

901.WPN0.10012014

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE SIDE**

**WRIT PETITION NO. 1001 OF 2014**

BASF INDIA LTD  
Construction Chemicals Division  
A Public Limited Company  
Registered Under the Companies Act  
having its factory at C-68, MIDC,  
Thane - Belapur Road, Turbhe,  
Navi Mumbai - 400 613.

... **Petitioner**

vs.

01. Government of Maharashtra  
Through Secretary, Industries,  
Energy & Labour Dept Mantralaya,  
Mumbai 400032.
02. Additional Commissioner of Labour,  
Having his office at C-20,  
D-Block, Kamgar Bhavan,  
Bandra Kurla Complex, Bandra East,  
Mumbai - 400 051.
03. B.A.S.F. Kamgar Sanghatana  
A Trade Union registered Under  
Trade Unions Act 1926  
Having its Registered Office  
at Turbhe Naka, Hanuman Nagar  
Ambedkar Road, Turbhe,  
Navi Mumbai - 400 705.

... **Respondents**

.....

Mr.S.C.Naidu a/w. G.D.Talreja a/w. Sachin Bhaskar, i/by  
M/s.G.D.Talreja & Associates, Advocate for the Petitioner.  
Mrs.M.S.Bane, 'B' Panel, A.G.P. for the State/Respondent Nos.1 and 2.  
Mr.Avinash K. Jalissatgi, Advocate for the Respondent No.3.

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901.WPN0.10012014

**CORAM :NARESH H.PATIL &  
RAVINDRA V.GHUGE, JJ.**

**Reserved On : 17TH JULY, 2014**

**Pronounced On : 1ST AUGUST, 2014**

**JUDGMENT : (Per Ravindra V. Ghuge J.)**

01. Heard. Rule. Rule made returnable forthwith by the consent of the parties and heard finally.

02. By this petition, the petitioner prays for the quashing and setting aside of the impugned order of reference dated 06/11/2013 passed by respondent No.2-Additional Commissioner of Labour. Consequentially, the petitioner prays for the quashing and setting aside of Reference (IT) No. 24 of 2013 pending before Shri.S.K.Deshpande-learned Presiding Officer, Industrial Tribunal, Thane.

03. We have heard the learned advocates for the respective sides and have gone through the petition paper book with their assistance. The submissions of the petitioner can be summarized as follows :-

- a) The petitioner is a factory engaging in the business of manufacturing construction chemicals.
- b) The petitioner employees about 35 workmen on its roll.
- c) Attendance of the petitioner's employees is registered on the electronic biometric system.
- d) Labour Contractors namely M/s.Omkar Enterprises, M/s.Advanced Enterprises and M/s. Mafoi are independent Labour Contractors, who supplied contract labourers in areas

901.WPNo.10012014

- of house-keeping, material handling, shifting, packaging, loading and unloading and other allied support services.
- a
- e) Each of these contractors have their independent legal identity.
- b
- f) Each of them have obtained licenses under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970. (“C.L.R.A.Act” in short). Each of the Contractors has its independent P.F.Code Number and ESIC Code Number.
- c
- g) The impugned order of reference is in relation to the contract labourers only.
- h) Respondent No.3-B.A.S.F. Kamgar Sanghatana claims to represent the said contract labourers.
- d
- i) The Respondent No.3 Sanghatana has already filed Complaint (ULP) No. 407 of 2011 before the Industrial Tribunal at Thane alleging Unfair Labour Practices (ULP) under Items 1(a) and (b) of Schedule II and 9 and 10 of Schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971 (“the State Act” in short).
- e
- j) The petitioner has filed voluminous record inclusive of Identity Cards as well as statutory records before the Industrial Tribunal to establish that there is no employer-employee relationship between the contract labourers and the petitioner.
- f
- k) By an order dated 21/03/2012 passed by the Industrial Court, Thane on the application for interim relief (Ex.U2), the petitioner was directed to maintain status-quo in respect of the employment of the workers with liberty to expedite the hearing of the complaint within six months.
- g
- h

