

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 28511 of 2023

M/s. A.R. Engineers

Vs

Deputy Chief Labour Commissioner (Central) & Ors.

with

WPA 28513 of 2023

M/s. Pearson Drums & Barrels Pvt. Ltd.

Vs

Deputy Chief Labour Commissioner (Central) & Ors.

For the Petitioners

: Mr. Ranjay De, Id. Sr. Adv.
Mr. Jaydeb Ghorai,
Mr. Diptesh Ghorai.

**For the Respondent/UOI
In WPA 28513 of 2023**

: Mr. Souvik Nandy, Id. Sr. Adv.
Mr. Debapriya Samanta.

For the Respondent No. 4

: Mr. Anjan Bhaduri.

Judgment reserved on

: 20.04.2026

Judgment delivered on

: 18.05.2026

Shampa Dutt (Paul), J.:

1. The writ applications have been preferred challenging the impugned order of reference dated 29.11.2023. The appropriate

authority herein being the Deputy Chief Labour Commissioner (Central), issued the said order of reference on being satisfied as follows:-

*“NO. Kol-700020/17/2023-Dy.CLC(C): WHEREAS, the undersigned is of the opinion that **an industrial dispute exists between the employer in relation to the management of M/s Pearson Drums & Barrels Pvt. Ltd. and M/s. A.R.Engineers, service providers of IOCL, Haldia Refinery versus their workmen represented by Bharat Barrel and Drum Mfg. Co. Pvt. Ltd. Worker's Association (INTTUC) and its workman in respect of the matter specified in the Schedule below;***

2. The order of reference has been made with the following schedule/issues:-

The Schedule

- 1. “Whether the Appropriate Government for the Management of M/s. Pearson Drums and Barrels Pvt. Ltd. and M/s. Engineers, service providers of IOCL, Haldia Refinery is Central Government or State Government?***
- 2. The action of the managements in denying the re-employment of 90 retrenched workmen are justified? If not, what relief the concerned workmen are entitled to?”***

3. The principal contention of the petitioner herein which was recorded by this Court at the interim stage is as follows :

“8. The first question referred for adjudication is as to whether the appropriate Government for M/s. Pearson Drums & Barrels Pvt. Ltd. and A.R. Engineers the service provider to IOCL, is the Central Government or the State Government.

9. This appears to be ex facie illegal. If the Deputy Chief Labour Commissioner (Central) had any doubt in that regard, he could not have made any reference to the CGIT.

10. The second limb of the reference is equally surprising. The second limb is "whether the actions of the management are justified? and if not what relief, the concerned workmen are entitled to?". Neither the ALC nor the workmen or the Trade Union have even whispered of any relationship between the employees of M/s. Bharat Barrel and Drum Mfg. Co. Pvt. Ltd. Worker's Association and M/s. Pearson Drums & Barrels Pvt. Ltd. or M/s. A.R. Engineers.

11. In those circumstances, this Court is not able to appreciate as to what material was available before the Deputy Chief Labour Commissioner (Central) to make any reference as contained in the order dated November 29, 2023.”

- 4.** The facts of the case in short is that the petitioner is a sole proprietorship concern.
- 5.** The petitioner participated in the tender floated by Indian Oil Corporation Limited for "fabrication, manufacturing and supply of empty bitumen drums with BD Lid as per IS: 3575 of 1993 or its

latest revision" and became successful as L-2 bidder. In consequence thereof, the petitioner has been awarded with the contract by Indian Oil Corporation vide "LETTER OF ACCEPTANCE" indicating the Tender No. HGNKK22015 and the Work Order No. 27849589 Dated 24.05.2022.

6. In terms of the said work order, the petitioner has already started the manufacturing process **with its own employees as aforesaid.** It is further stated that the relationship between Indian Oil Corporation (in short IOC) and the petitioner herein is not that of principal employer and contractor. Rather the management of IOC in connection with compliance of the provisions of Contract Labour (Regulation & Abolition) Act, 1970 and the Rules framed there under has confirmed that the petitioner is principal employer. Therefore, the requirement of issuance of FORM-III under Section 7 of the said Act of 1970 read with Rule 18(3) of Contract Labour (Regulation & Abolition) Central Rules, 1971 was never required.
7. It is the further contention of the petitioner that although there is no union in the name and style as "Bharat Barrel and Drum Mfg. Co. Pvt. Ltd. Worker's Association (INTTUC)" (in short the said union), being respondent No. 4 herein but it has received a conciliation memo dated 21.12.2022 issued by the respondent No. 2 enclosing therewith a letter dated 15.12.2022 of the respondent Union.
8. It is further stated that the said conciliation memo dated 21.12.2022 enclosing therewith the letter dated 15.12.2022 of the

respondent No. 4 stating that the said union has made a so called demand of reinstatement of 90 permanent workers in the manufacturing unit of the petitioner contending the same to be IOCL Haldia Refinery Controlled Drum Production Unit.

- 9.** The petitioner further states that a written representation was placed before the respondent no. 2 being the Assistant Labour Commissioner (Central), Kolkata-II, on 07.02.2023 stating as follows :

“In this connection please note that we are no way connected or associated with the retrenchment of 90-workmen of Bharat Barrel and Drum Mfg. Co. Pvt. Ltd. nor are we working on behalf of the said company at their place. We are no way connected with the dispute as termed therein in the letter addressed to us. Ours is small MSME certified unit and working at Vill-Kastokhali, Haldia, with the short order received from Indian Oil Corporation Ltd., Haldia....”

