

[REPORTABLE]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8246 OF 2013

(Arising out of Special Leave Petition (Civil) No. 20494 of 2011)

M/s. Tata Iron & Steel Co. Ltd.

.....Appellant(s)

Versus

State of Jharkhand & Ors.

.....Respondent(s)

WITH

C.A. No. 8247/2013

(@ SLP(C) No. 21086 of 2011)

JUDGMENT

A.K. SIKRI, J.

1. Leave granted.
2. We heard the Counsel for the parties at length. Having regard to the nature of issue involved that needs to be answered by us, it would be enough to take note of some admitted facts, eschewing detailed factual discussion which may unnecessarily burden this judgment.

3. The appellant before us is M/s. Tata Iron & Steel Company Limited (rechristened as Tata Steel Ltd.). Apart from manufacturing steel, its core business, the appellant company was having cement division as well. In the era of globalization, liberalization and also because of economic compulsions, the appellant decided to follow the policy of disinvestment. Persuaded by these considerations it sold its cement division to Lafarge India Pvt. Ltd (hereinafter to be referred as 'M/s. Lafarge') vide Business Transfer Agreement (BTA) dated 9.3.1999 which was to be effected from 1.11.1999. This agreement, *inter alia* provided that M/s. Lafarge would take over the company personnel, including, in terms of Section 25 FF of the Industrial Disputes Act, 1947. It was on the condition that:

- (a) The services of the company personnel shall not be or deemed to be interrupted by such transfer.
- (b) The terms and conditions of service applicable to the company personnel after such transfer are not in any way less favourable to the company personnel than those applicable to them immediately before the transfer.
- (c) The purchaser is, under the terms of transfer herein, legally liable to pay to the company personnel in the event of their retrenchment, compensation on the basis that services have been continued and have not been interrupted by the transfer of business.

4. This decision to hive off and transfer the cement division by the appellant to M/s Lafarge was communicated to the employees of the cement division as well. According to the appellant, consequent upon this agreement, with the transfer of business, the employees working in the cement division were also taken over by M/s Lafarge & M/s Lafarge issued them fresh letters of appointments. These included Respondent Nos. 8-82 herein who started working with M/s Lafarge.

5. It appears that these workers were not satisfied with the working conditions in M/s. Lafarge. They submitted a statement of demand to the appellant on 15.9.2003, stating *inter alia* that they were directed to work with M/s. Lafarge without taking their consent. As per these respondents/employees, impression given to them was that they would work in different departments in M/s. Lafarge for some days for smooth functioning of that establishment, which was a part of the appellant organization and thereafter they would be posted back to the parent department. They had obeyed these orders faithfully believing in the said representation. However, the concerned employees were not given all the benefits by M/s Lafarge which they were enjoying in their parent department. Thus, the demand was made to take them

back with the appellant company. The company did not pay any heed to this demand. These employees approached the Deputy Labour Commissioner, Jamshedpur, raising their grievances and requesting to resolve the dispute.

6. Notices were issued to the appellant to participate in the Conciliation Proceedings. The appellant appeared and took the plea that on and from 1.11.1999, the cement division was sold to M/s. Lafarge and these workmen had become the employees of M/s. Lafarge. It was also stated that fresh appointment letters issued by M/s. Lafarge and they ceased to be the employees of the appellant. Since no amicable settlement could take place and conciliation proceedings resulted in failure. The failure report was sent by the Labour Department to the Government of Jharkhand which resulted in two reference orders, thereby referring the disputes between the parties to the Labour Court, Jamshedpur, for adjudication. The dispute was referred under Section 10(1) of the Industrial Dispute Act, 1947 with following terms and reference.

“Whether not to take back Shri K. Chandrashekhar Rao and 73 other workmen (list enclosed) of M/s TISCO Limited, Jamshedpur in service by their own TISCO Management after their transfer to M/s. Lafarge India Limited, is justified? If not what relief they are entitled to?”

Other reference was also worded identically.

7. According to the appellant, the manner in which the references are worded, do not depict the true nature of the dispute between the parties. It was their submission that the concerned workmen were no longer in their employment and, therefore, could not have raised the grievance or any dispute against the appellant company and thus, no industrial dispute at all existed between the appellant and the respondent workmen. They took a specific plea that if M/s. Lafarge did not provide assured service terms, these respondents could raise the dispute only against M/s. Lafarge which was their real employer and M/s. Lafarge was not even made partial in the present proceedings. As per the appellant, the Conciliation Officer had not considered material on record and without applying its mind submitted the failure report leading to the reference in question. On that basis, Writ Petitions were filed by the appellant before the High Court of Jharkhand at Ranchi seeking quashing of the said reference.

