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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2960 OF 2024

Oil and Natural Gas Corporation Ltd ...Petitioner

Versus

Union of India & Ors ...Respondent

WITH
IN PERSON APPLICATION (L) NO. 26058 OF 2024
IN
WRIT PETITION NO. 2960 OF 2024

Mr Gobindram D Talreja, with Rahul Mantri i/b Gobindram D
Talreja & Associates, for the Petitioner-ONGC.

CORAM: M.S. Sonak &
Kamal Khata, JJ
DATED: 18th September 2024

PC:-

1. Heard Mr Talreja for the Petitioner.
2. This matter pertains to the assignment of the Division Bench headed by Hon'ble Justice Nitin Jamdar. However, as this bench was not available today and since our bench was the alternate

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bench, this Petition is taken up based upon a mention on behalf of the Petitioner.

3. The challenge in this Petition concerns the reference order dated 07/02/2023 made by the appropriate Government, i.e., the Union of India, exercising powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (“IDA”).

4. The terms of reference are incorporated in the schedule to the impugned order dated 07/02/2023, and the same read as follows:

“Whether there exists employer-employee relationship between the management of ONGC Ltd. Mumbai and the workers employed through Various Contractors and referred by Maharashtra Sanghatit Asanghatit Kamgar Sabha, Mumbai vide letter dated 1.6.2022?

If yes, whether the charter demands raised by Maharashtra Sanghatit Asanghatit Kamgar Sabha, Mumbai vide letter dated 1.6.2022 against the management of M/s ONGC Ltd., Mumbai is proper, legal, fair and justified? If Yes, to what reliefs the disputant are entitled and what directions, if any, are necessary in the matter?”

5. At the outset, Mr Talreja submits that it is an admitted position that the employees on whose behalf this dispute is raised

are contractors' employees. He submits that based on this admitted position, no reference could have been made to determine whether an employer-employee relationship exists between the management or ONGC Ltd and the workers employed through various contractors referred to in Kamgar Sabha's letter dated 01/06/2022.

6. Mr Talreja then submits that there ought to be no adjudication on the charter or demands submitted by the Kamgar Sabha vide its letter dated 01/06/2022 because a reference bearing No. CGIT No.2/40 of 2017 is already pending before the Central Government Industrial Tribunal ("CJIT") concerning the same or similar charter of demands. He submits that the matter was, in fact, decided by the Tribunal, and even the Hon'ble Supreme Court has only remanded the matter for fresh adjudication by the CJIT. He submits that the Kamgar Sabha, at whose behest the impugned reference was made, is also impleaded as one of the parties in the said reference. Mr Talreja submits that if the reference, in pursuance of the impugned reference order dated 07/02/2023, is allowed to proceed, there will be duplication, which can be avoided.

7. For the above two reasons, Mr Talreja submits that the impugned reference order be struck down.

8. We have considered the submission made by Mr Talreja and also perused the impugned reference order and other material on record. In our judgment, no case is made to interfere with the

impugned reference order based on the grounds urged before us. In any event, the grounds urged before us involved mixed questions of law and fact, which this court cannot address at this stage.

9. Though Mr Talreja submits that it is an “admitted position” that the employees on whose behalf the dispute is raised are the contractor's employees, no such admission appears from the records. Ultimately, in all these matters, even though workers are employed through contractors, an argument about such a contract being mere sham and camouflage is always available. The Kamgar Sabha has alleged that the workers regularly work for the ONGC but are paid salaries through the contractors. The allegation, therefore, is that the contracts are a sham and a camouflage. Such disputes cannot be determined without evidence. The appropriate Government has not closed this issue. Instead, the first term of reference requires the tribunal to determine whether an employer–employee relationship exists in the matter.

10. The question of whether an employer–employee relationship exists is a mixed question of law and fact. Based on any alleged admitted position, there is no question of scuttling the reference at the very threshold or interfering with the exercise of discretion by the appropriate Government in only referring the dispute for determination by the competent tribunal.

11. In **Steel Authority of India Ltd V/s Union of India and others**¹ the Hon'ble Supreme Court, following its earlier decision in **Steel Authority of India Ltd and others V/s. National Union Waterfront Workers and others**², has held that a reference under Section 10 of the ID Act is competent to consider the question of whether engaging employees through the contractor is a mere ruse/camouflage to evade compliance with various beneficial legislations to deprive the workers of the benefits thereunder. If the contract is not found to be genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer.

12. In paragraph 24, the Hon'ble Supreme Court has held that when, however, a contention is raised that the contract entered into by and between the management and the contractor is a sham one, given the decision in **Steel Authority of India Limited Vs. National Union Waterfront Workers** (supra), an industrial adjudicator would be entitled to determine the said issue. The industrial adjudicator would have jurisdiction to determine the said issue as in the event it be held that the contract purportedly awarded by the management, in favour of the contractor was a camouflage or a sham one, the employees appointed by the contractor would, in effect and substance, be held to be direct employees of the management.

