

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present :

The Hon'ble Justice Shampa Dutt (Paul)

WPA 8323 of 2024

**Eastern Coalfields Limited
Vs.
Union of India & Ors.**

For the Petitioner : Mr. Manik Das.

**For the Respondent/
Union of India** : Mr. Nandlal Singhania, Sr. Adv.
(Through VC)

Hearing concluded on : 22.01.2025

Judgment on : 29.01.2025

Shampa Dutt (Paul) , J.

1. The present writ application has been preferred praying for direction upon the respondent authorities to cancel, rescind and/or withdraw the impugned award dated 29th August, 2023 passed by the Central Government Industrial Tribunal cum Labour Court, Asansol, in Reference Case No. 31 of 2012 and not to take any step as per the said award.
2. **Vide the impugned order the learned Judge held as follows:-**

“That the claim for compassionate appointment of Achu Munda on the death of Sukra Munda is dismissed on contest. Smt. Kayri Munda, wife of Late Sukra Munda is entitled to monetary compensation from the management of ECL from the date of death of Sukra Munda in terms with the provisions of Clause 9.5.0 (iv) of NCWA-VI till she is sixty years of age. An award be drawn up in the light of my above decision. Let copies of the Award in duplicate be sent to the Ministry of Labour and Employment, Government of India, New Delhi for information and Notification.

**Sd/-
Presiding Officer,
C.G.I.T. cum L.C., Asansol.”**

3. It is the contention of the petitioner company that the learned Tribunal acted beyond the point of reference and as such the findings and directions which is beyond the reference is bad in law and liable to be set aside.
4. It is further submitted that only the point of reference made by the Government authority concerned is to be adjudicated by the Tribunal and the Tribunal cannot direct anything beyond the point of reference.
5. **The order of reference dated 01.8.2012, with the point for reference is as follows:-**

“Whether the action of the management of Nageshwar Satgram Colliery is just and fair, not to providing employment to Sri Achu Munda in place of his father Late Sukra Munda, only on the ground that he is son of 2nd wife, while in all the serviced record, Achu Munda is son of Late Sukra Munda. To what relief management can provide to Sri Achu Munda?”.

6. It is submitted that only the relief in respect of Sri Achu Munda (as referred) and matters incidental to the said

reference could be considered and decided by the tribunal.

The part of order as follows:-

“Smt. Kayri Munda, wife of Late Sukra Munda is entitled to monetary compensation from the management of ECL from the date of death of Sukra Munda in terms with the provisions of Clause 9.5.0(iv) of NCWA-VI till she is sixty years of age”

is not in accordance with law as the same has been decided **beyond the point of reference** and also not in respect of any matter incidental to the point of reference and as such it is prayed the order under revision is required to be modified being not in accordance with law.

7. In ***Hochtief Gammon v. Industrial Tribunal, Bhubaneshwar, Orissa and Ors., (AIR 1964 SC 1746), decided on 1st April, 1964,*** the Supreme Court held:-

*“7. In dealing with this question, it is necessary to bear in mind one essential fact, and that is that the Industrial Tribunal is a Tribunal of limited jurisdiction. Its jurisdiction is to try an industrial dispute referred to it for its adjudication by the appropriate Government by an order of reference passed under Section 10. **It is not open to the Tribunal to travel materially beyond the terms of reference, for it is well-settled that the terms of reference determine the scope of its power and jurisdiction from case to case.** Section 10 itself has been subsequently amended from time to time. Act 18 of 1952 made substantial amendments in Section 10. One of these amendments was that Section 10(1)(d) now empowers the appropriate Government to refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule, or the Third Schedule, to a Tribunal for adjudication. In other words under Section 10(1)(d), the appropriate Government can refer to the Industrial Tribunal not only a specific industrial dispute, but can also refer along with it matters*

appearing to be connected with, or relevant to, the said dispute. In that sense the power of the appropriate Government has been enlarged in regard to the reference of industrial disputes to the Tribunal.

8. *Section 10(4) which was also added by the same amending Act provides, inter alia, that the jurisdiction of the Industrial Tribunal would be confined to the points of dispute specified by the order of reference, and adds that the said jurisdiction may take within its sweep matters incidental to the said points. In other words, where certain points of dispute have been referred to the Industrial Tribunal for adjudication, it may, while dealing with the said points, deal with matters incidental thereto, and that means that if, while dealing with such incidental matters, the Tribunal feels that some persons who are not joined to the reference should be brought before it, it may be able to make an order in that behalf under Section 18(3)(b) as it now stands.*

12. *Reverting then to the question as to the effect of the power which is implied in Section 18(3)(b), it is clear that this power cannot be exercised by the Tribunal so as to enlarge materially the scope of the reference itself, because basically the jurisdiction of the Tribunal to deal with an industrial dispute is derived solely from the order of reference passed by the appropriate Government under Section 10(1). What the Tribunal can consider in addition to the disputes specified in the order of reference, are only matters incidental to the said disputes; and that naturally suggests certain obvious limitations on the implied power of the Tribunal to add parties to the reference before it, purporting to exercise its implied power under Section 18(3)(b). If it appears to the Tribunal that a party to the industrial dispute named in the order of reference does not completely or adequately represent the interest either on the side of the employer, or on the side of the employee, it may direct that other persons should be joined who would be necessary to represent such interest. If the employer named in a reference does not fully represent the interests of the employer as such, other persons who are interested in the undertaking of the employer may be joined. Similarly, if the unions specified in the reference do not represent all the employees of the undertaking, it may be open to the Tribunal to add such other unions as it may deem necessary. The test always must be, is the addition of the party necessary to make the adjudication itself effective and enforceable? In other words, the test may*

well be would the non-joinder of the party make the arbitration proceedings ineffective and unenforceable? It is in the light of this test that the implied power of the Tribunal to add parties must be held to be limited.

