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WP-12286-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA

ON THE 13th OF SEPTEMBER, 2024

WRIT PETITION No. 12286 of 2024

MANJEET GLOBAL PVT.LTD.

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

.....
Appearance:

Shri Kuldeep Bhargava, learned counsel for the petitioner.

*Shri Vishwajit Joshi, learned Additional Advocate General along with
Shri Rajwardhan Gawade, learned GA for the respondent No.1/State.*

*Shri Girish Patwardhan, learned senior counsel with Shri Mukund
Bhutda, learned counsel for the respondent No.2.*

Ms. Medha Patkar appears for the respondent No.3.

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WITH

WRIT PETITION No. 12579 of 2024

MANJEET COTTON PVT LTD.

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

.....
Appearance:

Shri Kuldeep Bhargava, learned counsel for the petitioner.

*Shri Vishwajit Joshi, learned Additional Advocate General along
with Shri Rajwardhan Gawade, learned GA for the respondent
No.1/State.*

Shri Girish Patwardhan, learned senior counsel with Shri Mukund



Bhutda, learned counsel for the respondent No.2.

Ms. Medha Patkar appears for the respondent No.3.

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ORDER

Regard being had to the similitude of facts and issue involved in both the petitions, they are being disposed off by the common order.

2. The facts of the case are noted from WP No.12286/2024.

3. The present petition is filed under Article 226 of the Constitution of India challenging the order dated 04.03.2024 (Annexure P/1) passed in Case No. 167/7/teen/2021 by Labour Commissioner, M.P. whereby a reference has been made that whether the transfer made by Century Yarn and Century Danim, Village & Post-Satrati, Dist. Khargone of Century Yarn and Century Denum Unit in favour of Manjit Global Pvt. Ltd. and Manjit Cotton Pvt. Ltd. and as a consequence payment of compensation under Section 25-FF of Industrial Disputes Act, 1947 (in short I.D. Act) by the concerned unit to the members of respondent No.3/Union is legal and valid ? if not then labours are entitled for which relief ? and in this regard what directions can be issued to the employer ?

4. Counsel for the petitioner argued that he is not aggrieved with the order of reference so far it relates to between the respondent No.2 and respondent No.3, however, making him also part of the reference is not permissible. It is urged that the petitioner had purchased the respondent No.2/Unit on 15.07.2021. The petitioner got its factory license and commenced production on 08.12.2023. The labours of respondent No.3/Union were never employee of the petitioner/industry and, therefore,



no liability can be fastened regarding payment of compensation to him. In support of his contention, he produced copy of the registered sale deed dated 15.07.2021 and referred Clause - 7.1.6 of the said deed which reads as under:-

7.1.6. Employees: The Transferor states that salaries and wages of the Employees and Workers have been paid in full till the date of this Agreement. The Transferor undertakes that the Transferor shall make the payment of compensation as contemplated under the Industrial Disputes Act, 1947 and full and final settlement of all legal dues to all the Employees and Workmen. The Transferee shall not be responsible for any liability in respect of Employees and Workmen in any manner whatsoever. The Transferee shall neither be reliable for payment of any statutory dues nor for providing employment to any of the Employees and Workmen. The Transferor shall be responsible for settlement of all the claims of Employees and Workmen of past, present or future, whether individually or collectively, directly or through Unions, including all Pending Litigations Initiated by Unions/Employees and Workmen and payment of compensation as contemplated under the Industrial Disputes Act, 1947.

5. He further argued that the petitioner/industry does not come within the purview of definition of 'Industrial Dispute' being subsequent purchaser of the unit as per the definition under Section 2(k) of I.D. Act which is reproduced as under:-

(k) "industrial dispute" means any dispute or difference between employers, or 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, or any person;

6. It is asseverated that the aforesaid reference has been made in pursuant to the order passed by Single Judge dated 13.09.2023 in W.P. No.28206/2021 which was affirmed in the Writ Appeal No. 1768/2023 filed by respondent No.2 decided on 23.06.2023. The respondent No.2 had also filed Review Petition No.207/2024 which was also dismissed by the Division Bench by its order dated 15.03.2024.



Against the said order, Special Leave to Appeal (C) No(s). 10531-10532/2024 filed by respondent No.2 was dismissed. He was not party to the aforesaid proceedings, therefore, the reference could not have been made treating him to be an employer of the member of the Respondent No.3/Union.

