Indore, dated : 04.01.2019

Shri Piyush Mathur, Senior Advocate with Shri Prateek Patwardhan, Advocate for the petitioner.

Shri H.Y. Mehta, Govt. Advocate for respondentNo.1.

Shri Pratush Mishra for respondents Nos.6, 8 19, 13, 15, 16 and 17.

Shri Abhinav Dhanodkar, Advocates for respondent No.3, 4, 7, 10, 11, 18 & 19.

O R D E R

Petitioner has filed the present petition being aggrieved by order dated 20.7.2018(Annexure P/4) by which Labour Commissioner, M.P., Indore in exercise of powers u/s 10 (1) of Industrial Disputes act, 1947 (hereinafter in short Ï.D. Act) has referred an industrial dispute to the Industrial Tribunal, M.P., Indore for adjudication.

2. Petitioner is a company incorporated under the provisions of Companies Act having its 6 manufacturing units situated at Pithampur. Petitioner is engaged in manufacturing of yarn, weaving, garments, stitching, hosiery material, etc.. According to the petitioner, textile industries are not performing well globally as well as in India because of overall recession in the business world. Even in Pithampur Industrial Area, some of the industries have stopped their production activities for want of

orders. Petitioner was also not in a position to provide the work to almost 600 workers in all the six units, but somehow managed to pay the minimum wages as prescribed under the Minimum Wages Act. There was no industrial dispute between the management and the employees / workmen.

3. For the first time, in the month of March, 2018, one Munnalal Sahni claiming himself to be a District President Mazdoor Sabha and member of Samajwadi Party submitted an application dated 13.3.2018 raising various demands for the workers working in the units of the petitioner. He also made a complaint to the Labour Department in which the cognizance was taken and thereafter petitioner was directed to appear on 27.3.2018 before labour Officer. In response to the aforesaid notice, representative of the petitioner/management appeared and submitted that no such trade union affiliated with Samajwadi Party is operating in any of their establishment. It has also been submitted that handful terminated employees backed by political party are creating problems in smooth functioning of the plant. Despite objection taken about the maintainability of the dispute , demands made by political party and 16 employees, labour officer started conciliation proceedings .The conciliation proceedings ended into

the failure and vide order dated 20.7.2018, the industrial dispute has been referred to the Industrial Tribunal for its adjudication.

4. The Industrial Tribunal at Indore has registered it as Ref. Case No.15/ID/18 on 8.8.2018 and directed the respondent Nos.2 to 19 to submit the statement of claims. On 14.8.2018, a statement of claim along with the documents was filed and notice was issued to the petitioner. On 28.8.2018, Shri Vinay Patwardhan advocate appeared along with Vakalatnama and Interlocutory Application and sought time to file the written statement. On 11.9.2018, the petitioner being Second Party filed an application seeking rejection of the Reference (I.A.no.2) and the learned Chairman directed the respondent Nos.2 to 19 to file the reply. Thereafter, the petitioner has filed the present petition before this Court on 14.9.2018 challenging Annexure P/4. By order dated 17.9.2018, while issuing notices to the respondents, this Court has stayed the further proceedings of the Tribunal.

5. All the Respondents have filed the return refuting the allegations made in the petition.

6. Shri Piyush Mathur, learned senior counsel for the petitioner, submitted that the State Government has wrongly referred the dispute to the Industrial Court contrary to the provisions of Section 2-A and 10 of the ID Act. There is no

registered Union in the Establishment of the petitioner, therefore, u/s. 2-A, the industrial dispute between workmen of industry and industry could not have been referred without being sponsored or espoused by a Trade Union. In absence of registered Trade Union, the dispute ought to have been raised by substantial number of employees, but in the present case, with the support of political parties, only 18 terminated employees have raised the dispute. In support of his contention, he has placed reliance over the judgment of apex Court in the case of **State of Punjab V/s. The Gandhara Transport Co. (P). Ltd. : (1975) 4 SCC 838**.