901.WPNo.10012014

- l) Aggrieved by the interim order, the petitioner filed Writ Petition No. 3907 of 2012 before the learned Single Judge of this Court.
- m) The petitioner undertook, not to terminate the concerned workers except for proved misconduct, before the learned Single Judge. Therefore, by an order dated 07/12/2012, the learned Single Judge disposed of the Writ Petition by directing the Industrial Court, Thane to decide Complaint (ULP) No. 407 of 2011 within six months.
- n) Respondent No.3-Union raised an industrial dispute before the Conciliation Officer under Section 2(k) of the Industrial Disputes Act, 1947 ("the Central Act" in short) claiming revision in wages of the concerned workmen.
- o) The petitioner produced voluminous documents before the Conciliation Officer along with their written statement clearly indicating that the concerned workmen are contract labourers and there was no employer-employee relationship between the petitioner and the said contract labourers.
- p) The Conciliation Officer after conciliating over the dispute, finally submitted his failure report dated 15/06/2013 to respondent No.2-Additional Commissioner of Labour, who is the appropriate Government.
- q) By the impugned order of reference dated 06/11/2013, the appropriate Government-respondent No.2 referred the demands of the concerned workmen to the Industrial Tribunal, Thane. The same came to be registered as Reference (IT) No.

901.WPNo.10012014

24 of 2013.

- r) Grievance of the petitioner is that when the U.L.P. Complaint was pending before the Industrial Court, Thane involving the disputed issue of employer-employee relationship, the same contract labourers could not have raised a Charter of Demands against the petitioner under the Central Act.
- s) The Respondent No.2-appropriate Government could not have referred the said dispute to the Industrial Tribunal without referring the dispute raised by the petitioner that the contract labourers have no employee-employer relationship with the petitioner. In short, the counter demand of the petitioner was not referred to the Industrial Tribunal.
- t) The Industrial Court had framed issues in the U.L.P. Complaint by its order dated 08/03/2013. The issues as to whether the concerned workers are contract labourers and as to whether there was employee-employer relationship with the petitioner, have been framed.
- u) When the existence of employer-employee relationship was being gone into by the Industrial Court in the U.L.P. Complaint, a reference order could not have been passed by the appropriate Government under the Central Act on the presumption that the concerned workers are the employees of the petitioner.
- v) The impugned order of reference and the reference proceedings before the Industrial Tribunal were barred by Section 59 of the State Act.

901.WPNo.10012014

- w) The Charter of Demands raised by the contract labourers cannot be gone into unless employer-employee relationship is established.
- x) Since the dispute as regards employer-employee relationship was being adjudicated upon in the U.L.P. Complaint, reference proceedings touching the same disputed issue are untenable in law in view of the prohibition prescribed under Section 59 of the State Act.
- y) When the U.L.P. Complaint was pending and was expedited under orders of the learned Single Judge of this Court, reference proceedings cannot be entertained until the issue of employer-employee relationship was decided in the U.L.P. proceedings.
- z) The U.L.P. proceedings and the reference proceedings could not be entertained simultaneously in view of the imminent risk of the two authorities coming to divergent findings on the disputed issue of employer-employee relationship.
- aa) The petitioner has, therefore, prayed that the impugned order of reference be quashed and set aside in view of the bar of Section 59 of the State Act. Alternatively, it is prayed that either the dispute raised by the petitioner under the Central Act be also referred to the Industrial Tribunal or the reference proceedings be kept in abeyance till the decision of the Industrial Court on the U.L.P. Complaint.

04. The respondent No.2-appropriate Government on the one hand

901.WPNo.10012014

has supported the impugned order. However, on the other hand, it is submitted that the dispute raised by the petitioner as regards employer-employee relationship has not been referred to the Industrial Tribunal. Nevertheless, it is submitted that the appropriate Government is willing to refer the said dispute to the Industrial Tribunal.