¹(2006) 12 SCC 233

²(2001) 7 SCC 1

13. A similar view was reiterated in **Nitinkumar Nathalal Joshi V/s. ONGC Ltd³**, **A.P. SRTC V/s. G. Srinivas Reddy⁴** and **State of Karnataka V/s. KGSD Canteen Employees Welfare Assn.⁵**

14. Accordingly, based on the first contention, no case is made to interfere with the impugned reference order.

15. Regards the second contention, again, it is open to the Petitioner to raise the ground now raised and even possibly urge the framing of a preliminary issue. However, at this stage, it is impossible to hold the impugned reference order as incompetent because of the proceeding in CGIT No. 2/40 of 2017. The scope of the pending reference is unclear at this stage. The terms of reference appended to the reference order dated 18.09.2017 differ from those appended to the impugned reference order. Similarly, since the pleadings are yet to be filed, even the scope of the impugned reference order, at least at this stage, cannot be regarded as the same as is involved in CGIT No. 2/40 of 2017. These are mixed questions of law and fact. The grounds urged hardly go to the root of the jurisdiction warranting interference at this stage.

16. The argument about duplication is also quite premature. Based on such grounds, the impugned reference order cannot be interfered with.

3(2002) 3 SCC 433

4(2006) 3 SCC 674

5(2006) 1 SCC 567

17. The appropriate Government has only made the impugned reference in fairly broad terms. Therefore, no case is made to interfere with the impugned reference order at this stage. The extraordinary and equitable jurisdiction of this Court cannot be invoked to create hurdles in adjudication and, thereby, defeat the resistance of the workmen.

18. In **S. K. Verma V/s. Mahesh Chandra and another**⁶ the Hon'ble Supreme Court deprecated the practice of employers, particularly public sector corporations, to go on raising preliminary objections to frustrate adjudication of an industrial reference on merits. The Court held that there appeared to be three preliminary objections which have become quite the fashion to be raised by all employers, particularly public sector corporations, whenever an industrial dispute is referred to a tribunal for adjudication. One objection is that there is no industry, a second is that there is no industrial dispute, and the third is that the workman is no workman. *The Court observed that it was a pity that when the Central Government, in all solemnity, refers an industrial dispute for adjudication, a public sector corporation which is an instrumentality of the State instead of welcoming a decision by the Tribunal on merits so as to absolve itself of any charge of being a bad employer or of victimisation etc. should attempt to evade decision on merits by raising such objections and never thereby satisfied, carry the matter often times to the High Court and to the Supreme Court, wasting public time and money.*

6(1983) 4 SCC 214

19. The Court observed that it expects public sector corporations to be model employers and model litigants and that it does not expect them to attempt to avoid adjudication or to indulge in luxurious litigation and drag workmen from court to court merely to vindicate, not justice, but some rigid technical stand taken up by them. The Court expressed hope that public sector corporations will henceforth refrain from raising needless objections, fighting needless litigations and adopting needless postures.

20. In **D. P. Maheshwari V/s. Delhi Administration and others**⁷ the Hon'ble Supreme Court, after adverting to its decision in **S. K. Verma** (supra), held that High Courts, in the exercise of their jurisdiction under Article 226 of the Constitution, should not stop proceedings before a Tribunal so that they may decide a preliminary issue. *Neither the jurisdiction of the High Court under Article 226 of the Constitution nor the jurisdiction of the Supreme Court under Article 136 may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill afford to wait by dragging the matter from Court to Court for adjudication of peripheral issues, avoiding decision on issues more vital to them. Article 226 and Article 136 are not meant to be used to break the resistance of workmen in this fashion.* The jurisdiction under Article 226 of the Constitution is supervisory and not appellate. In such a jurisdiction, neither the High Court nor the Supreme Court is required to be too astute to interfere with the exercise of jurisdiction by special tribunals at interlocutory stages and on preliminary issues.

⁷(1983) 4 SCC 293

21. For the above reasons, we see no merit in this Petition and dismiss it. However, we clarify that the observations in this order only examine whether any case was made to interfere with the impugned reference order and scuttle the reference at the threshold. Such observations, therefore, need not influence the Tribunal while deciding the reference on merits. All contentions of all parties on the merits are left open.

22. This Petition is dismissed with the above clarifications. There shall be no orders for costs since the Court did not issue notice to the workmen or the Kamgar Sabha, which represents the workers.

23. Since we have dismissed the main Petition, In Person Application (L) No. 26058 of 2024 does not survive, and it is disposed of.

24. The Petitioner must place an authenticated copy of this order before the CGIT at the earliest.

(Kamal Khata, J)

(M.S. Sonak, J)