
(2014) 07 BOM CK 0241

In the Bombay High Court

Case No : Writ Petition Nos. 864 and 1350 of 2007

United White Metals Limited

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 25-07-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 12(5), 25N, 25-N, 25-N(5)
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices
Act, 1971 — Section 59

Citation : (2014) 5 ABR 274 : (2015) 1 ALLMR 109 : (2014) 143 FLR 505 :
(2014) 5 MhLj 265

Hon'ble Judges : M.S. Sonak, J

Bench : Single Bench

Advocate : A.V. Bukhari, Senior Advocate, B.V. Bukhari, Avinash K. Jalisatgi i/b. A.V. Jalisatgi and Amol B. Desai, K.M. Naik, Senior Advocate i/b. S.P. Salkar, J. Saluja, AGP S.D. Govekar and K.V. Joseph, Advocate for the Appellant; A.V. Bukhari, Senior Advocate, B.V. Bukhari, Avinash K. Jalisatgi i/b. A.V. Jalisatgi, Amol B. Desai, K.M. Naik, Senior Advocate i/b. S.P. Salkar, J. Saluja, AGP S.D. Govekar, K.V. Joseph and Party in person, Advocate for the Respondent

Final Decision : Dismissed

Judgement

M.S. Sonak, J.—Both these Petitions raise common issues of fact and law and therefore can be conveniently disposed of together. The challenge in the two Petitions is directed against the Order dated 22 December 2006 passed by the Joint Commissioner of Labour, Mumbai, referring u/s 12(5) of the Industrial Disputes Act, 1947 ("said Act"), a dispute with the following terms of the reference:

By cancelling the Order dated 29.12.2003 the workmen be absorbed in the establishment of M/s. Otis Elevators (India), Mumbai (List is enclosed herewith)

2. The brief facts and circumstances in which the challenge arises is that the 252 employees referred to in the list annexed to the Order of Reference dated 22 December 2006 ("impugned order") were admittedly the employees of M/s. Otis

Elevator Co. (I) Ltd., (hereafter referred to as "the Otis") at least upto 29 December 2003. On and from the said date, the services of such employees were purported to be transferred on "as is where is basis" to M/s. United White Metals Limited (hereafter referred to as "the UWML"). At the time of such transfer, there were two Unions viz. Bharatiya Kamgar Karmachari Mahasangh ("BKKM") and Bhartiya Kamgar Sena ("BKS") operative against the employees. The BKKM filed Complaint (ULP) No. 11 of 2004 and BKS filed a Complaint (ULP) No. 181 of 2004 under the provisions of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("MRTP & PULP Act") alleging that the transfer is illegal, null and void and constituted an unfair labour practice. Both, Otis and UWML questioned the jurisdiction of the Labour Court to entertain such Complaints, inter alia on the ground that there was a serious dispute as to whether the employees could be said to be employed with Otis or UWML and that such a dispute could never be adjudicated in exercise of summary proceedings under the MRTP & PULP Act. In the alternate, Otis and UWML also urged that the employees in question had accepted the transfer without any demur, and consequently there was no unfair labour practice involved. The Labour Court, by its common judgment and order dated 30 August 2005 observed that the transfer of the employees was with their consent, but ruled that it did not have jurisdiction to entertain the Complaints, as there was a serious dispute as to whether the employees were employed with Otis or UWML. Thus, in effect the jurisdictional objection raised by Otis and UWML was upheld by the Labour Court and the two Complaints, dismissed for want of jurisdiction.

3. By order dated 17 September 2004, the Specified Authority u/s 25-N of the said Act permitted retrenchment of 116 employees out of the 235 purportedly transferred from Otis to UWML. Pursuant to the same, 116 employees were retrenched by UWML. The two Unions applied for a review. The review was rejected but the dispute was referred for adjudication to the Industrial Tribunal. At the stage when the parties appeared before the Industrial Tribunal, period of one year as prescribed u/s 25-N(5) had concluded, and therefore Otis and UWML, by applications urged for disposal of the Reference, as having become redundant. Such applications were rejected by the Industrial Tribunal by its order dated 8 December 2005. UWML preferred Writ Petition No. 838 of 2006 questioning the order dated 8 December 2005, which Petition was allowed by the learned Single Judge of this Court by its judgment and order dated 3 April 2006. The Appeal against the same being Appeal No. 892 of 2006 was dismissed by the Division Bench of this Court by judgment and order dated 5 March 2007.

