

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2390 OF 2021

VISHAL
SUBHASH
PAREKAR

Associated Cement Staff Union

...Petitioner

vs.

A.C.C. Limited and Another

...Respondents

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by VISHAL
SUBHASH
PAREKAR
Date: 2023.03.29
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Mr. Sushan Mhatre, for the Petitioner

Mr. Neel Helekar a/w. Mr. Rachit B. i/b. Haresh Mehta & Co., for the
Respondents.

CORAM : N. J. JAMADAR, J.

DATE : MARCH 27, 2023

P.C.:

1. Rule. Rule made returnable forthwith. With the consent of the
counsel for the parties, heard finally at the stage of admission.

2. This petition under Article 226 of the Constitution of India
takes exception to an order passed by the learned Member,
Industrial Court at Mumbai in Reference (IT) No. 30 of 2017 on an
application preferred by a group of workmen to delete their names
from the said reference. By the said order, the learned Member,
Industrial Court directed that the application would be considered
at an appropriate stage while deciding the reference itself.

3. The petitioner is a recognized trade union for the employees
of respondent No. 1. A charter of demand was raised by the

petitioner for the period 1st January, 2011 to 31st December, 2013. Eventually, the appropriate government referred the industrial dispute for adjudication. Statement of claim came to be filed by the petitioner. An application for interim relief preferred by the petitioner came to be rejected on the premise that the reference itself would be heard and decided within a period of six months. Thereupon the evidence for the petitioner came to be recorded.

4. On 5th December, 2019, an application was made by one of the workmen to delete the name of the said workmen from the reference. It was asserted that the said workmen had resigned from the membership of the first party union and since the said workmen had accepted all the benefits relating to the wages, allowances as offered by the second party company vide notice dated 25th November, 2019, the said workmen was not interested in prosecuting the said reference either by himself or through the first party union. It was thus prayed that the reference in respect of the said workmen be disposed of in view of the settlement of all his claims.

5. The petitioner resisted the application. It was inter alia contended that the individual workmen were not the parties to the

industrial dispute de hors the union and therefore the individual workmen cannot be allowed to appear and represent themselves before the industrial Court.

6. The respondent No. 1 gave no objection for grant of the prayer of the workmen.

7. By the impugned common order, the learned Member, Industrial Court, was persuaded to hold that though the workmen were not party to the reference in their individual capacity, the request for deleting their names from the reference was required to be determined while adjudicating the industrial dispute. Hence, the Industrial Court by the impugned common order, directed that those applications will be considered at appropriate stage.

8. Being aggrieved, the petitioner union has invoked the writ jurisdiction.

9. An affidavit in reply is filed on behalf of respondent No. 1.

10. I have heard Mr. Sushan Mhatre, the learned counsel for the petitioner and Mr. Neel Helekar, the learned counsel for the

respondents at some length.

11. The learned counsel for the petitioner endeavored to impress upon the Court that an individual workman is at no stage a party to the industrial dispute independently of the union.

12. In the backdrop of the nature of the order passed by the Industrial Court, in my view, the aforesaid question is not required to be determined in the facts of the case at hand. It is not the case that by the impugned order, the Industrial Court has permitted the workmen to independently prosecute the reference apart from the union. On the contrary, when a set of workmen professed to disassociate themselves from the industrial dispute, the learned Member, Industrial Court, considered it appropriate to defer the consideration to the final adjudication of the industrial dispute.

13. The learned counsel for the petitioner, however, urged that the observations in the impugned order indicate that the Industrial Court may venture into the areas which are not germane to the determination of the industrial dispute like the number of members of the union and the question as to whether the petitioner no longer continues to be the recognized union.

14. Indeed the observations in the later part of paragraph 7 give an impression that the Industrial Court adverted to those aspects. However, those observations appear to have been made to support the ultimate conclusion that the matter warrants consideration at the stage of final adjudication. Nonetheless to alleviate the apprehension of the petitioner, it may be appropriate to direct that the learned Member, Industrial Court shall not be influenced by any of the observations made in the impugned order while adjudicating the industrial dispute finally.

Hence, the following order.

ORDER

1] The petition stands disposed.

2] The learned Member, Industrial Court shall, however, not be influenced by any of the observations made in the impugned order while adjudicating the industrial dispute finally including the prayer for deletion by the individual workmen.

(N. J. JAMADAR, J.)