7. The respondent/State has filed reply stating that the petitioner was not made party in the reference order, however, a copy was marked to him being subsequent purchaser of the Unit and thereafter the Tribunal has issued notice to the petitioner considering the nature of dispute between respondent No.2 & 3 being subsequent purchasers of the Unit.

8. Counsel for the respondent No.2 though filed the reply on the notice, but at the outset submitted that he is not pressing his reply. He has nothing to say in the matter.

9. The respondent No.3, who is represented by Ms. Medha Patkar stated that she is the President of the Union and is duly authorized to represent the respondent No.3/Union. She had already appeared in the writ petition, writ appeal, and review petition representing the Union whose details have been mentioned herein-above. Her representation has never been disputed. She further submits that in compliance to the order passed by the Division Bench, in which a direction has been issued for making a reference under Section 10 of the I.D. Act, the proceedings have already been taken up by the M.P. Industrial Tribunal. The statement of claim has been filed. The petitioner has also appeared in the aforesaid proceedings through an advocate. All these contentions being advanced in the present petition, can very well be raised before the Tribunal. She referred the provisions of Sub-Section 5 of Section 10 of I.D. Act to support her contention that in the



reference, any establishment, group or class of group can also be included which is not a party in the reference and the Tribunal considered it appropriate to issue notices to the petitioner being a subsequent purchaser. The petitioner subsequent purchaser and respondent No.2 are disputing the claim of the respondent No.3/Union on the pretext of shifting the liability on each other. She also referred Section 12 of I.D. Act to contend that the authorities is conferred on the appropriate government to make a reference or not to make a reference on the basis of conciliation of the report of Conciliation Officer. However, in the present case, the reference is made in compliance to the order passed by this Court in Writ Petition and Writ Appeal the order of which has been affirmed up to the Supreme Court, therefore, the petitioner can not challenge the order of reference.

10. I have heard learned counsel for the parties at length and no other point was raised.

11. Facts of the case are that the respondent No.3 filed a writ petition W.P. No.28206/2021 challenging the order dated 13.12.2021 passed by Labour Commissioner, Indore, who has refused to refer the dispute under Section 10(1) of the I.D. Act holding that there is no dispute in existence between the workmen and the company. The present case has a chequered history which was considered by the Single Judge while deciding the writ petition filed by the respondent No.3. Admittedly, the respondent No.3 was party as respondent No.2. The Single Judge after considering the judgment passed by the Supreme Court in the case of *Anakapalle Cooperative Society Vs. Kamgar, AIR 1963 SC 1489* held as under:-



10] A perusal of the aforesaid decision clearly demonstrates that a dispute raised by the workmen regarding transfer of a unit to some other entity can also be the subject matter of an industrial dispute as provided under Section 10 of the Act of 1947. Thus, this Court is also of the considered opinion that the dispute cannot be closed only by referring to Section 25-FF of the Act of 1947. So far as reliance placed by the Labour Commissioner in the case of Anakapalle (Supra) is concerned, the same has extensively dealt with the scope of Section 25-FF of the Act as in that case, the workmen had demanded for their re-employment which came to be referred under s.10(1)(d).. In view of the same, this judgement is distinguishable and has no application in the facts and circumstances of the case.

11] Accordingly, the petition stands allowed and the impugned order dated 13.12.2021 is hereby set aside, and the matter is remanded back to the Commissioner to make a reference of dispute in accordance with law, within a period of six weeks from the date of receipt of certified copy of this order.

12. Upon perusal of the aforesaid, it is axiomatic that this Court held that transfer of a unit to some other entity can also be a subject matter of industrial dispute as provided under Section 10 of I.D. Act, 1947. The dispute can be closed only by referring to Section 25-FF of the Act. The said order was challenged before the Division Bench by the respondent no.2 in WA No.1768/2023 which was dismissed by the Division Bench. While dismissing the writ appeal it is held as under :-

"23. The learned Single Judge has rightly allowed the writ petition in as much as the disputed questions of facts as to whether the units were properly closed or not or the procedure under Section 25(O) of the Industrial Disputes Act has been followed or not in true letter and spirit, can only be gone into by recording evidence by the Industrial Tribunal. As such, no error has been found to have been committed by the learned Single Judge in allowing the writ petition filed by the respondent no.1. Accordingly, finding no merits in the appeal, the same is hereby dismissed.