- 10.** The said conciliation ended in a failure report and a reference was made by the Chief Labour Commissioner (Central). The order of reference has been challenged by the petitioner on the ground that the Deputy Chief Labour Commissioner, being the respondent no.1, in respect of the issue no. 1 as specified in the impugned order of reference is concerned, the same does not find place in the Second or Third schedule of the relevant statutory provision. Secondly, in respect of the petitioner herein the Central Government cannot be an

appropriate government as per the proviso to Section 2(a) of the said Act of 1947. So far as the petitioner is concerned, State Government is the appropriate Government in terms of the relevant statutory provision.

11. It is further submitted that respondent No. 1 and respondent No. 2 have acted, contrary to the provisions of the said Act of 1947 by illegally assuming jurisdiction being an appropriate Government when the petitioner is neither a contractor of IOC nor it has got any employer-employee relationship with the so called 90 workmen for whom the respondent union sought to espouse the cause.

12. Admittedly, the petitioners in the writ applications are service providers of IOCL and the issue as to who is the appropriate Government in respect of the said writ petitioners has been made part of the reference, without coming to a prima facie finding as to whether such a reference can at all be made and without being prima facie satisfied on the basic requirement to make a reference, that is whether the authority herein at all has the authority to make such a reference when the authority herein is not certain who the “appropriate authority is”.

13. It further appears that the authority being the respondent no. 1 herein being prima facie of the opinion that there exists an employee and employer relationship between the writ petitioners

and the workmen represented by the workers association and on the said presumption has proceeded to frame the second issue as to whether the action of the said management in denying the employment of 90 retrenched workmen was justified or not and as to what relief the workmen are entitled, **even though the employer employee relationship is denied.**

14. In *Workmen Employed by Hindustan Lever Ltd. vs Hindustan Lever Limited (1984) 4 SCC 392*, the Supreme Court held:-

“Only a reference which is legally made by the appropriate Government can be adjudicated by the Tribunal on merits.”

15. In Para 4 of *Workmen Employed (Supra)*, the Supreme Court held as follows:-

*“4. Section 10(1) confers power on the **appropriate Government** to refer an existing or apprehended industrial dispute, amongst others, to the Industrial Tribunal for adjudication. The dispute therefore, which can be referred for adjudication of necessity, has to be an industrial dispute which would clothe the **appropriate Government** with power to make the reference, and the Industrial Tribunal to adjudicate it.”*

16. In *Mecon Ltd. vs State of West Bengal and others 2001(2)L.L.N. 304*, the Calcutta High Court in Para 4 and 6 held:-

“4. First, Mr. Sengupta has contended that there was no sufficient material before the appropriate Government to refer the dispute to the Tribunal under Section 10 of the Act.

6. It is now settled position of law that in making a reference under Section 10 of the Act, the appropriate Government does an

administrative act and the fact that it has to form an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function does not make it any the less administrative act. The Court cannot therefore canvass the order of reference closely to see if there was any material before the Government to support its conclusion as if it was a judicial or quasi judicial determination. See The State of Madras v. C.P. Sarathy, [A.I.R. 1953 S.C. 53].”

17. Now regarding the 1st issue which is as follows:-

“Whether the Appropriate Government for the Management of M/s. Pearson Drums and Barrels Pvt. Ltd. and M/s. Engineers, service providers of IOCL, Haldia Refinery is Central Government or State Government?”

18. Section 10(1-A) of the industrial dispute act lays down:-

“Section 10 (1-A) *Where the Central Government is of opinion that any industrial dispute exists or is apprehended and the dispute involves any question of national importance or is of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such dispute and that the dispute should be adjudicated by a National Tribunal, then, the Central Government may, whether or not it is the appropriate Government in relation to that dispute, at any time, by order in writing, 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 National Tribunal for adjudication.”*

19. The said provision clearly provides that the central government may, **whether or not it is the appropriate government, may refer disputes** of the nature mentioned in the said section.

20. The power herein is vested only in the central government and in the present case, the central government has made the reference and the dispute (issue no. 1) in the present case is also covered therein. **Thus issue no. 1 is a valid reference.**

21. Regarding the second issue, Section 10(5) comes into picture herein.

22. Section 10(5) Industrial Disputes Act, lays down:-

*“Section 10(5) Where a dispute concerning any establishment or establishments has been, or is to be, referred to a [Labour Court, Tribunal or National Tribunal] [under this section and the appropriate Government is of opinion, whether on an application made to it in this behalf or otherwise, that the dispute is of such a nature that any other establishment, group or class of establishments of a similar nature is likely to be interested in, or affected by, such dispute, the appropriate Government may, at the time of making the reference or at any time thereafter but before the submission of the award, include in that reference such establishment, group or class of establishments, **whether or not at the time of such inclusion any dispute exists or is apprehended in that establishment, group or class of establishments.]”***

23. Thus here again the power has been given to the appropriate government to make a reference and include establishments groups etc., whether or not at the time of inclusion any dispute exists between them or not.

24. But this is after the initial valid reference is made.

25. In the present case, the relationship of employer-employee it self has been denied and this issue itself should have been framed as

an additional issue, that is “whether there exists an employer-employee relationship between the parties”.

26. So in this case, the government could not have held (presumed) that there existed an industrial dispute between the parties **without framing another issue, when the petitioner claims that there is no employer employee relationship between the parties (*Steel Authority of India Ltd. IISCO steel plant vs The State of West Bengal & Ors., in WPA 20373 of 2008, 24.11.2025*).**

27. The second issue thus being not in accordance with law is hereby quashed.

28. But as issue no. 1 is independent of the recital and also the 2nd issue in the reference, the same being valid under Section 10(1A) of Act is to be answered by the tribunal.

29. WPA 28511 of 2023 with WPA 28513 of 2023 are thus disposed of.

30. Connected application, if any, stands disposed of.

31. Interim order, if any, stands vacated.

32. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties expeditiously after due compliance.

(Shampa Dutt (Paul), J.)