4. The petitioners claim that out of 116 retrenched employees, 65 employees owing allegiance to BKKM on 18 January 2006 entered into a settlement with UWML and proceeded on Voluntary Retirement. Similarly, 60 employees, owing allegiance to BKKM, who had not been retrenched, also, by the same settlement, opted for Voluntary Retirement. About 110 employees, who owed allegiance to BKS, which included 51 employees who had been retrenched, also entered into a settlement with UWML and proceeded on Voluntary Retirement. In effect

therefore, it is the case of the employers that out of 235 employees, almost 201 have accepted benefits of Voluntary Retirement Scheme and accordingly there is no industrial dispute as such pending between the said 201 employees and the employers.

5. In so far as the balance 34 employees are concerned, it is the case of the employers that there is no industrial dispute pending between such employees and the employers. The employers submitted that 31 out of 34 employees were eventually retrenched and they have accepted notice pay, retrenchment compensation and legal dues without any demur. The dispute if at all, had been fuelled by only four employees i.e. Respondent Nos. 4 to 7, who addressed a demand letter dated 13 January 2006 to the Appropriate Authority for themselves and purportedly on behalf of some 31 others, who are under cover by the two settlements. In so far as the Respondent 4 to 7 are concerned, it is the case of the employers that they too have been retrenched by UWML in accordance with law. Further, the said Respondents have also accepted notice pay, retrenchment compensation and other legal dues without any demur. Consequently, there is no industrial dispute pending between the said Respondents 4 to 7 and employers. In so far as the Respondent no. 8-Mr. N.T. Tahsildar is concerned, the employers point out that the said Respondent has opted for Voluntary Retirement Scheme; his signature did not appear on the letter of demand dated 13 January 2006; and in any case, he has submitted a specific application, that his name be deleted from the letter of demand dated 13 January 2006. On basis of such material, the employers contend that there is no industrial dispute whatsoever pending between the employers and the said Respondent No. 8.

6. As noted earlier, the Assistant Commissioner (Labour) in pursuance of the powers delegated to him, has passed the impugned order dated 22 December 2006 referring to the Industrial Tribunal, the dispute arising out of the order dated 29 December 2003, transferring the services of almost 253 employees from Otis to UWML. This Reference is based upon the letter of demand dated 13 January 2006 addressed by Respondent Nos. 4 to 7 to the Specified Authority.

7. Mr. Bukhari and Mr. Naik, the learned Senior Advocates appearing for UWML and Otis respectively have, in unison attacked the impugned order, inter alia on the following grounds :

(A) That the Authority, in making the Reference has failed to take note of the common judgment and order dated 30 August 2005 passed by the Labour Court under the provisions of MRTP & PULP Act, which specifically holds that the transfer of the employees from Otis to UWML was effected with the free consent of such employees and consequently there was nothing illegal, null and void about the same. By reference to Section 59 of the MRTP & PULP Act, it was submitted that in such circumstances, Reference as made by the impugned order was clearly incompetent;

(B) The Authority, in making the impugned order, has ignored the judgment and order dated 3 April 2006 passed by the learned Single Judge of this Court in Writ Petition No. 838 of 2006 which practically upholds the retrenchment of 116 workmen by UWML. The Appeal against the said decision came to be dismissed by the Division Bench of this Court by its order dated 5 March 2007 in as much as such relevant material has been ignored, there is clear non application of mind in making the impugned order;

(C) From the dispute raised, it is clear that the same is not at all relatable to Section 2-A of the said Act, but at the highest, and without prejudice relatable to Section 2-K of the said Act. There is no material on record to establish that the four employees (Respondent Nos. 4 to 7) had any authority to raise any industrial dispute for and on behalf of 253 employees or for that matter even 35 employees. In such circumstances, a dispute raised by only four such employees, could never be regarded as an industrial dispute within the meaning assigned to this term u/s 2-K of the said Act. In as much as this jurisdictional aspect has been ignored, the impugned order is ultra vires, null and void.