8. These Writ Petitions came up before the learned Single Judge who dismissed these Writ Petitions with the observation that the Labour Court, which was already in seisin of the matter, can very well adjudicate and answer

the reference after considering all the points raised by the parties and on the basis of evidence led by the parties in the reference proceeding before the Labour Court. Intra Court Appeals preferred by the appellant have been dismissed by the Division Bench of the said Court observing that as there is a dispute between parties and, therefore, the learned Single Judge rightly dismissed the Writ Petitions.

9. It is how the parties are before us in the present proceedings.

10. At the outset, we would like to observe that the High Court is right in holding that the Industrial Dispute has arisen between the parties in as much as the contention of the workers is that they are entitled to serve the appellant as they continued to be the workers of the appellant and were wrongly “transferred” to M/s. Lafarge. On the other hand, the appellant contends that with the hiving off the cement division and transferring the same to M/s. Lafarge along with the workers who gave their consent to become the employees of the transferee company, the relationship of employers and employees ceased to exist and, therefore, the workmen have no right to come back to the appellant. This obviously is the “dispute” within the meaning of

Section 2(k) of the Industrial Disputes Act. 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.”

11. 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.

12. Having said so, we are of the opinion that the terms of reference are not appropriately worded in as much as these terms of reference do not reflect the real dispute between the parties. The reference pre-supposes that the respondents workmen are the employees of the appellant. The reference also proceeds on the foundation that their services have been “transferred” to M/s. Lafarge. On these suppositions the limited scope of adjudication is confined to decide as to whether appellant is under an obligation to take back these workmen in service. Obviously, it is not the reflective of the real dispute between the parties. It not only depicts the version of the respondents workmen, but in fact accepts the same viz. they are the employees of the appellant and mandates the Labour Court/ Industrial Tribunal to only decide as to whether the appellant is required to take them back in its fold. On the contrary, as pointed out above, the case set up by the appellant is that it was not the case of transfer of the workmen to M/s Lafarge but their services were taken over by M/s. Lafarge which is a different company/ entity altogether. As per the appellant they were issued fresh appointment letters by the new

employer and the relationship of employer-employee between the appellant and the workmen stood snapped. This version of the appellant goes to the root of the matter. Not only it is not included in the reference, the appellant's right to put it as its defence, as a demurrer, is altogether shut and taken away, in the manner the references are worded.

13. 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.

14. A full Bench of High Court of Delhi in the case of *Indian Tourism Development Corporation (ITDC) v. Delhi Administration and Ors.* **1982 (LAB) IC 1309** had an occasion to deal with issue of this nature i.e. pertaining to the "Terms of Reference". Various writ petitions were heard together and disposed of by the common judgment. One of the writ petitions, in which this issue arose, was C.W.P No. 1472/1981. One worker working at the sweets

counter of the Sona Rupa Restaurant of the management was caught red handed while misappropriating the sale proceeds of sweets sold to the customers. Though initially he admitted the theft but later he instigated other employees to resort to militant and violent acts in which various workers indulged in and abstained from work. In view of the violent and subversive activities of the workers, the management decided to close down the restaurant and informed the workmen accordingly. Notice of closure was issued wherein workmen were informed that their accounts would be settled in full and final. The workmen approached the Labour Department and raised the dispute alleging that there was a “lock-out” declared by the management. The management appeared in the conciliation proceedings and stated that it was a case of “closure” of the restaurant and not of lock-out. Since conciliation proceedings failed, the matter was referred by the appropriate Government to the Industrial Tribunal, Delhi, for adjudication with following terms of reference:

“Whether the workmen as shown in Annexure ‘A’ are entitled to wages for a period of lock-out w.e.f. 1.1.81 and if so, what directs are necessary in this respect.”

15. The Management filed the Writ Petition under Article 226 challenging the notification of reference on the plea that the real dispute about the existence or otherwise of the lockout had not been referred to. Instead lock-out was presumed in the reference itself on imagining and fictitious basis with the result, it was not open to the management to urge before the Tribunal whether there was at all a lock out, and instead it was a case of closure, prompted by workers' violent attitude. The High Court accepted these contentions on the analogy that the jurisdiction of the Court/ Industrial Tribunal in industrial disputes is limited to the points specifically referred for its adjudication and the matters incidental thereto and it is not permissible for it to go beyond the terms of reference. The High Court further pointed out that though the existence of lock-out itself was the real dispute between the management and its workmen, the terms of reference proceeded on the assumption that there was a lock-out declared by the management. This way the management was precluded from proving before the Industrial Tribunal that there was no lock out and, in fact it was a case of closure. Thus, the real dispute between the parties as to whether there was at all a lock-out or whether there was violence by the workmen which compelled the management to close the restaurant, was not referred.