05. The submissions of the respondent No.3-Union can be summarized as follows :-

- a) The petitioner has raised a dispute of employer-employee relationship in it's written statement filed before the Industrial Tribunal in the reference proceedings.
- b) The respondent No.3 has no objection if the said dispute of employer-employee relationship is gone into by the Industrial Tribunal in the reference proceedings.
- c) All objections raised by the petitioner in it's written statement before the Industrial Tribunal and in this petition, can be looked into by the Industrial Tribunal while deciding the reference proceedings.
- d) There is sufficient material before the Industrial Court in the U.L.P. proceedings as well as before the Industrial Tribunal in the reference proceedings, to establish employer-employee relationship between the petitioner and the concerned workmen.
- e) The respondent No.3-Union is not desirous of withdrawing the U.L.P. Complaint since the concerned workmen are protected by the interim orders as well as by the statement made by the

901.WPN0.10012014

petitioner before the learned Single Judge of this court in the Writ Petition.

- f) The U.L.P. proceedings as well as reference proceedings can be conducted simultaneously.
- g) The prayers made in the U.L.P. proceedings are in no way connected or similar to the prayers made in the reference proceedings. Therefore, the bar of Section 59 of the State Act would not be applicable.
- h) Though the petitioner has filed it's written statement along with voluminous documents before the Conciliation Officer, the petitioner stopped attending the proceedings and virtually boycotted the conciliation proceedings from 25/04/2012. The Roznama of the Conciliation proceedings clearly evidences this fact.
- i) Since the objections of the petitioner can be looked into by the Reference Court, there is neither any necessity to make a second reference incorporating the petitioner's objections, nor is the impugned order of reference liable to be set aside.

06. The petitioner and the contesting respondent No.3 have placed reliance upon various reported judgments of the Honourable Supreme Court of India as well as this Court. In the light of the submissions of the respective sides and the order that we propose to pass, we are not advertent to all the citations, in as much as, we are not considering the issue of the bar under Section 59 of the State Act for the reasons indicated in this order.

07. The U.L.P. Complaint is at the stage of recording evidence. The prayers set out in the said complaint are as follows :

- a) *Hold and declare that the Respondent have engaged in unfair labour practices under item 1(a) & 1(b) of Schedule II and 9 and 10 of Schedule IV of the M.R.T.U. & P.U.L.P. Act, 1971.*
- b) *Direct the Respondents to cease and desist from committing unfair labour practices complained of herinabove.*
- c) *This Hon'ble Court be pleased to direct the Respondents to provide them manual work and to pay their wages regularly every month.*
- d) *Restrain the Respondents from terminating the services of the workers named in Annexure "B". In the alternative, the Hon'ble Court may be pleased to direct the Respondent to maintain status in respect of employment of the workers named in Annexure "B".*
- e) *This Hon'ble Court be pleased to direct the Respondent not to get the work done from any outside workers, agents, agency, contractor's etc. without first giving preference to the workers named in Annexure "B".*
- f) *This Hon'ble Court is pleased to restrain the Respondent from removing the plan and machinery, semi-finished goods, finished goods, etc. from the premises of the Respondent No.1 Company at any other place or places.*
- g) *Ad-interim/interim reliefs please be granted as per the separate to interim relief application.*
- h) *Any other relief which this Hon'ble Court may deem fit and proper.*
- i) *Costs and compensation.*

08. The Industrial Court has cast issues in the said complaint, which are as follows :

1. *Whether this Court has jurisdiction to entertain and try the above complaint filed under Item 1(a) & (b) of Schedule II and Items 9 & 10 of Schedule IV in respect of the concerned workers named in Annexure-B ?*
2. *Whether the Respondents prove that the concerned workers in Annexure-B are contract employees of M/s. Advanced Enterprises, now working with M/s. United Associates and M/s. Omkar Enterprises ?*
3. *Whether the Complainant Union prove that concerned persons in Annexure-B are falling within the definition of "employee" under Section 3(5) of the MRTU & PULP Act, 1971 ?*
4. *Whether the Complainant Union prove that the Respondents have indulged in an unfair labour practices under Item 1(a) & (b) of Schedule II and Items 9 & 10 of Schedule IV of the MRTU & PULP Act, 1971 ?*
5. *What order ?*