(D) The transfer of employees from Otis to UWML was effected on 29 December 2003. The letter of demand by which the purported dispute has been raised was addressed by Respondent Nos. 4 to 7 to the Specified Authority only on 13 January 2006. In between, several employees have entered into settlement with the employers. Several employees have been retrenched or otherwise terminated. In these circumstances, the impugned order purports to refer a stale and infructuous claim, which is clearly impermissible. In as much as such relevant considerations have been ignored, the impugned order deserves to be struck down.

8. Mr. K.V. Joseph (Respondent No. 6) who appeared in person has submitted that the dispute does not concern Respondent Nos. 4 to 7 only but that Respondent Nos. 4 to 7 represent over 100 employees, who have been unfairly treated by both UWML and Otis. The necessary letter of authorisation, which enabled the said Respondents to raise such dispute was duly furnished before the Specified Authority. Mr. Joseph further submitted that between December 2003 and January 2006, the workmen through their Union were agitating their disputes before the Labour Court and other fora. The Labour Court, ultimately ruled that it has no jurisdiction to go into the issues raised. Similarly the reference in the context of action u/s 25N of Industrial Dispute Act, 1947 was declared to be redundant. However, there is no ruling, either from the Labour Court or this Court, to the effect that the transfer of employees from Otis to UWML was legal and valid or for that matter any ruling that the termination of services of the employees is legal and valid. The workmen were non suited on the ground that they had approached the wrong fora and never on merits. In such circumstances, there is no delay whatsoever in raising the industrial dispute. The dispute has been raised within a reasonable period and there is no reason to interfere with the impugned order, particularly, since the provisions of

the said Act provide no period of limitation, in the matter of Reference of disputes to the Industrial Tribunal. Mr. Joseph also submitted that the findings in the judgment and order of the Labour Court dated 30 August 2005 cannot be relied upon, particularly as Labour Court has held that it had no jurisdiction to entertain the Complaint. Mr. Joseph also pointed out that the Reference, in effect, questions the very termination of services of the employees, particularly as such termination was brought about by UWML, when in fact the very transfer of services of the employees from Otis to UWML, was itself null and void. For all these reasons, Mr. Joseph submitted that there was no case for interference with the impugned order.

9. Written submissions, accompanied by certain documents were filed by and on behalf of respondent Nos. 4 to 7, with an advance copy to the learned counsels for the petitioners alongwith authority letter signed by almost 100 workmen authorising respondent Nos. 4 to 8 to raise dispute with regard to any matters concerning employment or termination by the petitioners.

10. Mr. Bukhari and Mr. Naik, learned senior counsels appearing for the petitioners, by way of rejoinder objected to the production of the documents alongwith written submissions. Without prejudice, they submitted that the authority letter which is purported to have been signed by 100 workmen was issued on 29 September 2004. After this date, subsequent events, to which detailed reference has been made earlier, renders such authority letter redundant. Further none of the 100 workmen who are purported to have signed authority letter have themselves come forward to raise an industrial dispute or seek impleadment in the present proceedings. Further Mr. N.B. Tahasildar, upon whom authority is purported to have been conferred, has himself accepted voluntary retirement. For all these reasons, learned senior counsels submitted that no cognizance be taken of the authority letter dated 29 September 2004 or for that matter any of the other documents accompanying the written submissions.

11. Mr. Bukhari and Mr. Naik, learned senior counsels for the petitioners also submitted that most of the workmen have either accepted voluntary retirement or have suffered termination. There is, accordingly, no "employer-employee relationship" as between the workmen and UWML or Otis. The termination of services has in fact been upheld by this Court in its judgment and order dated 3 April 2006 passed in Writ Petition No. 838 of 2006. Accordingly, the reference is incompetent. The advocate for the petitioner in Writ Petition No. 1350 of 2007 (Otis) filed written submissions in response to those submitted by and on behalf of respondent Nos. 4 to 7 substantially reiterating the submissions made in the course of rejoinder.

12. The rival contentions now, need, to be evaluated in light of relevant facts and circumstances of the present case, coupled with law on the subject.