16. Later this judgment was followed by a Single Bench of Delhi High Court in the case of *Moolchand Kharati Ram Hospital vs. Labour Commissioner and Ors.* **1998 (III) LLJ 1139 Del**, where also dispute was as to whether the workmen had resorted to strike, as contended by the management or it is the management which had declared a lock-out, which was the stand of the workmen. However, the terms of reference stipulated were: whether the workmen were entitled to wages for the lock-out period? The Court concluded that since there was a dispute about the existence of lock-out itself, this kind of reference would not permit the management to prove that it was in fact a case of “strike” resorted to by the workmen. Reference was accordingly quashed. The court relied upon the full Bench judgment in *ITDC(supra)*. Some judgments of this Court were also referred to for the proposition that the jurisdiction of the Tribunal is limited to the extent of what is referred to it. We would like to reproduce that portion of the judgment where decisions of this Court are discussed:-

“25. Their Lordship of the Supreme Court in the matter of Management of Express Newspapers (Private) Ltd., Madras v. [The Workers and Ors., MANU/SC/0267/1962](#): (1962) IILLJ227SC, held that "since the jurisdiction of the Industrial Tribunal in dealing with industrial disputes

referred to it under Section [10](#) is limited by Section [10\(4\)](#) to the point specifically mentioned in the reference and matters incidental thereto, the appropriate Government should frame the relevant orders of reference carefully and the questions which are intended to be tried by the Industrial Tribunal should be so worded as to leave no scope for ambiguity or controversy. An order of reference hastily drawn or drawn in casual manner often gives rise to unnecessary disputes and thereby prolongs the life of industrial adjudication which must always be avoided.

26. In Sindhu Resettlement Corporation Ltd. v. [Industrial Tribunal of Gujarat and Ors. MANU/SC/0233/1967](#) : (1968)ILLJ834SC, their Lordships of the Supreme Court have emphasised the importance of drafting of reference under Section [10](#) of the Industrial Disputes Act. This has been observed in this case as under at p. 839 :

"If no dispute at all is raised by the employees with the management, any request sent by them to the Government would only be a demand by them and not an industrial dispute between them and their employer. An industrial dispute, as defined, must be a dispute between employers and workmen. The Government has to come to an opinion that an industrial dispute does exist and that opinion can only be formed on the basis that there was a dispute between the employee and the employer.

Where the retrenched employee and the Union had confined their demand to the management to retrenchment compensation only and did not make any demand for reinstatement the reference made by the Government under Section [10](#) in respect of reinstatement is not competent."

17. Appeals against the aforesaid decision was dismissed by this Court in *Moolchand Kharati Ram Hospital vs. Labour Commissioner and Ors.* **2002 (10) SCC 708**. This shows that view of the Delhi High Court in the aforesaid cases has been given imprimatur by this Court.

18. The Industrial Tribunal/ Labour Court constituted under the Industrial Disputes Act is a creature of that statute. It acquires jurisdiction on the basis of reference made to it. The Tribunal has to confine itself within the scope of the subject matter of reference and cannot travel beyond the same. This is the view taken by this Court in number of cases including in the case of *National Engineering Industries Limited v. State of Rajasthan & Ors.* 2000 (1) SCC 371.

19. It is for this reason that it becomes the bounden duty of the appropriate Government to make the reference appropriately which is reflective of the real/ exact nature of “dispute” between the parties. In the instant case, the bone of contention is as to whether the respondent workmen were simply transferred by the appellant to M/s. Lafarge or their services were taken over by M/s. Lafarge and they became the employees of the M/s. Lafarge. Second incidental question which would follow therefrom would be as to whether they have right to join back the services with the appellant in case their service conditions

including salary etc. which they were enjoying with the appellant are not given or protected by M/s. Lafarge? If it is proved that their service conditions are violated, another question would be as to whether they can claim the service benefits/ protection from M/s. Lafarge or they have the right to go back to the appellant?

20. It follows from the above that the reference in the present form is clearly defective as it does not take care of the correct and precise nature of the dispute between the parties. On the contrary, the manner in which the reference is worded shows that it has already been decided that the respondent workmen continue to be the employees of the appellant and further that their services were simply transferred to M/s. Lafarge. This shall preclude the appellant to put forth and prove its case as it would deter the labour court to go into those issues. It also implies that by presuming so, the appropriate Government has itself decided those contentious issues and assumed the role of an adjudicator which is, otherwise, reserved for the Labour Court/ Industrial Tribunal.

21. As a consequence, this appeal is allowed and the impugned judgment of the High Court is set aside. Sequitur to that would be to quash the references made in the present form. However, at the same time, direction is given to the

appropriate Government to make fresh reference, incorporating real essence of the dispute as discussed in this judgment, within a period of two months from the date of receipt of the copy of this judgment.

22. The appeals are allowed and disposed of in the aforesaid terms with no order as to costs.

.....J.
[K.S. RADHAKRISHNAN]

.....J.
[A.K. SIKRI]

NEW DELHI
SEPTEMBER 16, 2013