*All these issues will be heard and decided together.*

09. The report of the Investigating Officer dated 06/02/2012 filed by Shri.A.S.Jagdale, Investigating Officer in-charge is on the record of the U.L.P. complaint. We find from issue No.2 framed by the Industrial Court that the petitioner is to prove that the concerned workmen mentioned in annexure (B) to the complaint are contract employees/labourers of M/s.Advanced Enterprises and are not working with M/s. United Associates and M/s.Omkar Enterprises. The

901.WPNo.10012014

respondent No.3-Union which is the complainant in the said U.L.P. proceedings will have to prove that they fall in the definition of employee u/s. 3(5) of the State Act and thereby establish employer-employee relationship with the petitioner herein as per issue No.3. The answers to issue Nos.1 and 4 are based upon the conclusions to be drawn by the Industrial Court as regards issue Nos.2 and 3.

10. At the outset, we have noted that the filing of the U.L.P. complaint under Schedule II and Schedule IV of the State Act before the Industrial Court, has been objected to by the petitioner on ground of tenability. The petitioner has relied upon the reported judgments of the Honourable Apex Court in the case of **Vividh Kamgar Sabha V/s. Kalyani Steel, 2001 AIR SCW 170** and **Cipla Ltd V/s. Maharashtra General Kamgar Union & Ors., 2001 AIR SCW 929**. The interim relief granted by the Industrial Court in the U.L.P. proceedings was challenged by the petitioner in Writ Petition No. 3907 of 2012. The learned Single Judge by his order dated 07/12/2012 disposed of the petition by directing the Industrial Court to decide complaint U.L.P. No. 407 of 2011 within six months. We have considered in this backdrop, the factual matrix/peculiar facts emerging from this case while delivering this judgment.

11. We have considered the impugned order of Reference and the objections raised by the petitioner before the Conciliation Officer. We are categorically informed that the written statement, filed by the petitioner in the Reference proceedings before the Industrial Tribunal,

901.WPNo.10012014

raises the issue of employer-employee relationship. Having considered the demands of the respondent No.3-Union in the Reference proceedings and the objections raised by the petitioner through its written statement, we find that unless employer-employee relationship is established between the litigating sides, the demands raised by the respondent No.3-Union cannot be entertained as against the petitioner.

12. In the matter of **Telco Convoy Drivers Mazdoor Sangh V/s. State of Bihar**, reported at **A.I.R. 1989 SC 1565**, the Apex Court has held in Paragraph Nos. 1,14 and 16 as under :

*1. While exercising power under S. 10(1) the function of the appropriate Government is an administrative function and not a judicial or quasi judicial function, and that in performing this administrative function the Government cannot delve into the merits of the dispute and take upon itself the determination of the lis, which would certainly be in excess of the power conferred on it by S. 10. It is true that in considering the question of making a reference under S. 10(1), the Government is entitled to form an opinion as to whether an industrial dispute "exists or is apprehended". But the formation of opinion as to whether an industrial dispute "exists or is apprehended" is not the same thing as to adjudicate the dispute itself on its merits. Where, as in the instant case, the dispute was whether the persons raising the dispute are workmen or not, the same cannot be decided by the Government in exercise of its administrative function under S. 10(1) of the Act. The order of the Govt. refusing to refer the dispute on ground that the persons raising the dispute are not workmen is liable to be set aside, As the Govt. had persistently declined to make a reference under S. 10(1) the Supreme Court directed the Govt. to make a reference.*

*14. Applying the principle laid down by this Court in the above decisions, there can be no doubt that the Government was not justified in deciding the dispute. Where, as in, the instant case, the dispute is whether the persons raising the dispute are workmen or not, the same cannot be decided by the Government in exercise of its administrative function under Section 10(1) of the Act. As has been held in M.P. Irrigation Karamchari Sangh's case (supra), there may be exceptional*

901.WPN0.10012014

cases in which the State Government may, on a proper examination of the demand, come to a conclusion that the demands are either perverse or frivolous and do not merit a reference. Further, the Government should be very slow to attempt an examination of the demand with a view to declining reference and Courts will always be vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of the valid disputes, and that to allow the Government to do so would be to render Section 10 and Section 12(5) of the Act nugatory.