13. The Petitioner's first contention is based upon the judgment and order dated

30 August 2005 passed by the Labour Court in a Complaint under MRTP & PULP Act and the provisions of Section 59 of the MRTP & PULP Act, which read thus :

59. Bar of proceedings under Bombay or Central Act.-If any proceeding in respect of any matter falling within the purview of this Act is instituted under this Act, then no proceeding shall at any time be entertained by any authority in respect of that matter under the Central Act or, as the case may be, the Bombay Act; and if any proceeding in respect of any matter within the purview of this Act is instituted under the Central Act, or as the case may be, the Bombay Act, then no proceedings shall at any time be entertained by the Industrial or Labour Court under this Act.

14. By judgment and order dated 30 August 2005, the Labour Court has in fact upheld the preliminary objection raised by both Otis as well as UWML to the effect that the Labour Court, whilst exercising its summary jurisdiction under the provisions of MRTP & PULP Act lacked jurisdiction to go into issue as to whether the employees were employed by Otis or UWML, which was the basic dispute. Relevant extracts from the judgment and order dated 30 August 2005 passed by the Labour Court, read thus :

28. Thus, looking from various angles, although right from beginning the Unions have been protesting about the notice dtd. 29.12.2003, the workmen having consented for such a change, have accepted United White Metal Limited as their new employer and once this situation is accepted, the allegation of fraud, trickery, cheating all these things would not be within the ambit of this Court to enquire into. Even assuming for the sake of arguments that the Respondent No. 1 has innovated an intelligent device in getting the things done in this manner and committed a fraud on the workmen, the issue will have to be tried by a Tribunal constituted under the Industrial Disputes Act and not by the Industrial Court constituted under the Act.

29. Thus, this Court has no jurisdiction to try the Complaints. Hence, the order:-

ORDER

i) Both the Complaints viz. Complaint (ULP) No. 11/2004 and 181/2004 are dismissed as this Court has no jurisdiction to try any of these Complaints.

ii) There shall be no order as to costs in both the Complaints.

15. The Labour Court, in its judgment and order dated 30 August 2005 has incidentally made observations to the effect that there was no coercion or undue influence exercised at the stage of obtaining consents from the employees being transferred from Otis to UWML. However, such observations, cannot be elevated to the status of any final determination so as to apply the bar contained in Section 59 of the MRTP & PULP Act. In case of an order which is amenable to the judicial review, it is salutary principle that the Labour Court or the Industrial Tribunal, decides all issues together and not rest content by a decision upon preliminary objection. This is because, if the Court exercising judicial review,

were to reverse the Labour or Industrial Court on the preliminary issue, there will be necessity to remand the matter for adjudication on the remaining issues. However, once the preliminary objection, which goes to the root of jurisdiction is upheld and the same attains finality, including for want of challenge, there is no question of reference to findings on other issues. Such findings shall also have to be regarded as having been made by the Court or a Tribunal, without jurisdiction. In order to invoke the provisions of Section 59 of the MRTTP & PULP Act, it is necessary that the proceedings, on basis of which the plea of res judicata is being raised were proceedings within jurisdiction and not beyond. In the present matters, it was the case of the Petitioners themselves that the proceedings before the Labour Court under the provisions of MRTTP & PULP Act were without jurisdiction. Such case of the Petitioners has been upheld by the Labour Court in its judgment and order dated 30 August 2005. It is therefore impermissible for the Petitioners to refer to some findings or observations in the very same judgment and order dated 30 August 2005 and on the said basis invoke plea of res judicata by reference to the provisions of Section 59 of the MRTTP & PULP Act. The first contention raised by and on behalf of the Petitioners therefore lacks merit and deserves no acceptance.

16. The issue before the learned Single Judge of this Court in Writ Petition No. 838 of 2006 was whether a Reference questioning a permission to retrench granted u/s 25-N of the said Act, could be continued despite expiry of the statutory time limit of one year prescribed for validity of such permission u/s 25-N(5) of the said Act. The permission u/s 25-N in the present case was admittedly issued on 17 September 2004. The application to declare the Reference as not maintainable on the grounds of redundancy was made after the expiry of one year from 17 September 2004 and the same was dismissed by the Industrial Tribunal on 8 December 2005. In the light of categorical provisions of Section 25-N(5), the learned Single Judge of this Court ruled that the Industrial Tribunal was not competent to proceed any further with the Reference, once the period of one year as specified u/s 25-N(5) came to an end. This decision was upheld by the Division Bench of this Court by its order dated 5 March 2007.