7. Shri Mathur, learned senior counsel further emphasised that the appropriate Government ought not to have acted as a Post Office but should have applied the mind as to whether the industrial dispute does exist or not. If there is no industrial dispute in existence or apprehended, the appropriate Government lacks power to make any reference. The Writ Court can entertain the writ petition impugning a reference on a ground of non-existence of actual or apprehended industrial dispute because the Industrial Tribunal cannot decide the validity of the reference. In support of his contention, he has placed reliance over the judgment of apex Court in the case of **National Engineering Industries Ltd. V/s. State of Rajasthan : (2000) 1 SCC 371**; and **TATA Iron & Steel**

Co. Ltd.(TISCO) V/s. Stateof Jharkhand : (2014) 1 SCC 536. He further urged that in a joint meeting with the employees, the petitioner had agreed to enhance the salary of workmen working in the plant @ Rs.260/- per month CTC, therefore, the dispute ought not to have referred. The services of respondents No.2 to 19 have already been terminated; therefore, they cannot raise the industrial dispute in respect of the working conditions of the existing employees. Because of the industrial unrest created by handful terminated employees the petitioner had to stop the production activities which have rendered 600 workers jobless. If the dispute is further permitted to continue at their behest, Management would not be in a position to restart the production, hence prayed for setting aside of impugned order and quashment of proceedings of the Industrial Tribunal.

8. *Per contra*, Shri Pratush Mishra, learned counsel appearing for respondents Nos.6, 8 19, 13, 15, 16 and 17, submitted that the petitioner has already filed an application before the Tribunal challenging the validity of reference and by suppressing this fact filed the present petition and ex-parte stay has been obtained, hence the petition is liable to be dismissed with cost on this ground alone as the petitioner did not approach this Court with clean hands. He has drawn attention of this Court to the proceeding

dated 11.4.2018 written by labour officer in which, the petitioner raised an objection that the complaint is made over the letterhead of Samajwadi Party who have no existence in the establishment. It has been made clear by the Labour Officer that the complaint was made by the workmen along with authority letter of their representative, therefore, this issue has already been considered and decided by the Labour Officer and thereafter, the petitioner participated in the conciliation proceedings which ended into failure. Now the petitioner is estopped from assailing the order of reference dated 20.7.2018. He further submitted that in absence of any registered Union u/s. 36 of the ID Act any other workmen employed in an industry with the authorisation may represent the workmen who is party to the dispute. He further submitted that during pendency of conciliation proceedings, the management has terminated the services of respondents No.2 to 19 contrary to the provisions of Section 33 of the ID Act. Before termination of service, the petitioner ought to have taken the permission from the Labour Commissioner or the Industrial Tribunal. The conduct of the petitioner amounts to ‘unfair labour practice’. The respondent Nos to 2 to 19 are still covered under the definition of ‘workmen’ even after their termination from service, therefore, they can very well represent their claim before the Industrial tribunal. The Tribunal is

competent to decide the dispute after framing the appropriate issue/s.

9. Shri Abhinav Dhanodkar learned counsel appearing respondent Nos.3, 4, 7, 10, 11, 18 & 19 and Shri H.Y. Mehta, ld Govt. Advocate argued in support of the argument of Shri Mishra and prayed for dismissal of the writ petition.

10. Shri Mathur, learned senior counsel refuted the arguments of Shri P. Mishra by submitting that u/s. 36(1)(c) of the ID Ac the respondent Nos. 2 to 19 could be represented through any member/office bearer of any Trade Union or any other workmen employed in the industry and authorised, but in the present case, all the respondents are terminated employees, therefore, they cannot represent their case or the case of other workmen. He further submitted that the petitioner has already filed an application for withdrawal of I.A. No.2 before the Industrial Tribunal, therefore, this Court can decide the validity of the reference in this petition.

11. Undisputedly there is no registered Trade Union in any establishment of the petitioner. The employees/workmen working in the petitioner's establishment raised various demands vide Annexure R/2 on 16.3.2018 before the Labour Officer, Pithampur

and Labour Officer, Indore along with a authority letter signed by number of employees. It appears that in support of their demand, Shri Munnalal Sahni, District President Mazdoor Sabha wrote a letter to the Governor of M.P. and to the Minister, Department of commerce and Industries . On the basis of such demand, Labour Officer has registered it as Industrial Case No.15/ID/18. On the very first date of hearing 11.4.2018, the Labour Officer has made it clear that the dispute has been raised by the workmen along with authorisation letter. Thereafter, the petitioner further participated in the conciliation proceedings which ended into failure. Therefore, the ground raised by the petitioner that the political party has sponsored the dispute the workmen is misconceived and liable to be rejected.

12. So far as objection of the petitioner that respondents No.2 to 19 are the terminated employees, therefore, they cannot raise industrial dispute is also misconceived because as per definition of 'workmen' u/s. 2(s), the workmen includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute. It has been informed that they have also raised a dispute in respect of their termination.

