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IN THE HIGH COURT OF ORISSA, CUTTACK

WP(C) No.33461 of 2022

(Through hybrid mode)

Ananta Kumar Majhi and others .... Petitioners

-Versus-

State of Orissa and others .... Opposite Parties

Advocates appeared in the case:

For petitioners - Mr. Subir Palit, Senior Advocate
Mr. Niranjan Singh, Advocate

For opposite parties - Mr. Y.S.P. Babu, Advocate (AGA)
Mr. Satyabrata Mohanty, Advocate
Mr. Pratik Nayak, Amicus Curiae

CORAM:

JUSTICE ARINDAM SINHA
JUSTICE SANJAY KUMAR MISHRA

JUDGMENT
19.01.2023

ARINDAM SINHA, J.

1. Mr. Palit, learned senior advocate appears on behalf of petitioners. He submits, his clients are similarly situate, as those who raised industrial dispute and the appropriate government made reference dated 7th November, 2016. He submits, impugned is order dated 10th October, 2022, by which his clients' application for being

added as parties in the reference, was rejected. He relies on judgment of the Supreme Court in **Municipal Corpn. of Greater Mumbai v. K.V. Shramik Sangh**, reported in **(2002) 4 SCC 609**, paragraph-29.

2. Mr. Babu, learned advocate, Additional Government Advocate appears on behalf of State.

3. Mr. Mohanty, learned advocate appears on behalf of opposite party nos.8 to 11. He submits, petitioners neither were nor are similarly situate with his clients. He draws attention to the schedule of reference. We reproduce it below.

"SCHEDULE

> *"Whether S/Sri Mukunda Chandra Mohanty, Golekh Chandra Jena, Amar Kumar Roul and Jagadish Mohapatra,* ***contract labourers of the outgoing contractor*** *M/s-Kirtiman Transport (a contractor establishment of M/s-OSWAL chemicals and fertilizers Ltd., Paradeep)* ***are entitled for re-employment under the incoming new contractor****, namely M/s-Kalinga Transport Co-operative Society Ltd. (a contractor establishment of M/s-IFFCO Ltd. Paradeep)* ***like their other co-workmen****? If so, what should be the manner of relief*?"

(emphasis supplied)

He submits further, provision in sub-section (4) of section 10, Industrial Disputes Act, 1947 will not permit addition of parties

HIGH COURT ORISSA

considering the schedule of reference regarding the industrial dispute raised by his clients. His clients have been specifically named in the schedule and hence, addition will result in the Labour Court being unable to confine its adjudication to those points and matters incidental to the schedule, specifying the points of disputes for adjudication.

4. On query from Court regarding existence of provision in the Act for addition of parties to a reference, Mr. Nayak, learned advocate present in Court submits, the Supreme Court in **Hochtief Gammon v. Industrial Tribunal, Bhubaneswar**, reported in **AIR 1964 SC 1746** had considered the question. Mr. Nayak is appointed Amicus Curiae to assist in the adjudication.

5. The Labour Court, by impugned order, was not inclined to implead/add petitioners as interveners/parties to the case before it. As such, petition dated 18th May, 2022, of petitioners filed in the Labour Court, was rejected. We reproduce a paragraph from impugned order.

> *"After thorough discussion of the rival contentions of the present petitioners, so also the second party workmen and management Nos.1, 3 and 5, this Court is of the humble opinion that new parties should not be added to this case as it is a case registered in this Court being the outcome of a*

HIGH COURT ORISSA

*reference made by the appropriate Govt.. **This Court should not travel beyond the schedule of reference**. This Court should also not change the constitution of reference made by the State Govt. by allowing the present petitioners as parties at such a belated stage though there is no such bar under order 1 rule 10 CPC. The present interveners, if so advised, may approach the proper forum to ventilate their grievances under the ID Act. That apart, in many cases it is held by the Hon'ble Courts that new party would not be added by the State Govt. to the reference already made by it although it is open to the state Govt. to make additional reference to the same Court/Tribunal in respect of those workmen/interveners/petitioners so that both references would be considered together."*

(emphasis supplied)

HIGH COURT
सत्यमेव जयते
ORISSA

6. In **K.V. Shramik Sangh** (supra) the Supreme Court did provide for contingency of the union before it to move the appropriate government or the industrial adjudicator, within four weeks, for their prayer to be considered and for passing appropriate order. We reproduce a passage from relied upon parapgrarh-29.