17. From the aforesaid, it needs to be noted that neither the decision of the learned Single Judge/nor the order made by the Division Bench upholds retrenchment of the employees on merits. All that decisions lay down is that the Industrial Tribunal was not competent to proceed further with the Reference consequent upon the expiry of one year period referred to in Section 25-N(5) of the said Act. Besides, the issue as to whether the very transfer of the employees from Otis to UWML was legal or not, was not even remotely considered, much less decided either in Reference or the decision of this Court. In fact, such issue was not even the subject matter of the proceedings.

18. The case now set out by the employees is that the very transfer of the employees from Otis to UWML was illegal. As a result, all actions taken by UWML, even assuming that such actions were in accordance with the provisions of the

said Act, are a nullity, having been taken by an entity, which was not at all the employer of the said employees. The impugned order, by which the Reference is being made is an administrative order. There is no requirement in such an order that detailed reasons be set out or consideration of relevant material, reflected in the order itself. There is no warrant therefore to proceed on the basis that the material in the form of decisions of this Court were not at all considered by the Authority. Even assuming that there was no particular consideration of such material, such material, as noted earlier, could never have come in the way of making the Reference by impugned order. Accordingly, there is no merit in the second contention of the Petitioners, as well.

19. The dispute, as referred by the impugned order in the present case relates to the transfer order dated 29 December 2003, by which employees of Otis were transferred to UWML. True, the terms of Reference have not been happily worded. At least prima facie therefore, the terms of Reference shall have to be construed by reference to the demand letter dated 13 January 2006. This demand letter, makes it clear that the employees questioned the very order dated 29 December 2003, by which their services came to be transferred from Otis to UWML. Further, the employees contend that since such transfer was itself void, action of termination brought about by UWML, which cannot be regarded as a validly constituted employer, is also void. Thus, construed, it cannot be said that the dispute, as raised, has no nexus whatsoever with the provisions contained in Section 2-A of the said Act and is exclusively referable to the industrial dispute as defined u/s 2-K of the said Act. Such an exercise shall have to be undertaken because the terms of a reference are never to be construed pedantically. The order making a reference has to be read along with pleadings of parties and other circumstances, with a view to draw out from various points and about which the parties are at variance leading to the dispute and to determine the real nature of the dispute. The parties are to be offered opportunity before the Tribunal to file their Statement of Claim and response. As long as the parties do not travel way beyond the terms of Reference, the Tribunal would be well within its jurisdiction in adjudicating the dispute between the parties. Merely because the terms of reference may not have been happily worded or could have been worded in a better manner, does not render the order making reference infirm, null and void.

20. The issue whether Respondent Nos. 4 to 7 had authority to raise industrial disputes on behalf of 253 or for that matter 35 employees, is basically a question of fact. Further, there is no dispute that the services of Respondent Nos. 4 to 7 have since been terminated. By letter of demand dated 13 January 2006, the employees not only questioned their transfer from Otis to UWML, but further seek the restoration of their employment with Otis. The employees specifically stated that the notice/order dated 29 December 2003, by which their services were purported to be transferred to UWML are against the provisions of the said Act apart from constituting victimisation. The terms of reference also make reference to absorption of their services by Otis. If the impugned order along

with terms of reference is construed, not in a pedantic manner, but in the context of letter of demand dated 13 January 2006, then it is clear that the Reference relates to retrenchment or otherwise termination of the services of the employees, including in particular Respondent Nos. 4 to 7. Such a dispute is obviously relatable to Section 2-A of the said Act. Once a dispute or difference between the workmen and his employer is connected with or arise out of termination of services of individual workmen, then the consequent dispute shall have to be deemed to be an industrial dispute notwithstanding that no other workmen or any union of workmen is a party to the dispute. In these circumstances, it cannot be said that the impugned order making a Reference is without jurisdiction because what has been referred is not at all a dispute within the meaning assigned to this term under the said Act.