13. As per definition of 'industrial dispute' u/s. 2(k), industrial dispute means any dispute or difference between employee and employer or between employer and workmen which is connected with the employment or non-employment or terms of employment or with the condition of labour or any person and as per Section 10, if the appropriate Government is of the opinion that any dispute exists or is apprehended, it may refer it to the Labour Court or Industrial Tribunal, as the case may be. There is no controversy in regards to terms of reference which clearly reflects that there is an industrial dispute between the petitioner and the respondent nos. 2 to 19 which in respect of non-payment of certain benefits to all the workmen. The terms of reference is properly worded , clearly reflects that the demand is being made by respondents No.2 to 19 not for themselves only but for all the workmen/employees working in the petitioner's establishment.

14. In case of State of Punjab V/s. Gandhara Transport (supra), the dispute was in respect of dismissal of 3 workmen sponsored by 18 co-workers, which was referred to Labour Court for adjudication in the year 1960. The apex Court has held that such since dispute is not represented by substantial or appreciable body of workmen so as to make the dispute an industrial dispute hence liable to be quashed. After the aforesaid judgment, Section 2A has

been inserted, where the dispute in respect of dismissal of individual workman is deemed to be an industrial dispute. In the case in hand, the dispute is in respect of demand of certain benefits for all the workmen has been referred to the Labour Court. If the reference sought by the respondent nos. 2 to 19 is answered in favour of the workmen, then all the employees working in the establishment of the petitioner would be benefited.

15. Section 36(1)(c) of the ID Act specifically provides that where the worker is not a member of any Trade Union, still he can be represented by any other workman employed in the industry on the basis of authorisation. As held above, workman includes the dismissed workman also. Therefore, the respondent Nos. 2 to 19 as authorised can very well represent the other workmen for the dispute pending before the Industrial Tribunal. U/s. 36(4), even the workman can be represented by a legal practitioner with the consent of other party to the proceeding and with the leave of Labour Court and the Tribunal, as the case may be.

16. In case of TISCO Ltd. (supra), the management disputed that the workman who raised the dispute is not its worker; therefore there cannot be any industrial dispute u/s. 2(k). The apex Court has held that this itself would be a dispute which has to be determined by means of adjudication. The role of Labour Department is to

confine to discharge administrative function of referring the matter to the Labour Court/Tribunal and if dispute is referred, needs to be adjudicated upon by the Industrial Tribunal. Para 10 of the said judgement is reproduced below :

> "10. Section 2 (k) of the Industrial Disputes Act which defines Industrial Dispute reads as under: "2(k) "industrial dispute" means any dispute or difference between employers and employers, between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."
> No doubt, as per the aforesaid provision, industrial dispute has to be between the employer and its workmen. Here, the appellant is denying the respondents to be its workmen. On the other hand, respondents are asserting that they continue to be the employees of the appellant company. This itself would be a "dispute" which has to be determined by means of adjudication. Once these respective contentions were raised before the Labour Department, it was not within the powers of the Labour Department/ appropriate Government decide this dispute and assume the adjudicatory role as its role is confined to discharge administrative function of referring the matter to the Labour Court/ Industrial Tribunal. Therefore, this facet of dispute also needs to be adjudicated upon by the Labour Court. It cannot, therefore, be said that no dispute exists between the parties. Of course, in a dispute like this, M/s. Lafarge also becomes a necessary party."

The apex Court in the aforesaid case, has further held that the jurisdiction of the Tribunal is not confined to a terms of reference,

but at the same time it is empowered to go into the incidental issues. If the reference is properly worded, then it is still open to the management to contend and prove that the respondent/workman ceased to be their employee. Para 12 of the aforesaid judgment is reproduced below.

> "12. We would hasten to add that, though the jurisdiction of the Tribunal is confined to the terms of reference, but at the same time it is empowered to go into the incidental issues. Had the reference been appropriately worded, as discussed later in this judgment, probably it was still open to the appellant to contend and prove that the respondent workmen ceased to be their employees. However, the reference in the present form does not leave that scope for the appellant at all."

17. The Division Bench of this Court in the case of **Birla Corporation Ltd. V/s. Dy. Labour Commissioner : 2016 (3) MPLJ 117**, has held that on the basis of pleading made by the parties, the Industrial Tribunal is entitled to frame certain issues which fall in the category of 'incidental issues' which are either issue of law or mixed question of law and facts. Such 'incidental', 'additional' or 'ancillary issues' are required to be decided by the Tribunal as a preliminary issue if they pertain to the jurisdictional issue. Para 10 and 13 of the aforesaid judgment are reproduced below :

18.