16. It has been already stated that we had given one more chance to the Government to reconsider the matter and the Government after reconsideration has come to the same conclusion that the convoy drivers are not workmen of TELCO thereby adjudicating the dispute itself. After having considered the facts and circumstances of the case and having given our best consideration in the matter, we are of the view that the dispute should be adjudicated by the Industrial Tribunal and, as the Government has persistently declined to make a reference, under Section 10(1) of the Act, we think we should direct the Government to make such a reference. In several instances this Court had to direct the Government to make a reference under Section 10(1) when the Government had declined to make such a reference and this Court was of the view that such a reference should have been made. See *Sankari Cement Alai Thozhiladar Munnetra Sangam v. Govt. of Tamilnadu*, (1983) 1 Lab LJ 460; *Ram Avtar Sharma v. State of Haryana*, (1985) 3 SCR 686 : (AIR 1985 SC 915); *M. P. Irrigation Karamchari Sangh v. State of M. P.*, (1985) 2 SCR 1019: (AIR 1985 SC 860); *Nirmal Singh v. State of Punjab*, (1984) 2 Lab LJ 396 : (AIR 1984 SC 1619).

13. In the case of **Ahmedabad Dairy Dudh Vitran kendra Sanchalak Mandal V/s. Ahmedabad Dairy**, reported at **1999 SCC (L & S) 1079**, the Apex Court, dealing with a similar situation has laid down in Paragraph Nos.4 and 5 as under :

4. We have heard counsel for the appellants as well as counsel for the respondents. We are of the opinion that having regard to the facts of the case as well as the voluminous evidence sought to be adduced by both dies (sic. sides), the question as to whether the members of the Association are workmen or not requires detailed investigation of

901.WPN0.10012014

*facts. It is true that there appeared to be certain agreements entered into between the respondents and the appellants but it is the case of the appellants that, agreement apart, there is plenty of evidence in the form of instructions and circulars issued by the respondents which would show that the members of the Association were really workmen and not commission agents as alleged. In fact, in pursuance of the permission given by this Court to file affidavits the parties have filed affidavits running to several pages setting out facts in support of their respective contentions. We have also heard both counsel for the sometime and are satisfied that the issue requires detailed examination of facts and can be satisfactorily adjudicated upon only by a tribunal.*

*5. We are of the opinion that neither a writ proceedings in the High Court nor an appeal under Article 136 is the proper forum in which these factual contentions and allegations should be gone into. The High Court itself has observed at various places in its judgment that the nature of the dispute between the parties and the facts and circumstances were such; that a writ petition was not the appropriate forum to enter into such facts but seems to have allowed itself to be persuaded to go into the question perhaps because the counsel on both sides were not adverse to that course. We however think that the High Court should not have done this but, instead, should have directed the Government to refer the disputes between the parties to an industrial tribunal, making the issue of the jurisdictional fact viz. As to 'whether the appellants are workmen ?' also one of the terms of reference. We say this because, though there are agreements between the parties, not only is the interpretation of the agreements a matter of dispute, it will also be necessary to consider whether the agreement reflects the real position or whether the conduct of the parties and other material placed on record show that the appellants were employees as suggested by the appellants and not commission agents as suggested on behalf of the respondents. Also, the only ground on which the State Government declined to make a reference was that the appellants were not workmen. This view is not so obvious or patent on the facts before us. In the circumstances, we think the best course is to set aside the order of the High Court and direct that the matter be gone into by an industrial tribunal after the Government has made an appropriate order. We, therefore, allow these appeals, set aside the order of the High Court and direct the State Government to refer to an industrial tribunal all the disputes between the parties including the preliminary question whether the appellants are workmen within the meaning of Industrial Disputes Act or not.*

901.WPNo.10012014

14. In the matter of **D.D.Gears Ltd. V/s. Secretary (Labour) & Ors.**, reported at **2006 IV LLJ 387**, the Division Bench of the Delhi High Court has observed in Paragraph Nos. 20,21 and 22 as follows :

20. *In our opinion, we cannot interfere with the reference order under section 10 (1) of the Industrial Disputes Act because that order does not affect the rights of the parties. Hence the Writ petition against that order is liable to be dismissed.*