21. Mr. Bukhari and Mr. Naik, learned senior counsels for the petitioners submitted that no cognizance ought to be taken of the letter of authority dated 29 September 2004, which bears signatures of almost 100 workmen and which purports confer authority upon respondent Nos. 4 to 8 in the matter of raising of industrial dispute. At this stage, there is no question of taking cognizance as such of the letter of authority dated 29 September 2004. This is because irrespective of any such cognizance, it cannot be said that the dispute as referred is not an industrial dispute. Ultimately, it is for the Industrial Tribunal to take into consideration various documents and to determine their proper scope and import. The submissions made by the learned counsels with regard to the letter of authority, in effect, invite this Court into the thicket of disputed questions of fact. The same is position in regard to the submission that there is no "employer-employee relationship" as between the workmen and UMWL and Otis. All these are issues which involve adjudication into disputed questions of fact. In fact, if the submissions of the petitioners made before the Industrial Tribunal under the MRTU & PULP Act proceedings are to be accepted, then the issue of relationship of "employer-employee" has to be adjudicated by reference to a competent forum established under the Industrial Disputes Act, 1947. This was the precise contention urged on behalf of the petitioners, which has been ultimately upheld by the Industrial Court. This is clear from the following:

The material question now that erupts before the Court is as to whether such an issue i.e. the issue that Otis Elevator Company (India) Limited claims that the workmen are not their employees, United White Metal Limited claims that the workmen are their employees and the workmen claim that they continue to be the employees of Otis Elevator Company (India) Limited, a dispute is there or is not there. There is a dispute about the relationship of employer and employee. Whether such a dispute can be gone into by this Court ? According to Mr. Kulkarni, because to the admission of Otis Elevator Company (India) Limited, the employees were the employees of Otis Elevator Company (India) Limited till 28.12.2003, the picture emerges that in the past the relationship is admitted and once this relationship is admitted, this Court is competent to probe into the grievances that have been listed in the Complaints. The Ld. Advocates of the

Respondents, on the other hand, claim that a distinct principle is stated all along by the Hon''ble Supreme Court in Cipla and Kalyani to tell that if the relationship of employer-employee is in dispute, such an issue cannot be gone into by this Court because the proceedings before this Court are summary in nature. Mr. Kulkarni submits that in all these cases, the employees of the Contractor had taken a plea that they be held to be in employees of the principal employer and in the case in our hand, there is no agency like the Contractor. Therefore, those cases should be distinguished. By looking to the wording in the relevant judgments, it appears that those cases state a principle. They not only decide the issues involved in those matters, but they state the principle that the Courts that are constituted under the Act have got the jurisdiction to decide a dispute between the employer and employee. If there is a dispute about the relationship itself, then that dispute has got to be resolved by approaching a competent forum established under the I.D. Act.

(emphasis supplied)

22. The reference of stale demands can be one of the grounds to question an order making a reference under the provisions of the said Act. However, in this case it needs to be noted that the transfer in question was purported to be effected by order dated 29 December 2003. There is material placed on record by the Petitioners themselves that the employees questioned the transfer by initiating the proceedings under the MRTTP & PULP Act. By judgment and order dated 30 August 2005, the Labour Court held that such proceedings were without jurisdiction. In the meantime, by resort to the provisions of Section 25-N of the said Act, services of some of the employees came to be retrenched. A Review Petition was filed questioning the grant of permission u/s 25-N, as a result of which a Reference was made to the Industrial Tribunal. The employers preliminary objection as to the continuance of the Reference beyond a period prescribed u/s 25-N(5) was rejected by the Industrial Tribunal. However, learned Single Judge of this Court, by judgment and order dated 3 April 2006 has held that the continuance of the Reference proceedings beyond a period of one year was without jurisdiction. In these circumstances, the raising of demand on 13 January 2006 cannot be regarded as being barred by any unreasonable delay or laches. The issue was definitely live, and what has been referred cannot be described as some stale or settled claim. Ultimately, it is to be noted that the said Act does not prescribe any period of limitation as such for the exercise of powers u/s 12(5) or for that matter Section 10 of the said Act. What is necessary is that the exercise of power is to be within a reasonable period and care should be taken to avoid reference to disputes which may have become completely stale. From the facts and circumstances of the present case, as noted above, it cannot be said that Reference is in respect of some stale claim and accordingly there is no merit in the fourth contention raised by the Petitioners.

