

(2016) 07 MAD CK 0071

In the Madras High Court

Case No : W.A. No.163 of 2016 and W.P. No. 34247 of 2015

Executive Director Bharat Heavy Electricals Limited

APPELLANT

Vs

Government of India

RESPONDENT

Date of Decision : 28-07-2016

Acts Referred:

Citation : (2017) 1 CLR 796 : (2016) 2 CWC 524 : (2017) 152 FLR 367 : (2016) 4 LLN 191

Hon'ble Judges : Mr. Huluvadi G. Ramesh and Mr. M.V. Muralidaran, JJ.

Bench : Division Bench

Advocate : Mr. Vijay Narayan, Senior Counsel for Mr. John Sachariah for Fox Mandal and Associates, for the Appellant; Ms. N.K. Nithila Vani, Central Government Standing, for the Respondent; Tribunal, Mr. R. Viduthalai, Senior Counsel, for the Respondent Nos. 1 and 2

Final Decision : Dismissed

Judgement

Huluvadi G. Ramesh, J.—Both the writ appeal and the writ petition have been preferred by the Executive Director of Bharat Heavy Electricals Limited, Tiruchirappalli, aggrieved by the order passed by the learned single Judge in vacating the order of stay, against the order passed by the Central Government, the first respondent herein in referring the matter to the Central Government Industrial Tribunal cum Labour Court, Chennai, the second respondent herein for adjudication, in regard to the dispute raised by the members (approx. numbering 1174) of the BHEL Valaga Oppanda Thozhilalar Nala Sangam (BHEL Contract Labour Union), Tiruchirappalli, the third respondent herein with respect to their absorption and regularisation on the ground that even though they are working for several years as contract labourers, the Management is exploiting them, instead of absorbing them on par with the regular employees of BHEL, without taking into consideration the continuous service rendered by them for more than 30 years as contract labourers through the contractor only for the welfare and functioning of the BHEL company.

2. Heard the learned senior counsel for the appellant/writ petitioner-Management and the learned senior counsel for the third respondent/Sangam-Contract Labourers.

3. It transpires that earlier when the Central Government refused to refer the dispute after the failure of conciliation talks, the third respondent-Sangam of contract labourers under the contractor had approached this Court in Writ Petition No.9271 of 2015 and obtained an order for referring the dispute to the Central Government Industrial Tribunal cum Labour Court and based on the direction issued by this Court, the Central Government has referred the matter to the second respondent-Industrial Tribunal accepting that there is a dispute. This aspect has been disputed by the learned senior counsel for the appellant/writ petitioner on the ground that the order passed by the learned single Judge in the said writ petition referring the dispute to the second respondent-Industrial Tribunal for adjudication is bad in law for non-compliance of the principles of natural justice.

4. However, challenging the order passed in W.P. No.9271 of 2015 dated 31.7.2015 at the instance of the contract labourers, an appeal was filed by the Management in W.A.No.1667 of 2015 seeking to delete the observations made by the learned single Judge on the merits of the case, since they would have a binding effect in the adjudication by the Industrial Tribunal of the dispute raised and the Division Bench also, by order dated 10.12.2015, after recording the fair submission made by the learned senior counsel representing the contract labourers for deletion of the observations made in respect of the merits of the case, deleted all the observations made in respect of the merits of the case and gave liberty to the Industrial Tribunal to proceed with the matter in accordance with law.

5. Thereafter the present writ petition and the writ appeal have been filed by the Management challenging the impugned order of reference passed by the Central Government as well as the order of the learned single Judge vacating the order of stay of reference of the dispute to the second respondent-Industrial Tribunal. The learned senior counsel for the appellant/writ petitioner, relying upon the judgment of the Apex Court in the case of M/s Rahman Industries Private Limited v. State of U.P. & others, AIR 2016 SC 551, has contended that the Central Government cannot act as a post office by referring each and every petition received by them, as the Central Government is well within its jurisdiction to see whether there exists a dispute worth referring for adjudication.

6. On the other hand, the learned senior counsel representing the contract labourers, emphasising on the observations made by the Apex Court in the aforesaid judgment, has contended that the Court, on judicial scrutiny, can issue a direction to the Government to make a reference, if it finds that the refusal of the Government to make a reference of the dispute is unjustified on irrelevant factors.

7. We have also gone through the judgment of the Apex Court in the case of M/s. Rahman Industries Private Limited v. State of U.P. & others, AIR 2016 SC 551, wherein the Apex Court, in paragraph-4, has observed as follows:-

"4. We find force in the submission made by the learned Counsel. In the scheme of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"), it is not as if the Government has to act as a post office by referring each and every petition received by them. The Government is well within its jurisdiction to see whether there exists a dispute worth referring for adjudication. No doubt, the Government is not entitled to enter a finding on the merits of the case and decline reference. The Government has to satisfy itself, after applying its mind to the relevant factors and satisfy itself to the existence of dispute before taking a decision to refer the same for adjudication. Only in case, on judicial scrutiny, the court finds that the refusal of the Government to make a reference of the dispute is unjustified on irrelevant factors, the court may issue a direction to the Government to make a reference."

8. Of course, as relied upon by the learned senior counsel for the contract labourers, the observation in paragraph-4 speaks to the fact that the High Court can issue a direction to the Government to make a reference. But, in the case on hand, the fact remains that there was non-compliance of the principles of natural justice while issuing such a direction, as the Management was not made a party in the earlier writ petition filed by the contract labourers.

9. Be that as it may, in the present W.P. No.34247 of 2015 filed by the Management, though initially they obtained an order of stay against the impugned order of reference, the order of stay having been vacated by the learned single Judge, in the light of the observations made by the Division Bench in W.A. No.1667 of 2015 dated 10.12.2015, giving rise to the filing of W.A. No.163 of 2016, during the course of the proceedings, as the learned senior counsel for the third respondent-contract labourers has agreed that the Industrial Tribunal can decide whether the order of reference made by the Central Government is maintainable or not, as a preliminary issue, we feel that it would be proper for the parties to agitate the matter before the second respondent-Industrial Tribunal in accordance with law. Accordingly, without going into the merits, we direct the second respondent-Central Government Industrial Tribunal cum Labour Court to entertain the dispute on the preliminary issue as to whether the order of reference made by the Central Government is maintainable or not and to decide the same in accordance with law. Both the parties, namely, the Management and the contract labourers are at liberty to approach the second respondent-Industrial Tribunal and to raise all the contentions available to them. The matter may be taken up by the second respondent-Industrial Tribunal within a period of one month from the date of receipt of a copy of this order. With these observations, both the writ appeal and the writ petition are disposed of accordingly. Consequently, C.M.P. No. 2297 of 2016 and M.P. No.1 of 2015 are closed. No costs.