

W.P.A. 4929 of 2016

Board of Trustees for the Port of Kolkata
Vs.
Union of India & Ors.

Mr. Alok Kr. Banerjee
Mr. Ashok Kr. Jena ... for the petitioner

1. The affidavit-of-service as filed on behalf of the writ petitioner is taken on record.
2. At the very outset, Mr. Jena, learned advocate appearing on behalf of the writ petitioner draws the attention of this Court to the order dated 21.02.2025 whereby and whereunder, this Court granted liberty to Ms. Sujata Chowdhury, Learned Advocate to file Vakalatnama on behalf of respondent no. 4 federation after taking no objection from the erstwhile advocate of the respondent no. 4 in the department.
3. It reveals that under cover of his report dated 10.03.2025, Assistant Registrar (Mandamus-II) stated that neither any affidavit-in-opposition nor any Vakalatnama has been filed on behalf of respondent no. 4. It is pertinent to mention herein that by an order dated 21.02.2025, this Court also granted liberty to the private respondent no. 4 to file affidavit-in-opposition within two weeks. Mr. Jena submits that, he has also received no communication from the learned advocate for the respondent no. 4 regarding filing of any Vakalatnama and he has also not received any copy of the affidavit-in-opposition.

4. On perusal of the affidavit-of-service as filed today, it reveals that despite service none appears on behalf of the respondent nos. 1 to 3 that is Union of India and its functionaries as well as on behalf of the respondent nos. 4 & 5.
5. In view of such, this Court proposes to take up hearing of the instant writ petition in absence of the said respondents.
6. In course of hearing, Mr. Jena, learned advocate appearing on behalf of the writ petitioner at the very outset draws attention of this Court to the order of reference dated 19.02.2015 which is under challenge in the instant writ petition. He also draws the attention of this Court to the notice dated 30.4.2015 as issued by the Secretary of the Central Government Industrial Tribunal, Kolkata in connection with Reference Case Number 15 of 2015 in consequence of the said reference dated 19.02.2015.
7. In course of his submission, Mr. Jena also draws attention of this Court to page no. 31 of the writ petition being a copy of the letter dated 29.11.2013 as written by the President of respondent no. 4 federation addressed to respondent no. 7. It is submitted by Mr. Jena that from the contents of the said letter dated 29.11.2013, it would reveal that there was no relationship of employer and employees between the writ petitioner and the workmen of respondent no. 4 federation within the meaning of Section 2(k) of the Industrial Disputes Act, 1947 (hereinafter referred to as the said Act of 1947 in short). It is submitted by Mr. Jena that in view of such, it may be safely inferred that no industrial dispute exists between the writ petitioner and the employees of the private respondent no. 4 federation and thus, the reference under Section 10 of the said Act of 1947 is

patently illegal. Mr. Jena submits that it is a fit case of issuing appropriate Writ / Writs for quashing of the said reference which is under challenge in the instant writ petition.

8. On careful consideration of the entire materials as placed before this Court, this Court at the very outset intends to go through the contents of the letter dated 11.9.2013 as mentioned in the foregoing paragraph. It appears to this Court that under cover of the said letter the president of respondent no. 4 federation wrote to the private respondent no. 7 stating *inter alia* that the workmen of the respondent no. 4 federation were working under one contractor M/S. Star Ship Supplier (respondent no. 5) wherein the principal employer is M/s. Soham Overseas Pvt. Limited i.e. the respondent no. 7.
9. It further reveals from the paragraph 3 of the said letter dated 29.11.2013 that the workmen of the respondent no. 4 federation were contract labourers under respondent no. 7 through their contractor i.e. respondent no. 5 and they were rendering service initially in the T.T. Shed of C.I.W.T.C. Limited which shed was subsequently taken over by the writ petitioner from February 2011.
10. It thus, appear to this Court that it is the specific case of the respondent no. 4 federation that their workmen were working under the respondent no. 7 through their contractor i.e. respondent no. 5, in the T.T. Shed of the writ petitioner and thus by no stretch of imagination it can be held that there exists a relationship of employer and employees between writ petitioner and the workmen of respondent no. 4 federation.

11. In view of such, if there be any dispute between the workmen of the respondent no. 4 federation either with their principal employer i.e. respondent no. 7 or with its contractor i.e. respondent no. 5 the same does not come under the purview of the 'industrial dispute' within the meaning of Section 2(k) of the said Act of 1947.
12. In view of such, this Court holds that the reference as made under Section 10 is not logical and cannot be sustained.
13. In view of the discussion made hereinabove, the instant writ petition succeeds.
14. Consequently, the order of reference dated 19.2.2015 as issued by the Desk Officer of Government of India, Ministry of Labour, Shram Mantralaya as well as the proceeding under Reference Case no. 15 of 2015 as initiated by the Central Government Industrial Tribunal at Kolkata pursuant to the said reference are hereby quashed and set aside.
15. The instant writ petition, is thus, disposed of in the light of the observations made hereinabove.
16. There shall be no order as to costs.

(Partha Sarathi Sen, J.)