24. The concerned respondent/authority is directed to comply with the order dated 13.09.2023, passed by the learned Single Judge in W.P. No.28206/2021. The Commissioner is directed to make a reference of dispute in accordance with law, within a period of six weeks from the date of receipt of certified copy of the order"

13. Upon perusal of the aforesaid, it is manifest that the Division Bench has directed the Commissioner to make a reference of the dispute in



accordance with law within the period of six weeks from the date of receipt of a certified copy of the order. Being aggrieved by the said order, an SLP was also preferred before the Hon'ble Supreme Court by the respondent no.2 and the same was also dismissed. Thus, the order passed by this Court directing the Commissioner to make a reference of the dispute in respect of whether the units were properly closed or procedure under section 25-O of the Disputes Act was followed or not in true spirit was affirmed.

14. By the impugned order, the Commissioner while making reference has endorsed a copy of the order to the petitioner. Learned counsel for the petitioner has already submitted that he is not challenging order of reference on merits but confines challenge only to the extent making him party in the reference as he could not have been made party.

15. Even otherwise, as per the provisions of section 10(5) of the ID Act, in the reference in establishment, a group or class of group can also be included which is not a party in the reference and the Tribunal if considers it appropriate, can issue notices to such unit. The provision of section 10(5) of ID Act reads as under :-

(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.

In view of the aforesaid, there is no merit in the contention of the petitioner that he could not have been made party by the Labour Court by



issuing notices. The Labour Court is possessed with the power to issue notice to any establishment, group or class of group which is not party to the reference. The Tribunal too considered the petitioner Unit to be a necessary party for adjudicating the dispute. To appreciate the aforesaid contention, it is apt to refer the decision passed by the Apex Court in the case of *Globe Ground India Employees Union vs Lufthansa German Airlines reported in (2019) 15 SCC 273* relevant para of the judgment read as under :-

“10. Whenever, an application is filed in the adjudication proceedings, either before the Industrial Tribunal in a reference made under the Industrial Disputes Act, 1947 or any other legal proceedings, for impleadment of a party who is not a party to the proceedings, what is required to be considered is whether such party which is sought to be impleaded is either necessary or proper party to decide the lis. The expressions “necessary” or “proper” parties have been considered time and again and explained in several decisions. The two expressions have separate and different connotations. It is fairly well settled that necessary party, is one without whom no order can be made effectively. Similarly, a proper party is one in whose absence an effective order can be made but whose presence is necessary for complete and final decision on the question involved in the proceedings.

14. There cannot be any second opinion on the ratio decided in the aforesaid cases relied on by the learned Senior Counsel for the appellant. But, whenever an application is filed for impleadment of a third party, who is not a party to the reference under the Industrial Disputes Act or any other proceedings pending before the Court, what is required to be considered is whether such party is either necessary or proper party to decide the lis. It all depends on the facts of each case; the allegations made and the nature of adjudication proceedings, etc. In this case it is to be noted that only the scope of reference is limited which is already discussed above. However, it is also clear from Section 10(4) of the Industrial Disputes Act, 1947 that whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matters incidental thereto only.”

16. After reference order, the matter has already been taken up by the MP Industrial Tribunal and the same has been registered as case No.11-ID/2024. In pursuant to the notice by the Tribunal, the petitioner has already appeared before the Tribunal through an advocate.

17. I do not find any merit in the contention of the learned counsel for the petitioner that without there being any conciliation proceedings, the reference could not have been made because in the present case, reference



has been made as per the direction of the writ court, affirmed by the Division Bench and the Supreme Court. The petitioner has already appeared before the Tribunal and the petitioner can raise all the objections and contentions that he is not an employer of the members of respondent no.3 and as per the condition of the sale deed he is not liable to pay any compensation to the members of respondent no.3 unit.

18 In view of the aforesaid, this court does not find any merit in the writ petition. Accordingly, the present petition stands dismissed.

19. However, it would be open for the petitioner to raise all the contentions before the Tribunal which would be decided by the Tribunal without being influenced by any observation made by this Court. By order dated 08.05.2024, the proceedings of the Tribunal was stayed by this Court. Since the petition is dismissed and considering the aforesaid fact that proceedings remained pending because of interim order passed by this Court, it is observed that the Tribunal shall take up the matter on the top priority and conclude the same expeditiously.

(VIJAY KUMAR SHUKLA)
JUDGE