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Id. No. 64/2022

4th July, 2023

Present:

Ms. Asha Jain Madan, Ld. A/R for the workmen.
Sh. A.K Roy, Ld. A/R for the management.

This order is being passed to decide issue no. . framed by order dated 17.03.2023 as a preliminary issue. The said issue is with regard to the maintainability of the proceeding for want of territorial jurisdiction of the Tribunal and for the settlement dated 20.01.2015.

In order to decide the issue it is necessary to describe briefly the circumstance leading to the application of the respondent for deciding the issue no. 1 as a preliminary issue.

The Govt., of India, Ministry of labour and employment by order dated 14.02.2022 has made a Reference to this Tribunal for adjudication of the dispute between the parties in terms of the reference. One of the terms of the reference is whether the dispute raised by Delhi Rajya General Workers Union vide letter dated 30.06.2020 and 22.07.2020, in respect of Sh. Aziz Khan and 40 others is maintainable on account of lack of territorial jurisdiction and the settlement dated 20.01.2015. Being called upon, all the parties filed their pleadings and the respondent no. 1 raised objection with regard to the maintainability of the proceeding. The objections were two fold. Firstly the dispute raised before the ALC. Delhi, leading to failure of conciliation and culminating into a reference by the appropriate Government is bad, since some of the workers are working in the office of the management at Noida and as such ALC Delhi should not have held the conciliation proceeding. Secondly, the settlement dated 20.01.2015 cannot be held to be a settlement in perpetuity and the Delhi Rajya Gen. Workers union was not in existence nor had espoused the cause of the claimants when that conciliation was

held. The respondent no. 1, thus, contended that an issue be framed touching the territorial jurisdiction of the Tribunal and the said issue be decided as a preliminary issue. Though on behalf of the claimants, serious objection was raised for deciding the issue no. 1 as a preliminary issue on the ground that the said issue involves a mixed question of fact and law and can be decided after recording of the evidence, this tribunal by order dated 17.03.2023, while allowing the prayer of respondent no. 1, proceeded to hear the issue no. 1 as the preliminary issue. Hence this order.

During course of argument the Ld. A/R for the management pointed out that from the list of the workers Annexed to the reference received from the appropriate Govt. it is evidently clear that except 4 persons, all other workmen are presently working in Noida. Thus, the labour commissioner of Noida has the jurisdiction to conciliate the matter and on failure of conciliation to report the same to the appropriate Govt. for reference to the labour court/ Industrial Tribunal for adjudication. In this case, since the conciliation was held by the ALC Delhi and consequently the reference was made to this Tribunal, the later lacks the territorial jurisdiction to adjudicate upon the issue. He also pointed out that the present dispute has been espoused by Delhi Rajya Gen. Workers Union Delhi which was not a registered union on the date of conciliation nor this union has anything to do with the settlement dated 20.1.2015 relied upon by the claimants, which was infact at the behest of Delhi State Gen. Workers Congress. Mr. Roy, the Ld. A/R for the management, while referring to the conciliation proceeding also pointed out that the objection regarding the territorial jurisdiction of the ALC Delhi was raised during the conciliation proceeding. But the same was not considered and the appropriate Govt., in a mechanical manner referred the dispute to this Tribunal. Since the reference

stems from the conciliation proceeding, which was held by an authority having no territorial jurisdiction, the proceeding in respect of the workmen working in Noida should be sent back to the appropriate Govt. and the proceeding may be taken up in respect of the workmen working in Delhi only. To support his contention the Ld.A/R for the management placed reliance in the case of *Workmen of Shri Rangavilas Motors Vs. Shri Rangavilas Motors Pvt. Ltd., 1967 SCR(2)528 decided by the Hon'ble Supreme Court and in the case of HT Media Ltd. Vs. Govt. of NCT of Delhi decided by the Hon'ble High Court of Delhi in w.p.c no. 8239 of 2015* and submitted that the Hon'ble Courts in the said judgment have clearly held that the proper question to raise is where did the dispute arise and not where was the dispute was sponsored, i.e, whether there is an nexus between the dispute and the territory of the state making the reference. Ordinarily if there is a separate establishment, and the workmen are working in that establishment, the dispute would arise at that place. Mr. Roy, while referring to the case of HT media Referred Supra, also pointed out that the appropriate Govt. cannot act merely as a channel of communication between the conciliation officers and labour court but has to judiciously though not judicially apply mind before referring the purported dispute for adjudication. He thereby emphasized that the issue no. 1, be decided in favour of the management and the dispute relating to the workers working in the Noida be sent back to the appropriate Govt. for reconciliation by the appropriate authority.