23. Upon consideration of the totality of the circumstances, it cannot be said that the issuance of the impugned order is vitiated by non application of mind, or

exclusion of relevant circumstances or taking into account of irrelevant circumstances. The impugned order making a Reference is basically an Administrative order and not a judicial or a quasi judicial one. Therefore, this Court is not obliged to canvass the order of Reference closely to see if there was any material before the Government to support its conclusion, as if were dealing with a judicial or a quasi judicial order. In case of *The Secretary Indian Tea Association Vs. Ajit Kumar Barat and Others*, upon which reliance was placed by the learned counsel for the parties, the Supreme Court at paragraph 6 has summarized the law in the matter of challenge to an order of Reference. Relevant observation of the Supreme Court, read thus :

This law on the point may briefly be summarized as follows:-

1. The appropriate Government would not be justified in making a reference u/s 10 of the Act without satisfying itself on the facts and circumstances brought to its notice that an industrial dispute exists or apprehended and if such a reference is made it is desirable wherever possible, for the government to indicate the nature of dispute in the order of reference;
2. The order of the appropriate Government making a reference u/s 10 of the Act is an administrative order and not a judicial and quasi-judicial one and the court, therefore, cannot canvass the order of the reference closely to see if there was any material before the Government to support its conclusion, as if it was a judicial or quasi-judicial order;
3. An order made by the appropriate government under S. 10 of the Act being an administrative order no lis is involved, as such an order is made on the subjective satisfaction of the Government;
4. If it appears from the reasons given that the appropriate government took into account any consideration irrelevant or foreign material, the court may in a given case consider the case for a writ of mandamus and;
5. It would, however, be open to a party to show that what was referred by the Government was not an industrial dispute within the meaning of the Act;

[Emphasis supplied]

24. The aforesaid decision of the Supreme Court, by reference to its previous decisions lays down that the order of appropriate government making a reference u/s 10 of the said Act is an administrative order and not a judicial or quasi-judicial one and the Court, therefore, cannot canvass order of reference closely to see if there was any material before the government to support its conclusion, as if it was a judicial or a quasi judicial order. An order made of reference made by the appropriate government being an administrative order, no lis is involved, as such the order is made on the subjective satisfaction of the Government.

25. The learned counsel for the Petitioners also placed reliance on the decision of

the Supreme Court in the case of State of Bombay Vs. K.P. Krishnan and Others, in support of his proposition that an order of reference, if vitiated by non application of mind can be interfered with by a court exercising powers of judicial review. Obviously, there can be no dispute about the proposition laid down. However, upon consideration of the facts and circumstances of the present case, it cannot be said that the impugned order has been issued without any application of mind. The Petitioners may have their own case, particularly, as number of employees are said to have accepted benefits of Voluntary Retirement Scheme. However, these are matters which can always be placed before the Industrial Tribunal, which the Tribunal is bound to take into consideration, in case the stage of moulding the relief does arise. However, these are not grounds for questioning the very reference order itself.

26. The learned counsel for the Petitioners also placed reliance upon the decision of the Supreme Court in the case of M/s. Tata Iron & Steel Co. Ltd. vs. State of Jharkhand & Ors. Civil Appeal No. 8246 of 2013 decided on 16.9.2013, to contend that there is non application of mind and the impugned reference order needs to be interfered. In the case upon which reliance has been placed, the Appellant M/s. Tata Iron & Steel Co. Ltd. was denied that the Respondents are its workmen on the ground that their services had been legitimately transferred to M/s. Lafarge. On the other hand, the Respondents were asserting that they continue to be the employees of the Appellant Company. In these circumstances, the Supreme Court held that this by itself would be a "dispute" which has to be determined by means of adjudication. Further, the Supreme Court also ruled that in a dispute of this nature M/s. Lafarge would also be a necessary party. However, since the terms of reference, as worded, did not reflect the correct and precise nature of dispute between the parties, the reference order in its then form was quashed and the matter was remanded to the appropriate government to make fresh reference incorporating real essence of the dispute within a period of three months from the date of the order.