21. *It is well settled that a writ petition lies only when the rights of some party has been adversely affected. A mere reference under section 10(1) of the Industrial Disputes Act does not affect (sic) any one, rights and hence no writ petition should ordinarily be entertained against a mere reference under section 10(1), as such a petition is premature.*

22. *It is only when an award is given by the Labour Court or Tribunal that a writ petition should be entertained.*

15. In the case of **D.P. Maheshwari v. Delhi Administration**, reported at **(1983) 4 SCC 293**, the Apex Court dealing with the issue of High Courts entering into the arena of taking up preliminary issue for adjudication, has observed in paragraph No.7 as under :

7. *We are clearly of the opinion that the High Court was totally unjustified in interfering with the order of the Labour Court under Article 226 of the Constitution....."*

16. The learned Single Judge of the Gujarat High Court in the case of **United Phosphorus Ltd. V/s. Commissioner of Labour & 2 Ors.**, reported at **2010 II CLR 1045**, has observed in Paragraph Nos.38,39 and 40 as under :

38. *The Industrial Disputes Act is the only machinery provided for the workmen to have their grievance settled either by conciliation or by adjudication. There is no other third option open to the workmen. If attempt made by the management to thwart the proceedings by seeking a writ of prohibition, the very machinery will be jeopardized and the*

workmen will lose faith in the machinery created for the purpose of resolving the grievances of the workmen.

39. It will not be out of place to refer to a recent judgment of the Supreme Court in *Harjinder Singh Vs. Punjab State Warehousing Corporation*, in Civil Appeal No.587 of 2010 (arising out of SLP(C) No.6966/2009), dated 05.01.2010, wherein G.S.Singhvi, J. had observed as follows:

"23....It need no emphasis that if a man is deprived of his livelihood, he is deprived of all his fundamental and constitutional rights and for him the goal of social and economic justice, equality of status and of opportunity, the freedoms enshrined in the Constitution remain illusory. Therefore, the approach of the courts must be compatible with the constitutional philosophy of which the Directive Principles of State Policy constitute an integral part and justice due to the workman should not be denied by entertaining the specious and untenable grounds put forward by the employers - public or private."

40. A.K.Ganguly, J., in his concurring opinion had observed as follows:

"46.At this critical juncture the judges' duty, to my mind, is to uphold the constitutional focus on social justice without being in any way misled by the glitz and glare of globalization. "

17. To meet the ends of justice in the light of the above discussed views, we are restraining ourselves from going into the issue of bar of Section 59 for reasons more than one.

Firstly, the U.L.P. complaint is pending before the Industrial Court and has been expedited by the orders of the learned Single Judge of this Court. The Industrial Court, therefore, is under an obligation to decide the said U.L.P. complaint as expeditiously as possible and within the time frame granted by this Court.

Secondly, respondent No.3-Union is desirous of

901.WPN0.10012014

pursuing the U.L.P. complaint. All the issues cast in the said complaint will have to be decided. We also find that the prayers made in the U.L.P. complaint are tenable against an employer and not against a principal employer.

Thirdly, the petitioner has disclosed in its submissions that the U.L.P. Complaint could be decided expeditiously before the Reference proceedings could be taken up for hearing.

Fourthly, issue of employer-employee relationship has also been raised by the petitioner in the Reference proceedings. Demands can be raised by workmen against their actual employer and not against the principal employer.

Fifthly, when the foundation of the disputes between the petitioner-Company and the respondent-Union is as regards the existence of employer-employee relationship, in the event we were to hold that the Reference was hit by the bar of Section 59 of the State Act, the impugned reference order would be required to be set aside. However, upon adjudication of the U.L.P. Complaint, if employer-employee relationship was established, then the quashing and setting aside of the order of reference would result in a miscarriage of justice, in as much as, the respondent-Union would then be required to again raise its Charter of Demands for revision of wages. We find that this would cause more harm than good to the litigating parties.

901.WPNo.10012014

Sixthly, though the basis of the tenability of both the proceedings rests on existence of 'employer-employee' relationship, the prayers made and the reliefs to be granted, are divergent.