"10. Even though it is a well settled principle of law that an Industrial Tribunal or a Labour Court while adjudicating a dispute has no power to vary or alter the points or issues referred for adjudication, however, on the basis of pleadings made by the parties, the Tribunal is entitled to frame certain issues which fall in the category of 'incidental issues' which are either issues of law or mixed question of law and fact. Such 'incidental', 'additional' or 'ancillary issues' are required to be determined by the Tribunal as they pertain to the jurisdictional question and are normally required to be decided as a preliminary issue. If the issue goes to the root of the matter and is an issue or an objection pertaining to the maintainability of the Industrial Dispute referred for adjudication or the jurisdiction of the Tribunal itself, the Tribunal is well within its right to go into this question as an 'incidental issue' and decide it as a preliminary issue. If the Tribunal on such examination comes to the conclusion that it has no jurisdiction, the Tribunal is free to reject the reference."

"13. If the aforesaid legal principle is applied in the facts and circumstances of the present case, we are of the considered view that the question as to whether the reference should be made to the Labour Court or to the Industrial Court or whether the Labour Court to which the reference is made, has jurisdiction to deal with the matter, is a mixed question of law and fact and in our considered view when the Labour Court itself is clothed with the power to decide the question of its own jurisdiction as a preliminary issue, challenge to the order of reference on this count in a petition under Article 226/227 of the Constitution of India, is not required. An objection can be raised before the Labour Court and the Court after framing a preliminary issue can decide this question of jurisdiction, as the question of jurisdiction is nothing but an 'incidental matter' which can be answered while adjudicating the dispute by the Labour Court itself."

18. In a recent case of **Hind Kamgar Sangathan V/s. Dai Ichi Karkaria Ltd. : (2018) 11 SCC 258**, the apex Court has referred the matter to High Court to adjudicate upon as to what happens in case there is no recognized Union available in the establishment. The apex Court has observed that this issue is required to be decided by the Industrial Tribunal and the High Court ought to have remanded the matter back to the Industrial Tribunal. Para 3 and 4 are reproduced below :

> "3. The learned senior Counsel appearing for the Appellant has brought to our notice that there is no recognized union under the first Respondent since the registration under the Trade Unions Act granted to the Second Respondent has been cancelled. The learned Counsel for the second Respondent submits that the issue is pending before the appellate authority. Be that as it may, as rightly pointed out by Sh. C.U. Singh, learned senior Counsel, that this issue has not been adjudicated before the High Court. At any rate, the High Court has not gone into the issue, apparently because according to the learned senior Counsel, this point was not canvassed before the High Court. Though there are serious disputes as to whether this point was canvassed or not, we find that this was one of the issues raised even before the Industrial Tribunal and the point is seen raised in the High Court as well. Though normally, the court would have relegated the Appellate to pursue the remedy of review, we do not propose to do so since the matter was pending for the last four years. Hence, we are of the view that the matter needs to be sent back to the High Court."

> "4. Accordingly, without expressing any opinion on the merits of the issue raised before this Court by the Appellant on the recognition/registration aspect of the unions, we set aside the judgment and remit the matter to the High Court with a request to the High Court to hear the parties afresh and decide on the point, as to what happens in case there is no recognised union available in an establishment. We also make it clear that the High Court may also go into other questions as to what happens when there is a registered union under the Trade Unions Act. Since the writ petition is of the year 2012, we request the High Court to dispose of the writ petition expeditiously and preferably, within six months from the date of production of a copy of this judgment."

19. In view of the above, this Court is of the opinion that the terms of reference is very precise clearly indicates the industrial dispute between the workmen and the petitioner hence impugned order is not liable to be quashed in a writ petition under Article 226 of the Constitution of India. So far as other objections raised by the petitioner are concerned, they are either issue of law or mixed question of law and fact both, comes under the category of incidental, additional or ancillary issues which are required to be decided by the Industrial Tribunal either as a preliminary issue or while answering the terms of the Reference in view of law laid down by apex Court in the case TISCO (supra) and by this Court in the case of Birla Corporation (supra). It is discretion of the Tribunal either to decide as a preliminary issue or while answering the terms

of reference. The Industrial Court is directed to decide the issues independently without being influenced by the observation made by this Court hereinabove.

20. In view of the above, the petition is disposed of.

No order as to costs.

(VIVEK RUSIA)
JUDGE

Alok/-