27. In the present case, Otis claims that the employees are no longer their workmen, in view of a transfer order dated 29 December 2003. The employees on the other hand contend that a transfer order dated 29 December 2003 is illegal or needs to be cancelled and therefore they continue to be the employees of Otis or in any case they need to be reabsorbed by Otis. Accordingly, the impugned order involves both Otis as well as UWML in the dispute. Although the terms of the reference may not be happily worded, nevertheless, this is not a case where it can be said that the essence of the dispute has not been referred for adjudication. As noted earlier, there is no warrant to construe the terms of a reference in a pedantic manner.

28. The circumstance that some employees have opted for a Voluntary Retirement Scheme, is a matter which is bound to be taken into consideration by the Tribunal, when it comes to moulding of relief, if any, that may be available to the employees. Similarly, the disputed contention with regard to the employees

accepting the transfer orders without any demur or otherwise, are also issues that will have to be taken into consideration by the Industrial Tribunal, in the course of adjudication. However, based upon such disputed questions, it cannot be said that the impugned order by which the reference has been made is itself without jurisdiction or that the same is vitiated by non application of mind.

29. Therefore, taking into consideration the totality of the circumstances there is no merit in any of the contentions raised by and on behalf of the Petitioners. The Petitions are accordingly dismissed and the Rule issued therein is discharged.

30. The dispute in the present case has arisen on account of the transfer of employees from Otis to UMWL purported to have been effected on 29 December 2003. The complaints made by the employees under the MRTU & PULP Act were successfully resisted by the petitioners by urging that a serious dispute has arisen as to whether the workmen are employees of UMWL or Otis and that such dispute cannot be decided by the Industrial Court under summary jurisdiction conferred upon it by the MRTU & PULP Act. The petitioners, in fact, contended that the only proper remedy would be to seek adjudication before the competent forum under the Industrial Disputes Act, 1947. Thereupon, pursuant to the demands raised by the workmen, a reference has been made under the provisions of the Industrial Disputes Act to the Industrial Tribunal. The petitioners now seek to resist such reference, by relying inter alia upon some observations made by the Industrial Court, in exercise of its summary jurisdiction under MRTU & PULP Act. In fact, by the very same orders, the Industrial Court has upheld the preliminary objection as to jurisdiction raised by and on behalf of the petitioners. From this, it is clear that the petitioners want to deny the workmen, even a bare opportunity of adjudication before the forum, which they themselves had urged as being the competent forum. The workmen are being shuttled between various fora to seek adjudication. Consistent with the objections raised by the petitioners themselves, the workmen had to seek reference before the Industrial Tribunal under the provisions of the Industrial Disputes Act, 1947. Such reference was then stalled by the petitioners from year 2006 to the year 2014. All this is bound to wilt resistance of the workmen, who can ill-afford the luxury of such prolonged litigation spread over several fora and over such a prolonged period. In these facts and circumstances, it is only appropriate that the petitioners pay costs of Rs. 25,000/- each to respondent No. 4 to 7.

31. The petitions are, accordingly, dismissed. Interim reliefs stand vacated. The petitioners to pay costs of Rs. 25,000/- (Rs. Twenty Five thousand only) each to respondent Nos. 4 to 7. Such costs to be deposited by the petitioners in the Registry of this Court within a period of four weeks from today. Upon deposit, the Registry to pay such costs to respondent Nos. 4 to 7 forthwith. Further, the Industrial Tribunal is requested to dispose of the reference as expeditiously as possible and in any case on or before 31 December 2015.

32. At this stage, Mr. Naik learned senior counsel appearing for the petitioner in Writ Petition No. 1350 of 2007 and Mr. R.B. Sawant, learned counsel for the

petitioner in Writ Petition No. 864 of 2007, apply for stay on the proceedings before the Industrial Tribunal for a period of eight weeks. There shall accordingly be a stay on the proceedings before the Tribunal for period of eight weeks from today. However, it is made clear that the direction for payment of costs to respondent Nos. 4 to 7 is not stayed.