In reply, the Ld. A/R for the workmen submitted that the claimants of this proceeding are the workers appointed by BHEL management having its registered office in Delhi, which is not under dispute. The management, at its discretion, deputed the workmen to work in Delhi as well as in Noida. But they being the employees of BHEL, their claims are against the mgt having

registered office at Delhi. Moreover, the contractors to whom the BHEL mgt has issued work orders are also having their office in Delhi. The earlier dispute which was settled with majority of the present workers on 20.01.2015, was also filed before the RLC, New Delhi. The PF of the claimants workmen are being deposited as Wazirpur Industrial Area Delhi. Moreover, the workmen, now working in Noida were earlier engaged in Delhi. All these factors taken together clearly establishes that the cause of action for the dispute arose in Delhi and merely because some of the workmen are now working in Noida, their right for raising the dispute before the ALC Delhi cannot be closed. With regard to the identity with the union espousing the cause, she submitted that this aspect can be proved by adducing oral and documentary evidence and cannot be decided at this stage. She also pointed out that the said aspect has no bearing on the question of maintainability for want of territorial jurisdiction. To support her contention the Ld. A/R for the claimants relied upon the judgment of the Hon'ble High Court of Madras in the case of *Raju's Cafe, Coimbatore and others vs. The Industrial Tribunal, Coimbatore, and another* and submitted that the mere fact that the Government have acted on the information furnished to it, with reference to the existence of a dispute, does not make that Tribunal incompetent to try the said dispute. She emphasized and argued that the appropriate Government, in exercise of the power under section 10(1) (d) and 2A of the Id. Act when referred the matter to this Tribunal for adjudication, which is the ultimate adjudicating Authority, it become immaterial whether the conciliation was made by an authority having territorial jurisdiction or not. She thereby argued to decide the issue no. 1 in favour of the workmen.

From the aforesaid discussion, it clearly appears that making a reference by the appropriate Government is an

administrative act and the Government, before making such a reference is supposed to take all relevant facts into consideration touching upon this aspect. In the case of *Prabhakar Vs. Joint Director, Sericulture Department, (2015)15 SCC1* decided by the *Hon'ble Supreme court* and referred to by the *Hon'ble High Court of Delhi in HT Media Ltd.* referred by the respondent, the Hon'ble Supreme court in para 14 and 17 have clearly held that when the appropriate Government makes a reference of an Industrial Dispute for adjudication, it does not decide any question of fact and law. The only condition which the exercise of that power should satisfy is, that there should be the existence or apprehension of an Industrial Dispute. When once the government is satisfied about the said question, it acquires jurisdiction to refer the dispute for adjudication. The Government by the administrative act, before making such a reference has to form an opinion as to whether the Industrial Dispute exists or apprehended.

In this case the appropriate Government after considering the materials formed an opinion about the existence of the industrial dispute and referred the same for adjudication. For such reference, it becomes immaterial whether the conciliation was held by an authority having territorial jurisdiction or not. Hence, no illegality is noticed in the order of the appropriate Government by referring the matter to the Industrial Tribunal Delhi. Even otherwise, had the conciliation been done by the ALC Noida, the appropriate Government had the power of referring the matter to this Tribunal. Thus, considering the objection of the respondent from all possible angles, it is concluded that the reference is not bad for want of territorial jurisdiction of ALC Delhi for conducting the conciliation proceeding. It would not be proper to revert back the matter in respect of the workmen working in Noida as the same would lead to multiplicity of litigation. The

Issue no. 1 is thus decided in favour of the workmen and it is held that the proceeding is maintainable in this Tribunal. The parties are directed to come ready on the next date i.e. 31-09-2023 when the workmen shall adduce evidence in respect of the remaining issues.

Presiding Officer
4th July, 2023.