*"29**.** In the result, for the reasons stated and discussion made above, the impugned judgment and order are set*

aside leaving it open to the Union to seek remedies available in terms of para 125 of the judgment of the Constitution Bench in SAIL [(2002) 7 SCC 1] before the State Government or the industrial adjudicator, as the case may be. ***In case, the Union moves the appropriate government or the industrial adjudicator within four weeks from today, they shall consider the same and pass appropriate orders within a period of six months."***

(emphasis supplied)

7. Controversy between the parties is whether or not there can be addition of petitioners and adjudication of the case. We find in **Hochtief Gammon** (supra), a Constitution Bench of the Supreme Court declared the law regarding addition of party to a reference. We reproduce a passage from paragraph-12 (SCC online print).

"12. ***.*** *......... What the Tribunal can consider in addition to the disputes specified in the order of reference, are only matters incidental to the said disputes;* ***and that naturally suggests certain obvious limitations on the implied power of the Tribunal to add parties to the reference before it****, purporting to exercise its implied power under Section 18(3)(b). If it appears to the Tribunal that a party to the industrial dispute named in the order of reference does not completely or adequately represent the interest either on the side of*

HIGH COURT ORISSA

the employer, or on the side of the employee, it may direct that other persons should be joined who would be necessary to represent such interest. If the employer named in a reference does not fully represent the interests of the employer as such, other persons who are interested in the undertaking of the employer may be joined. ***Similarly, if the unions specified in the reference do not represent all the employees of the undertaking, it may be open to the Tribunal to add such other unions as it may deem necessary****. The test always must be, is the addition of the party necessary to make the adjudication itself effective and enforceable?* ***In other words, the test may well be would the non-joinder of the party make the arbitration proceedings ineffective and unenforceable? It is in the light of this test that the implied power of the Tribunal to add parties must be held to be limited.****"*

(emphasis supplied)

8. It is clear to us that law declared by the Supreme Court regarding addition of party in **Hochtief Gammon** (supra) provided for a test. The test is, would non-joinder of the party seeking to be added make the proceeding ineffective and unenforceable. Case of private opposite parties is that they were employed under erstwhile contractor.

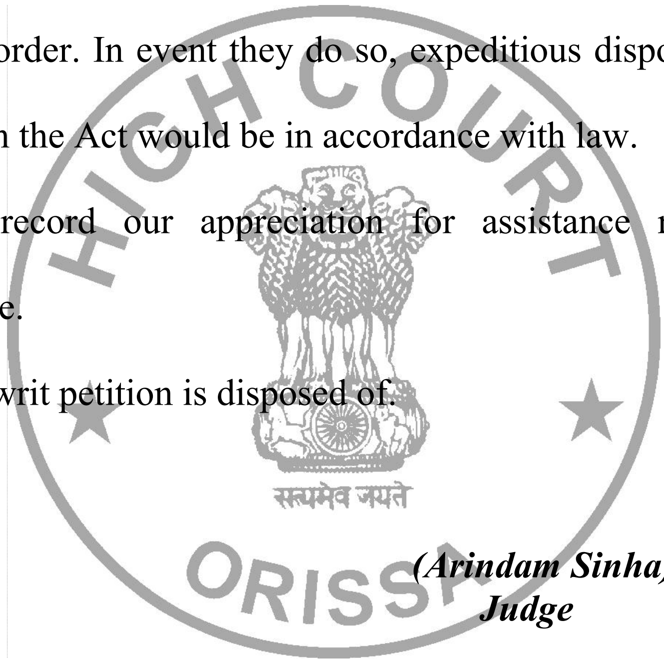
HIGH COURT
सत्यमेव जयते
ORISSA

They had raised industrial dispute to be employed under the new contractor. Applying the test to private opposite parties, in having raised the industrial dispute resulting in the reference to be confined by the schedule, there is no doubt that adjudication will not be rendered ineffective or unenforceable by sustaining impugned order rejecting petitioners' plea to be added as party.

9. For reasons aforesaid, impugned order does not warrant interference. Petitioners are at liberty to apply for remedy as observed in impugned order. In event they do so, expeditious disposal in terms of provision in the Act would be in accordance with law.

10. We record our appreciation for assistance rendered by Amicus Curiae.

11. The writ petition is disposed of.



(Arindam Sinha)
Judge

(S. K. Mishra)
Judge

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