18. The Honourable Supreme Court while deciding the case of ***The Indian Express Newspapers (Bombay) Pvt. Ltd. & Anr. V/s. Employees' Union & Ors.***, reported at **1978 (2) SCC 18**, has observed as under :

*“But we agree with Sri Ramamurthy that liberality, not pedantry, must guide the construction of the language of the reference (vide Express News-papers Ltd. V. Workmen, (1963) 3 SCR, 540, 555: AIR 1963 SC 569). Once the real controversy is clear, the verbal walls cannot narrow the natural ambit of the subject-matter; especially in an equitable jurisdiction unbound by processual blinkers and niceties of pleading.”*

19. In the case of the ***Management of Express Newspapers (Pvt.) Ltd., Madras V/s. The Workers and Ors.***, reported at **AIR 1963 SC 569**, the Apex Court has laid down as under :

*“An order of reference hastily drawn or drawn in a casual manner often gives rise to unnecessary disputes and thereby prolongs the life of industrial adjudication which must always be avoided. Even so, when the question of this kind is raised before the Courts, the Courts must attempt to construe the reference not too technically or in a pedantic manner, but fairly and reasonably.”*

20. The Honourable Supreme Court while dealing with the case of ***Workmen of Dimakuchi Tea Estate V/s. Management of Dimakuchi Tea Estate***, reported at **AIR 1958 SC 353**, has noted as under :

*“Where the workmen raise a dispute as against their employer, the person regarding whose employment, non-employment, terms of employment or conditions of labour, the dispute is raised need not be, strictly speaking, a 'workman' within the meaning of the Act but must*

*be one in whose employment, non employment, terms of employment or conditions of labour, the workmen as a class have a direct or substantial interest.”*

21. We are, therefore, of the prima facie opinion, in the light of the above stated facts, that the issue of employer-employee relationship is involved in both of these U.L.P. and Reference proceedings. It is in these circumstances that we find that the U.L.P. Complaint needs to be decided expeditiously and as per the directions of the learned Single Judge of this court, prior to taking up the reference proceedings for hearing as it would lead to a judicial pronouncement on the issue of employer-employee relationship. This would be in aid of the reference proceedings thereafter.

22. In the light of the above, we are inclined to partly allow this petition and issue the following directions:

- a) The learned Member, Industrial Court, Thane shall decide Complaint (U.L.P.) No. 407 of 2011 as expeditiously as possible and as per the time frame directed by the learned Single Judge by it's order dated 07/12/2012 in Writ Petition No. 3907 of 2012 and the subsequent order, if any.
- b) In the event, the time frame granted by the learned Single Judge in the U.L.P. complaint has expired, the Industrial Court, Thane shall endeavour to decide complaint (U.L.P.) No.407 of 2011 as expeditiously as possible and preferably on or before 29/11/2014.
- c) The Industrial Tribunal, Thane would proceed to decide

901.WPNo.10012014

Reference (IT) No. 24 of 2013 after the judgment of the Industrial Court is delivered in Complaint (U.L.P.) No. 407 of 2011.

- d) The second party-Union would be at liberty to move an application for interim relief, if so desired, after the Reference proceeding is taken up for adjudication by the Industrial Tribunal, Thane.
- e) The Industrial Court, Thane dealing with Complaint (U.L.P.) No. 407 of 2011 and the Industrial Tribunal, Thane dealing with Reference (IT) No. 24 of 2013, may note that this Court has not expressed any opinion on the contentious issues/merits of the dispute between the petitioner-Company and respondent No.3-Union. As such, both these authorities are expected to decide the proceedings pending before it as per the directions set out herein above, but without being influenced by any observations made by this Court in this judgment.
- f) Both the litigating parties are expected to co-operate with the Industrial Court, Thane in the U.L.P. proceedings and thereafter, the Industrial Tribunal, Thane in the Reference proceedings. They shall refrain from seeking unnecessary adjournments.

23. The Writ Petition is, therefore, partly allowed in the above terms and rule is made partly absolute. No order as to costs.

**(RAVINDRA V.GHUGE, J.)**

**(NARESH .H.PATIL, J.)**

*This print replica of the raw text of the judgment is as appearing on court website (authoritative source)*

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*Publisher has only added the Page para for convenience in referencing.*

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