

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 28424 of 2024

Indian Institute of Management Calcutta (IIMC)
Vs
Union of India & Ors.

For the Petitioner : Mr. Soumya Majumder, Sr. Adv.
Ms. Sanjukta Dutta.

For the Union of India : Mr. Kumaresh Dalal,
Mrs. P. Saha Das.

Hearing concluded on : 31.01.2025

Judgment on : 17.02.2025

SHAMPA DUTT (PAUL), J. :

1. The present writ application has been preferred praying for direction upon the respondent authorities to revoke and withdraw the order of Reference being No. 26 of 2023 and F No. 24(42)/2023-IR dated 18th October, 2023 and to act in accordance with law.
2. Heard the learned counsel for both the parties and perused the materials on record. It appears that vide an order dated

18.10.2023 the Regional Labour Commissioner made a 'reference' as follows:-

“Whether the stand of the management of the Indian Institute of Management Calcutta (IIMC) that they do not have any employer-employee relationship with the contractual workers working for the contractor M/s Sanchari Caterers, Kolkata in the premises of IIMC, is legal and justified in the eye of law or not? If not, what relief the workers are entitled to for their retrenchment?”

3. Being aggrieved with the said 'reference' the present writ petition has been preferred.
4. The Petitioner is a statutory body under the Indian Institutes of Management Act, 2017.
5. The respondent no. 1 is a 'State' within the meaning of the Article 12 of the Constitution of India and exercises administrative functions under the provisions of the Industrial Disputes Act, 1947 in making reference to Industrial Tribunals. The respondent no. 2 exercises statutory duties and functions under the Industrial Disputes Act, 1947. **The respondent no. 3 is an omnibus trade union, who purports to represent the employees of the contractors engaged by the petitioner.** However, it is stated that the said respondent trade union has no recognition or representative character in IIMC but the

permanent and contractual employees of IIMC are members of Indian Institute of Management Calcutta Employees' Union.

6. It is further stated that the respondent no. 4 was a mess contractor, selected by the Students Council for providing food to the hostels/mess students who undertake the academic programmes in the campus of the Institute. The said Students Council is an unincorporated body and is elected by the mess students from amongst themselves. The respondent nos. 5 to 17 were the staffs of the respondent no. 4 who used to cater to the mess students of IIMC. **The said mess contractor was engaged by the Students Council since long upto 01 Sep 2022.**
7. In October-November 2022, there were allegations of sabotaging and wilfully supplying stale and contaminated food to the students of the New Hostel for which the students started protesting and many of them having fallen ill, stopped taking the mess meals. The 170 residents of the New Hostel building then started to avail themselves of the mess facilities in other hostels. In such circumstances the respondent 4, namely Sanjari Caterers was required to move out of the New Hostel premises with its men and materials. Thereafter, the Students Council engaged a new contractor on and from 4th November, 2022.

- 8.** By reason of disengagement of the respondent no. 4 by the Students Council, there was a large-scale law and order problem since the respondent nos. 5 to 17 along with outsiders showed continuous threat of force and physically prevented the new contractor and its men and materials from entering in the hostel campus, even the security guards were threatened.
- 9.** The mess functioning resumed after intervention by the highest executive authorities of the State since the disturbance could not be controlled by the local administration.
- 10.** On 21st December, 2022, an agreement had been executed between the new contractor and the Students Council delineating the terms and conditions of supply of food to the students' hostels.
- 11.** The respondent nos. 5 to 17 claiming to be the members of the respondent trade union had raised a purported industrial dispute over the issue of alleged retrenchment/termination from service by a letter dated 6th December, 2022. The said representation of the union was forwarded by the Conciliation Officer to the management of IIMC as well as to the contractor, namely M/s. Jana Enterprise with whom the Students Council had entered into an agreement on 21st December, 2022 for mess facilities.

12. The petitioners had made representation against such purported industrial dispute having been raised.
13. It is stated that in course of conciliation proceeding, the Conciliation Officer recorded that IIMC is not the principal employer. The same will appear from a copy of the **minutes** of conciliation held on 20th June, 2023.
14. The Conciliation Officer had also sent conciliation notice to the respondent no. 4 being the contractor who had employed the respondent nos. 5 to 17, fixing 31.07.2023 for conciliation asking the parties to attend.
15. The Government of India issued an order of reference on 18th October, 2023 for adjudication by the Industrial Tribunal.
16. On the strength of such order of reference, the Central Government Industrial Tribunal at Kolkata has registered the Reference Case No. 26 of 2023 wherein the union has filed a claim statement.
17. Hence the writ application, on the ground that the 'reference' is bad in law, as there is no employer-employee relationship between the petitioner and the said respondents no. 5 to 17 and as such there is no 'industrial dispute'.
18. **The following judgments have relied upon by the petitioner:-**

a) National Engineering Industries Ltd. v. State of Rajasthan & Ors., (2000) 1 SCC 371, (Paras 23, 24).

