

**(2002) 01 BOM CK 0032**

**In the Bombay High Court**

**Case No :** C.A.J.L.P.A. No. 177 of 2001 against W.P. No. 3691 of 1999

Tata Consulting Engineers and Associates Staff Union

APPELLANT

Vs

Tata Consulting Engineers and Another

RESPONDENT

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**Date of Decision :** 17-01-2002

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 18(1)

**Citation :** (2002) 93 FLR 370 : (2002) 2 LLJ 323

**Hon'ble Judges :** C.K. Thakker, C.J;S. Radhakrishnan, J

**Bench :** Division Bench

**Advocate :** S.J. Deshmukh and N.M. Ganguli, for the Appellant; K.M. Naik, instructed by Salgaonkar and Co., for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

1. This Letters Patent Appeal is filed by Appellant-Tata Consulting Engineers and Associates Staff Union ("Union" for short) against Tata Consulting Engineers ("Company" for short). Being aggrieved by the Award passed by the Industrial Tribunal, Mumbai, on April 22, 1996 in Reference (IT) No. 23 of 1984, and confirmed by the learned single Judge on March 9, 2000 in Writ Petition No. 3691 of 1999, the union has approached the Division Bench.

2. Pursuant to a Charter of Demands made on behalf of the Union, a Reference was made to the Industrial Tribunal, Mumbai, by the appropriate Government. The Tribunal considered demands raised by the Union. On the basis of the evidence on record, oral as well as documentary, the Tribunal held that the demand raised by the Union was not bona fide, and, accordingly, disposed of the Reference. In the operative part of the Award, the Tribunal observed thus:

"Reference stands rejected. No order as to costs."

Against the Award passed by the Tribunal, the Union approached this Court by filing the above petition. The learned single Judge, who heard the matter, was also satisfied that no illegality could be said to have been committed by the

Tribunal in disposing of the Reference, and, accordingly, the petition was rejected. Against the said order, the Union has approached this Court by filing the Letters Patent Appeal.

3. We have heard the learned counsel for the parties. The learned counsel for the Appellant raised several contentions. It was urged that the so-called Award passed by the Industrial Tribunal cannot be said to be "Award" within the meaning of Section 2(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"), and on that ground alone, the Award deserves to be quashed and set aside, and the order passed by the learned single Judge also deserves interference. It was contended that there is an error apparent on the face of the record committed by the Tribunal in holding that the demand, made by the Union, was not justified. The further submission of the learned counsel was that when the Tribunal itself noted that the rise was given by the Company for the benefits of the members of the union, it ought to have held that the demand was justified; but, in the light of subsequent facts and events, no relief could be granted by the Tribunal. It was also contended that it was wrong on the part of the Tribunal to refuse the relief on the ground that undertaking had not been given by members of the appellant-union. According to the learned counsel, it was a collateral condition which could neither have been imposed nor such fact could have been considered. Finally, it was submitted that the impugned action on the part of the company was "unfair labour practice" within the meaning of the Act, inasmuch as it is not in consonance with Part I Item No. 9 of the Vth Schedule of the Act, read with Item 5 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. On all these grounds, it was submitted that the impugned Award deserves to be quashed and set aside, as also the order passed by the learned single Judge.

4. The learned counsel for Respondent No. 1, on the other hand, submitted that irrespective of the language used in disposing of the Reference, if substance is to be seen, it is quite clear that the Tribunal considered the evidence on record, and on merits, the reference was decided. Whether it was stated that the Reference was "rejected" or Award was passed, the substance is to be looked at, and not the form in which it was made. The learned counsel also submitted that while rejecting the demands made by the Union, the relevant facts and circumstances have been taken into account by the Tribunal; and, on the basis of entire materials, the Tribunal recorded a finding of fact that the company, on its own, gave rise to several demands, and, hence, the demand was not justified. Thus, it was not a case wherein the Tribunal has rejected the Reference without entering into the merits. It was also submitted that there was no unfair labour practice as alleged by the Union. Since the settlement had been arrived at under Sub-section (1) of Section 18 of the Act otherwise than in conciliation proceedings, the benefits were given to those employees who had given undertaking. The company was and is prepared to extend the same benefits to the petitioners if they had also given similar undertaking.

5. Learned counsel submitted that it cannot be said that by disposing of the Reference, and by not granting demands made on behalf of the members of the Union, any illegality can be said to have been committed. Similarly, the learned single Judge has not committed any jurisdictional error in disposing the petition. It is true that once a Reference is made by the appropriate Government, it has to be decided on merits. But according to the counsel, the reference has been decided on merits and no fault can be found against it.

6. Reliance placed by the learned counsel for the Appellant on a decision of the Supreme Court in *Jai Bhagwan Vs. Management of The Ambala Central Co-operative Bank Ltd. and Another*, does not help him. Likewise, *Pandavapura Sahakara Sakkare Karkhana Ltd. Vs. State of Mysore and Others*, Kant also does not carry the case of the Appellant further. In both the cases, it was held that once a reference is made, it cannot be decided otherwise than on merits, such as availability of alternative remedy, or that no reference could have been made, etc. In the instant case, however, in our opinion, an Award was passed by the Tribunal on merits and the matter was not decided on the ground that no such Reference could have been made. The Tribunal considered the relevant evidence on record and the steps taken by the Company. On the basis of such evidence, the Tribunal recorded a finding that there was no justification for the demand made by the Union, and hence, the demand was not granted. The ratio laid down in the decisions cited by the learned counsel for the Appellant, therefore, will not help the Appellant. Similarly, though the Reference was "rejected", virtually, it was an Award made by the Tribunal on the basis of evidence adduced by the parties. Apart from the fact that no specific argument has been advanced at the time of hearing of the Petition before the learned single Judge, even if it is assumed that it is a pure question of law, and can be raised in the Letters Patent Appeal, in our view, the order passed by the Tribunal in disposing of the Reference can be said to be Award as defined in Clause (b) of Section 2 of the Act. Hence, that contention also cannot be accepted.

7. Regarding the grievance that there is "unfair labour practice" by the company, the learned counsel for Respondent No. 1 is right in contending that both the classes of employees cannot be said to be similarly situated. Since the case does not fall under Sub-section (3) of Section 18 of the Act, but is covered by Sub-section (1), obviously, the benefits can be extended to those employees who had entered into settlement. Such settlement creates rights in favour of one party, and, at the same time, it creates obligations. If a person does not give an undertaking, which is a part and parcel of the voluntary settlement arrived at between the parties otherwise than in conciliation proceedings, he cannot claim benefits under the said settlement.

8. No doubt, it was contended that under Clause 6 of the settlement, the Company was required to take action. If such action not taken, it is open to the Appellant to take appropriate proceedings in accordance with law. The fact, however, remains that the settlement which was arrived at between the parties,

which has been relied upon by the Tribunal as well as by the learned single Judge, is settlement under Sub-section (1) of Section 18 of the Act. Obviously, therefore, the employees covered by such settlement under Sub-section (1) of Section 18 is an independent class, and if certain benefits have been granted in favour of those employees, no complaint can be made by the members of the other union, and on that basis, no relief can be granted.

9. For the foregoing reasons, we are of the considered view that by making the Award, the Tribunal has not committed any infirmity, nor has the learned single Judge committed any error. We, therefore, find no ground to interfere with the Award passed by the Tribunal as well as the order passed by the learned single Judge. The Letters Patent Appeal deserves to be dismissed, and is, accordingly, dismissed. In the circumstances of the case, there will be no order as to costs.