15. *In Anil Kumar Upadhaya v. P.K. Sarkar [AIR 1961 Cal 60] a learned Single Judge of the Calcutta High Court has accepted the same view. In that case, the Trustees of the Provident Fund in question who had not been impleaded originally to the reference were summoned by the Tribunal and the Court held that in the absence of the Trustees, the award would have become nugatory. It would be noticed that in all these decisions, the implied power of the Tribunal to summon additional parties in the reference proceedings is confined only to cases where such addition appeared to be necessary for making the reference complete and the award effective and enforceable. Such a power cannot be exercised to extend the scope of the reference and to bring in matters which are not the subject-matter of the reference and which are not incidental to the dispute which has been referred.*

17. *The next contention raised by Mr Chatterjee is that M/s Hindustan Steel Ltd. is a necessary party because it is the said concern which is the employer of the respondents and not the appellant. In other words, this contention is that though in form the appellant engaged the workmen whom the respondent Union represents, the appellant was acting as the agent of its principal and for adjudicating upon the industrial dispute referred to the Tribunal by the State of Orissa, it is necessary that the principal viz. M/s Hindustan Steel Ltd. ought to be added as a party. In dealing with this argument, it is necessary to bear in mind the fact that the appellant does not dispute the respondent Union's case that the workmen were employed by the appellant. It would have been open to the State Government to ask the Tribunal to consider who was the employer of these workmen and in that case, the terms of reference might have been suitably framed. Where the appropriate Government desires that the question as to who the employer is should be determined, it generally makes a reference in wide enough terms and includes as parties to the reference different persons who are alleged to be the employers. Such a course has not been adopted in the present proceedings, and so, it would not be possible to hold that the question as to who is the employer as between the appellant and M/s Hindustan Steel Ltd. is a question incidental to the industrial dispute which has*

been referred under Section 10(1)(d). This dispute is a substantial dispute between the appellant and M/s Hindustan Steel Ltd. and cannot be regarded as incidental in any sense, and so, we think that even this ground is not sufficient to justify the contention that M/s Hindustan Steel Ltd. is a necessary party which can be added and summoned under the implied powers of the Tribunal under Section 18(3)(b).

18. The result is, though we accept Mr Chatterjee's argument that Section 18(3)(b) postulates the existence of an implied power in the Tribunal to add parties and summon them, in the present case that power cannot be exercised, because having regard to the limited nature of the implied power, M/s Hindustan Steel Ltd. cannot be regarded as a necessary party under the provisions of Section 18(3)(b). The appeal accordingly fails and is dismissed with costs."

8. Section 10 of the Industrial Disputes Act, 1947 lays down:-

"10. Reference of disputes to Boards, Courts or Tribunals.- (1) [Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time], by order in writing-

(a) refer the dispute to a Board for promoting a settlement thereof; or

(b) refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or

[(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or]

[(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication:

Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause (c).]

.....

*[(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.].....”***

9. In the present case the direction of tribunal to the extent “*Smt. Kayri Munda, wife of Late Sukra Munda is entitled to monetary compensation from the management of ECL from the date of death of Sukra Munda in terms with the provisions of Clause 9.5.0(iv) of NCWA-VI till she is sixty years of age*” **is clearly beyond the term of reference as the same was not even incidental to the reference preferred.**
10. **It is trite that Tribunal gets jurisdiction to pass the Award in terms of reference. Tribunal cannot go beyond the terms of reference to pass an Award.**
11. In view of the above discussion, the Award dated 29.08.2023 passed in Reference Case No. 31 of 2012 by the Central Government Industrial Tribunal cum Labour Court, Asansol, **is modified to the extent** that direction given to the extent “*Smt. Kayri Munda, wife of Late Sukra Munda is entitled to monetary compensation from the management of ECL from the date of death of Sukra Munda in terms with the provisions of Clause 9.5.0(iv) of NCWA-VI till she is sixty years of age*” is, hereby, **quashed, only on the point of it being beyond the**

point of reference and not in respect of the legality of the claim or dues as admissible.

- 12. However, liberty is reserved with Smt. Kayri Munda** wife of deceased employee Late Sukra Munda to make her claim with the management for monetary compensation from the management of ECL from the date of death of Sukra Munda in terms with the provisions of Clause 9.5.0(iv) of NCWA-VI till she is sixty years of age.
- 13.** The said claim be addressed within 60 days from its filing.
- 14.** With the above modification, **the present writ petition is disposed of.**
- 15.** Pending I.As., if any, also stand disposed of.
- 16.** All parties to act on the basis of server copy of this judgment downloaded from the official website of this Court.

(Shampa Dutt (Paul), J.)