

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

**APPEAL NO.723 OF 2006
IN
WRIT PETITION NO.44 OF 2004**

The Workmen,
Through Honorary Secretary of the
IREL Canteen, Employees Welfare
Association, Trombay,
Mumbai – 400085

Appellant
(original
..... Respondent No.1)

Versus

- 1 Indian Rare Earths Ltd.,
a Company incorporated under the
provisions of the Companies Act, 1956,
having its Registered Office at Plot
No.1207, Veer Savarkar Marg, Near
Siddhi Vinayak Temple, Prabhadevi,
Mumbai – 400028
Respondent No.1
(Original Petitioner
..... No.1)
- 2 Union of India,
Through Secretary, Department of
Atomic Energy, Government of India,
having its Secretariat Office at
Anushakti Bhavan, C.S.M. Marg,
Mumbai – 400039
Respondent No.2
(Original Petitioner
..... No.2)
- 3 S.N. Saundakar,
Presiding Officer, Central Government
Industrial Tribunal No.2, at Mumbai
having his Court and Chamber at 2nd
Floor, Shram Raksha Bhavan,
Shivrushti Road, Opp: Priyadarshini,
Sion, Mumbai - 400022
Respondent No.3
(Original
..... Respondent No.2)

Ms. Jane Cox for the Appellant

Mr. Amit Sale I/b. Consulta Juris for Respondent No.1

Mr. Dashrath A. Dube with Mr. Rupesh Dube I/b. M.C. Prosthy for
Respondent No.2

**CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.**

**RESERVED ON : DECEMBER 5, 2023
PRONOUNCED ON : DECEMBER 11, 2023**

JUDGMENT (PER : CHIEF JUSTICE)

1. Heard Ms.Jane Cox, learned Counsel representing the Appellant, Mr. Amit Sale representing Respondent No.1 and Mr. Dashrath A. Dube representing Respondent No.2.

2. This appeal by workmen challenges the judgment and order dated 26th July 2016 passed by the learned Single Judge whereby Writ Petition No.44 of 2004 filed by the Respondents has been allowed and the Award dated 19th May 2003 made by the Central Government Industrial Tribunal-2 Mumbai (**CGIT**) in Reference No.CGIT-2/116/1998 has been set aside.

3. Certain facts which are necessary to be noted for proper adjudication of the issue involved in this appeal are: that the Central Government, by means of an order dated 17th August 1998 referred an industrial dispute under section 10(1)(d) read with Section 10(2-A) of the Industrial Disputes Act, 1947 (**Act of 1947**). The Reference made by the order dated 17th August 1998

is as follows:

"Whether the action of the management of Indian Rare Earths Ltd. in not absorbing the services of Mrs. Sujata S. Saradesai and 19 other employees of Co-op. Canteen Society Ltd., in Indian Rare Earths Ltd. is legal and justified? If not, to what relief the workmen concerned are entitled?"

4. The workmen before the CGIT pleaded *inter alia*, that they were engaged in employment by the Management of Indian Rare Earths Ltd. (**Respondent No.1**) in the canteen at Thorium Factory in the premises of Bhabha Atomic Research Centre (**BARC**) through M/s. Indian Rare Earths Employees Cooperative Canteen Society Ltd., (**Cooperative Society**). It was further pleaded by the workmen before the CGIT that this canteen was run in the said premises for the benefit of employees of Respondent No.1 and that Thorium factory was owned by the Department of Atomic Energy, Government of India (**Respondent No.2**) and accordingly, it was the obligation of Respondent No.2 to provide and maintain the canteen for the workmen.

5. It was also contended by the workmen before the CGIT that funds for running the canteen were provided by Respondent No.1 by way of subsidy and advance and that losses incurred by the canteen were made good by Respondent No.1 by providing

additional subsidy by writing-off advances. It was, thus, pleaded that Respondent No.1 and/or Respondent No.2 is the employer and that for circumventing the legal rights of the workmen and for depriving them of their lawful rights, the Management of Respondent No.1 made the workmen to form the cooperative society and accordingly the workmen were employed through the society. It was also contended by the workmen that since the business of the canteen has been discontinued by the Management of Respondent No.1 who was paying wages to the workmen through the society and consequently they are entitled to be absorbed in the employment of the Management as regular/permanent workers.

6. The case set-up by the workmen before the CGIT was denied by Respondent No.1 as also Respondent No.2 by contending that the workmen, in fact, were employees of the cooperative society which had been running the canteen and that workmen were not the employees of Respondent No.1 or Respondent No.2 and hence no claim of regularization in employment can be said to have accrued in favour of the workmen either as against Respondent No.1 or Respondent No.2. It was also pleaded on behalf of the Respondents that the canteen was run on 'No Profit No Loss' basis.

