees / workmen were employed by ONGC or contractors. According to him by rephrasing the 3 points for determination the Tribunal has the right to decide the rephrased issue and determine it since it goes to the root of the matter. He would submit that the learned Tribunal was right in its determination but on a query put by the Court as to whether the point for determination at point No.1 has been considered or he was not in position to answer the same.

8. He has drawn my attention to the judgment in the case of *General Manager, Oil and Natural Gas Commission, Silchar V/s. Oil*

*and Natural Gas Commission Contractual Workers Union*¹ and would contend that if the reference is made for the purpose of determining as to whether the workers were employed by ONGC or the contractor, as determined by the Supreme Court in the above case it would be open to the Tribunal to consider rephrasing of the issues for reference which has been made to it in so far as the present workers are concerned. However on perusing the decision of the Supreme Court in the above case, it is seen that the issue which was involved in that case pertained to regularisation of the workers on their completion of 240 days under the Contract Labour (Regulation and Abolition) Act, 1970 the issues as appearing in the present reference were not decided in that case. Hence this decision would have no applicability in the present case. It is further seen that in the above case, the issue of declaration of the contractor as to whether the contract between ONGC and Contractor was sham and bogus or whether the Contractor was sham and bogus was never an issue for determination. The facts of that case are therefore clearly distinguishable from the facts of the present case.

9. Next Mr. Mishra would submit that the actual wordings as rephrased by the learned CGIT are not at all important as the Tribunal has the right to rephrase the reference which has been made. I am afraid I am unable to accept this submissions made by Mr. Mishra in view of specific provisions of Section 10(4) of the Industrial Disputes

1 (2008) 12 Supreme Court Cases 275.

Act, 1947, which are alluded to hereinabove.

10. Mr. Naidu has drawn my attention to the impugned Award dated 27.02.2015 and would submit that in view of the rephrased point for determination by the learned CGIT, a completely erroneous and wrong finding has been given which is completely contrary to the reference made by the Central Government to the CGIT. On juxtaposing the three terms for determination / reference made by the Central Government to the CGIT and the point for determination framed / rephrased by the learned Tribunal it is clearly seen that Tribunal has misdirected itself in the present case. Mr. Naidu in his support has referred to and relied upon following decisions in the case of *Workmen of M/s. British India Corporation Limited V/s. British India Corporation Ltd.*² and *Cholan Roadways Ltd. V/s. G. Thirugnanasambandam*³.

11. In the case of Workmen of M/s. British India Corporation Limited (*second supra*), Mr. Naidu has drawn my attention to paragraph Nos.1 and 2 which are directly relevant in the facts and circumstances of the present case and the manner in which present reference has been decided. For the sake of convenience paragraph Nos.1 and 2 are reproduced herein below:-

² (1965) 2 LLJ 433

³ (2005) 3 Supreme Court Cases 241

“1. This is an appeal by special leave in an industrial matter. The appellants are the workmen of the respondent which carries on a number of industries. In the present appeal we are concerned with the Cawnpore Woollen Mills branch of the respondent (hereinafter referred to as the Mills). There was a dispute between the respondent and its workmen with respect to wages and it was referred to the tribunal for adjudication in the following terms:

“Should the employers of British India Corporation Limited (Cawnpore Woollen Mills branch) Kanpur be required to increase the wages of their workmen and clerks? If so, with what details?”

Seven issues were raised by the tribunal in connection with the matter in dispute but we are not concerned with most of them in the present appeal. It is only necessary to refer to two points which have been urged on behalf of the appellant before us. The first is that the tribunal should have consolidated dearness allowance with wages and inasmuch as it held that this question had not been referred to it, it was in error. Secondly, the decision of the tribunal relating to increase in wages with respect to four categories, namely, (i) operatives in spinning and weaving section, (ii) engineering and power house workers, (iii) clerks, (iv) supervisors, was also challenged as incorrect. We shall deal with these points seriatim.

2. Taking first the question of amalgamation of dearness allowance with wages, the tribunal held that this question had not been referred to it. We have already set out the term of reference, and it is obvious that there is no express reference in that term to the amalgamation of dearness allowance with wages. It is, however, urged on behalf of the appellants that this question arises incidentally out of the matter under reference and should have been dealt with by the tribunal, particularly as dearness allowance is part of wages, though the two have been treated separately for various reasons. It is true in a sense dearness allowance is part of wages; but we are of opinion that the question of amalgamation of dearness allowance with basic wages raises specific and distinct issues some of which may be of far-reaching effect in the region to which this industry belongs and such a question cannot be considered as a mere incidental matter arising out of the reference as to increase in wages. Increase in wages is a very different matter and such an increase would not necessarily comprise even incidentally the question of amalgamation of dearness allowance with basic wages. We agree with the tribunal that if it was the intention of Government that the matter of amalgamation of dearness allowance and basic wages should be considered by the tribunal, there should have been a specific term in the reference to that effect. In

the absence of such a term, it was not possible for the tribunal to consider this question and thus make a radical change in the pattern of wages prevalent in the region as if by a side-wind. We therefore reject the contention of the appellants in this behalf.”

12. In the above case, it is seen that though specific point for reference was referred, it was radically changed and a completely different issue was decided. This was noted by the Supreme Court as been completely alien to the point of reference which was made. The Supreme Court also noted that the decision on such indistinct issue would have far reaching effect and would lead to undesired results. It was noted that in the absence of a specific term it was not possible for the Tribunal to consider making a radical change by rephrasing the point of determination which was referred to it, which would lead to a different result. In the case of Cholan Roadways Ltd. (*third supra*), Mr. Naidu has drawn my attention to paragraph No.34 of the said decision which is relevant and is reproduced below:-

“34. This decision also has no application to the facts of the present case. In the instant case, the Presiding Officer, Industrial Tribunal as also the learned Single Judge and the Division Bench of the High Court misdirected themselves in law insofar as they failed to pose unto themselves correct questions. It is now well settled that a quasi-judicial authority must pose unto itself a correct question so as to arrive at a correct finding of fact. A wrong question posed leads to a wrong answer. In this case, furthermore, the misdirection in law committed by the Industrial Tribunal was apparent insofar as it did not apply the principle of res ipsa loquitor which was relevant for the purpose of this case and, thus, failed to take into consideration a relevant factor and furthermore took into consideration an irrelevant fact not germane for determining the issue, namely, that the passengers of the bus were mandatorily required to be examined. The

Industrial Tribunal further failed to apply the correct standard of proof in relation to a domestic enquiry, which is “preponderance of probability” and applied the standard of proof required for a criminal trial. A case for judicial review was, thus, clearly made out.”

13. What is held in paragraph No.34 is in consonance with the provisions of Section 10(4) of Industrial Disputes Act, 1947 and cannot be ignored.

14. In view of the above, the impugned Award on the basis of the rephrased point for determination by the learned Tribunal is not sustainable and leads to a completely different result / outcome which has not been specifically referred to it by the Central Government. In view of the above observations and findings, the impugned Award stands quashed and set aside.

15. Learned CGIT is directed to consider the reference made by the Central Government which has been noted in paragraph No.3 hereinabove and answer the three issues strictly in accordance with law after adducing evidence from both the parties on the said three terms for determination / reference.

16. Both parties pray for directions to the Tribunal to expedite the hearing and decision on the Reference. It is directed that the reference shall be decided within a period of eight (8) months from today.

17. Writ Petition No.7012 of 2023 is stood over to **14th January, 2024.**

18. With the above directions, Writ Petition No.8163 of 2015 is disposed. Review Petition No.87 of 2023 is accordingly disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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