It was held that only if an industrial dispute existed, the reference could be made. It was further held in Para 24 that:-

*“.....When a **settlement is arrived** at during the conciliation proceedings it is binding on the members of the Workers' Union as laid down by Section 18(3)(d) of the Act. It would ipso facto bind all the existing workmen who are all parties to **the industrial dispute** and who may not be members of unions that are signatories to such settlement under Section 12(3) of the Act. The Act is based on the principle of collective bargaining for resolving industrial disputes and for maintaining industrial peace. “This principle of industrial democracy is the bedrock of the Act,” as pointed out in the case of P. Virudhachalam v. Lotus Mills [(1998) 1 SCC 650 : 1998 SCC (L&S) 342] . In all these negotiations based on collective bargaining the individual workman necessarily recedes to the background. Settlements will encompass all the disputes existing at the time of the settlement except those specifically left out.”*

b) Organon India Ltd. vs State of West Bengal & Ors., 2003 (4) L.L.N. 999, Writ Petition No. 122 of 2003, Calcutta High Court, (Paras 9-18).

“16.The Tribunal substituted its view holding that there was an abandonment of service by the "workman" in the place and instead of order of

reference that termination of service by the management was justified or not.....”

In the said case, the tribunal had travelled beyond the point of reference.

c) Sinclairs Hotels and Transportation, Ltd., and another Versus State of West Bengal, and others, 2003 SCC OnLine Cal 92, (Paras 14-25).

In the said case, the **award** passed on the reference was **challenged**.

19. From the facts as noted above the following is evident:-

- i.** In the present case the **‘settlement’ referred to** dated 20.06.2023 is **not a settlement agreement** but a conciliation proceeding. The petitioner herein also raised the point of there being no ‘industrial dispute’ as there was no employer employee relationship between the parties, in the said conciliation proceeding wherein a further date being 31.07.2023 had been fixed for conciliation. **As such there is no settlement agreement on record.**

20. The Supreme Court in ***Cipla Ltd. vs Maharashtra General Kamgar Union & Ors., AIR 2001 SC 1165, decided on 21 February, 2001***, the court held:-

“.....in cases arising under Section 33C(2) of the Industrial Disputes Act the scope, though very limited, certain incidental questions can be gone into like a claim for special allowance for operating adding machine which may not be based on the Sastry Award made under the provisions of Chapter V-A. The learned counsel pointed out that in the event we were to hold that it is only in clear cases or undisputed cases the labour court or the industrial tribunal under the Act can examine the complaints made thereunder, the whole provision would be rendered otiose and in each of those cases provisions of the Bombay Industrial Relations Act, 1946 or the Industrial Disputes Act will have to be invoked. We are afraid that this argument cannot be sustained for the fact that even in respect of claims arising under Section 33C(2) appropriate dispute can be raised in terms of Section 10 of the Industrial Disputes Act and that has not been the position in the present case. Nor can we say that even in cases where employer-employee relationship is undisputed or indisputably referring to the history of relationship between the parties, dispute can be settled and **not in a case of the present nature where it is clear that the workmen are working under a contract. But it is only a veil and that will have to be lifted to establish the relationship between the parties. That exercise, we are afraid, can also be done by the industrial tribunal under the Bombay Industrial Relations Act, 1946 or under the Industrial Disputes Act.** Therefore, we are afraid that the contention advanced very ably by Shri Singhvi on behalf of the respondents cannot be accepted. Therefore, we hold that the High Court went far beyond the scope of the provisions of the Act and did not correctly understand the decisions of this Court in *Gujarat Electricity Board, Thermal Power Station, Gujarat v. Hind Mazdoor Sabha* (supra) and *General Labour Union (Red Flag), Bombay v. Ahmedabad Mfg. & Calico Printing Co. Ltd & Ors.* (supra). The correct interpretation of these decisions will lead to the result, which we have stated in the course of this order. In the view we have taken on the question of jurisdiction of the Labour Court under the Act, the decision given by the High Court on other questions need not be considered.....”.

21. In ***Vividh Kamgar Sabha vs Kalyani Steels Ltd. & Anr., AIR 2001 SC 1534, decided on 9 January, 2001***, in a similar case the Supreme Court held:-

“If there is a dispute as to whether the employees are employees of the company then that dispute must first be got resolved by raising a dispute before the appropriate forum.”

The appropriate forum herein being under the industrial dispute act.

22. In a case similar to the present case, the Supreme Court in ***Balwant Rai Saluja & Anr. Etc. Etc vs Air India Ltd. & Ors., 2014 (9) SCC 407, decided on 25 August, 2014, held:-***

“.....The present dispute finds origin in an industrial dispute which arose between the Appellants-workmen herein of the statutory canteen and Respondent No. 1- herein. The said industrial dispute was referred by the Central Government, by its order dated 23.10.1996 to the Central Government Industrial Tribunal cum Labour Court (for short “the CGIT”). The question referred was whether the workmen as employed by Respondent No. 3-herein, to provide canteen services at the establishment of Respondent No. 1-herein, could be treated as deemed employees of the said Respondent No. 1.....”

23. The petitioner herein is the management institute (statutory body). Their case being that the canteen is run within their premises under the management of students’ council and that

as such there is no employee-employer relationship between them.

- 24. This is clearly an industrial dispute** and has to be decided by the appropriate forum under the industrial dispute Act *((Cipla Ltd. vs Maharashtra General Kamgar Union & Ors., Vividh Kamgar Sabha vs Kalyani Steels Ltd. & Anr., and Balwant Rai Saluja & Anr. Etc. Etc vs Air India Ltd. & Ors., (Supra))* and as such the 'reference' being in accordance with law requires no interference by this Court.
- 25. WPA 28424 of 2024 stands dismissed.**
- 26.** All connected application, if any, stands disposed of.
- 27.** Interim order, if any, stands vacated.
- 28.** Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

[Shampa Dutt (Paul), J.]