Respondent No.1 had provided free premises, equipments, furniture, water and electricity facilities. However it was not the Respondents that employed the workmen, rather it was the society which employed the workmen as its own staff. Further contention raised by the Respondents before the CGIT was that since the canteen suffered heavy losses to the tune of Rs.13,81,000/- (Rs.Thirteen Lacs Eighty One Thousand Only) as on 25th July 1996 and Respondent No.1 could not further finance to meet the heavy losses of the society, the canteen management suggested the Union of the workmen to close down the canteen and accordingly a settlement was arrived at according to which the canteen premises was handed over to run BARC canteen. Further contention made by the Respondents was that with approval of Respondent No.2 the canteen operations were stopped w.e.f. 1st July 1996, however no Liquidator was appointed for the society and therefore, the cooperative society continued to be in existence and accordingly, the workmen also continued to be on rolls of the society.

7. The CGIT, however rendered the Award dated 19th May 2003 in favour of the workmen by holding that as per the Office Memorandum dated 29th January 1992 and subsequent letters of

the Government of India and the Ministry of Personnel, Public Grievances and Pensions dated 15th November 1997, 20th March 1997 and 25th September 1997, the employees of the canteen have been extended the benefits as are available to other Central Government employees w.e.f. 1st January 1991 and accordingly, it cannot be said that the Management of Respondent No.1 or Respondent No.2 did not have any concern with the Management. The CGIT, thus, gave its finding by means of Award dated 19th May 2003 that the action of the Management in not absorbing the services of the workmen was neither legal nor justified. The CGIT further directed the Management of Respondent No.1 / Respondent No.2 to absorb the workmen except the workman at Sr.No.4 of the enclosure viz. Maruti C. Kamble who had died, during service.

8. The Award dated 19th May 2003 was challenged both by Respondent No.1 and Respondent No.2 by instituting Writ Petition No.44 of 2004 before this Court which has been allowed by learned Single Judge by means of judgment and order dated 26th July 2006. It is this judgment and order dated 26th July 2006 passed by the learned Single Judge of this Court which is under challenge in this appeal.

9. Submission of the learned Counsel for the Appellant while assailing the judgment and order under appeal, *inter alia*, is that the learned Single Judge has erred in law in holding that the power to add party for the purpose of making an Award lies with the appropriate Government and that such power is not available to the Industrial Tribunal. It has further been argued by the learned Counsel for the Appellant / workmen that reliance placed by the learned Single Judge on the judgment of the Hon'ble Supreme Court in the case of ***Hochtief Gammon V/s. Industrial Tribunal, Bhubaneshwar, Orissa and Ors. AIR 1964 SC 1746*** is highly misplaced, as the learned Single Judge has completely failed to consider the circumstances in which the Industrial Reference was made by the appropriate Government. It has further been argued that the finding rendered by the learned Single Judge that addition of Union of India as a party to the proceedings would amount to materially enlarging the scope of Reference, is erroneous. In support of these submissions, learned Counsel for the Appellant has placed reliance on the judgments in the case of ***Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers Union and Anr. (2000) 4 SCC 245***, judgment of the Hon'ble Supreme Court in the case of ***Steel Authority of India***

Ltd. & Ors. Vs. National Union Water Front Workers & Ors. 2001 III CLR 349 and the judgment in the case of ***Indian Petrochemicals Corporation Ltd. and Anr. Vs. Shramik Sena and Ors. (1999) 6 SCC 439.***

10. *Per Contra*, the appeal has vehemently been opposed by the learned Counsel representing Respondent Nos.1 and 2 both by submitting that the learned Single Judge, while allowing the Writ Petition and setting aside the Award passed by the CGIT, has taken a correct legal view and hence the judgment of the learned Single Judge does not warrant any interference in this appeal. Accordingly, it has been contended that the appeal is liable to be dismissed.

11. We have considered the competing submissions made by the learned Counsel representing the respective parties and have perused the records available before us of this appeal.

12. The learned Single Judge has held the Award made by the CGIT to be bad giving reasons based on the provisions contained in Section 10(1), 10(5) and 10(3)(b) of the Act of 1947. It has been observed in the judgment under appeal that admittedly, Respondent No.2 was not a party to the Reference proceedings

and hence the CGIT was not justified in issuing any direction for regularization / absorption on permanent basis of the workmen by Respondent No.2. It has further been recorded by the learned Single Judge that Respondent No.2 was subsequently added a party under an order passed by the Tribunal which was not permissible keeping in view the provisions of Section 10(1) and 10(5) of the Act of 1947. Relying on the judgment in the case of **Hochtief Gammon (supra)** the learned Single Judge has recorded a finding that power to add a party for the purpose of making an Award against that party is with the appropriate Government and not with the Tribunal. The learned Single Judge has elaborately discussed the plea taken by the workmen based on the provisions of Section 18(3)(b) of the Act of 1947. The said finding of the learned Single Judge is based on the law laid down by the Hon'ble Supreme Court in the case of **Hochtief Gammon (supra)**, wherein, the Hon'ble Supreme Court has considered the effect of power vested with the Industrial Tribunal as implied in Section 18(3)(b) of the Act of 1947. The Hon'ble Supreme Court has held that Section 18(3)(b) of the Act of 1947 cannot be taken aid of by the Tribunal so as to enlarge the material scope of Reference itself. The findings recorded by the learned Single

Judge is based on sound reasoning for the reason that the Tribunal or the Industrial Tribunal assumes jurisdiction to try any industrial dispute on the Reference made by the appropriate Government under Section 10(1) of the Act of 1947 and not on its own.

13. At this juncture, reference may also be made to Section 10(5) of the Act of 1947 according to which where a dispute concerning any establishment is to be referred to the Tribunal and the appropriate Government forms an opinion that the dispute is of such a nature that any other establishment is likely to be interested or affected by such dispute, the appropriate Government may, at the time of making the Reference or even at any time thereafter, include in that Reference any such establishment. Thus, power to add a party is vested with the appropriate Government in terms of the provisions contained in Section 10(5) of the Act of 1947. As far as the provisions of Section 18(3)(b) of the Act of 1947 are concerned, in our opinion, the Tribunal can consider addition of any party other than the parties specified in the order of Reference for matters which are only incidental to such dispute.

14. Admittedly, in the Reference proceedings, Respondent No.2

was not a party and hence in case the workmen intended to get any relief against Respondent No.2, the appropriate course available to the workmen was to approach the appropriate Government with a prayer to add Respondent No.2 as a party to the proceedings before the Tribunal invoking the provisions of Section 10(5) of the Act of 1947. The workmen, instead sought impleadment of Respondent No.2 during the proceedings before the CGIT though in the Reference proceedings Respondent No.2 was not a party.

15. We are, thus, in complete agreement with the aforesaid finding recorded by the learned Single Judge. We also find ourselves in agreement with the finding of the learned Single Judge where it has been recorded in the judgment under appeal that if the question was, as to who is the real employer, then the appropriate Government, while making Reference under Section 10(1) of the Act of 1947 could have included the said question/issue and accordingly, Respondent No.2 could also have been added as a party by the appropriate Government itself.

16. In view of the aforesaid, we do not find any ground to interfere with the said finding recorded by the learned Single

Judge.

17. Secondly, it is also to be noticed that as far as liability of Respondent No.1 to absorb or grant regular employment to the workmen is concerned, it is not in dispute that the canteen was closed w.e.f. 1st July 1996. The CGIT has also noticed the said fact. It is also noticeable that after recording that the canteen was closed w.e.f. 1st July 1996, the CGIT has returned a finding that the workmen are entitled to be absorbed in the services of Respondent No.2 and accordingly directions have been given. The learned Single Judge, however did not agree with the said finding and has recorded that no finding has been given by the CGIT, as to whether establishment of Respondent No.1 continued or not. The submission made on behalf of the Respondents that the Thorium plant run by Respondent No.1 was closed w.e.f. 1st April 1998, has been accepted by the learned Single Judge and thus, the learned Single Judge has also agreed with the submission that there was no question of running any canteen by Respondent No.1 for the workmen of Thorium plant and accordingly, in such circumstances, an order or direction to Respondent No.1 for absorbing the workmen was not legally permissible

18. If we examine the aforesaid reasoning given by the learned Single Judge for holding that even Respondent No.1 was not liable to absorb the workmen in regular / permanent employment, what we find is that the said finding is based on two undisputed facts viz; (i) that the canteen itself had not been in operation w.e.f. 1st July 1996 and (ii) that the Thorium plant run by Respondent No.1 itself was closed w.e.f. 1st April 1988. Thus, in case the plant itself was closed, the question of running the canteen did not arise and accordingly, any direction for absorption in regular / permanent employment of the workmen by Respondent No.1 also could not have been given by the CGIT.

19. In view of the discussion made and the reasons given above, we are of the unambiguous opinion that there is no illegality or irregularity in the judgment and order passed by the learned Single Judge which may call upon this Court to make any interference in the same.

20. Resultantly, the appeal is hereby dismissed. However, there shall be no order as to costs.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)