Hochtief Gammon vs Industrial Tribunal, Bhubaneshwar, ... on 1 April, 1964

Equivalent citations: 1964 AIR 1746, 1964 SCR (7) 596, AIR 1964 SUPREME COURT 1746, 1964 9 FACLR 101, 1965 (1) SCWR 71, 1965 (1) SCJ 292, 1964 2 LABLJ 460, 1964 7 SCR 596, 1964-65 26 FJR 229

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Bench: P.B. Gajendragadkar, K.N. Wanchoo, K.C. Das Gupta

PETITIONER:
HOCHTIEF GAMMON

Vs.

RESPONDENT:
INDUSTRIAL TRIBUNAL, BHUBANESHWAR, ORISSA AND ORS.

DATE OF JUDGMENT:
01/04/1964

BENCH:
GAJENDRAGADKAR, P.B. (CJ)
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GAJENDRAGADKAR, P.B. (CJ)
WANCHOO, K.N.
GUPTA, K.C. DAS

CITATION:
1964 AIR 1746 1964 SCR (7) 596
CITATOR INFO :
RF 1972 SC1216 (4)
RF 1975 SC2226 (1,7)

ACT:
Industrial Dispute--Addition and Summoning of Parties--Reference-Powers of Industrial Tribunal-Test and Limitation-Whose liability to pay Workmen's claim-Who is Employer-Disputes, whether different and substantial-Industrial Disputes Act, 1947 (14 of 1947), Ss., 10, 18.

HEADNOTE:
On reference of an industrial Dispute between the appellants and the respondents, its workmen, the office of the Industrial Tribunal issued notice not only to the appellant and

;its workmen, the respondents but also to Hindustan Steel Ltd. This was done apparently because a copy of the notification of the Government containing the order of reference had been served on the said Hindustan Steel Ltd. The Hindustan Steel Ltd. appeared and urged that it was not concerned or interested in the dispute and should not be added a party to the reference. The appellant contended, inter alia, that the interests of Hindustan Steel Ltd. and the appellant were common in the pending proceedings, and the material documents which may have to be proved were with the said concern. The Tribunal considered the question and held that it would decide the matter later; meanwhile it directed Hindustan Steel to be present during the hearing of the reference on merits. The appellant, who was dissatisfied with this order as it wanted a specific direction to add Hindustan Steel as a party to the reference, moved the High Court under Art. 226 of the Constitution. This writ petition failed as the High Court held that the petition was premature as the Tribunal had not yet passed a final order under Leave:

Held: (i) S. 18(b) as it originally stood postulates that the Tribunal had an implied power to summon parties, other than parties to the industrial dispute to appear in the proceedings before it.

(ii) Where certain points of dispute have been referred to the Industrial Tribunal for adjudication, it may while dealing with the said points deal with matters incidental thereto, and than parties to the industrial dispute to appear in the proceed the Tribunal feels that some persons who are not joined to the reference should be brought before it, it may be able to make an order in that behalf under s. 18 (3)(b) as it now stands.

(iii) Section 10(5) has now conferred power on the appropriate Government to add to the reference other establishments, groups or classes of establishments of a similar nature, if it is satisfied that establishments are likely to be interested in, or affected by such dispute. The appropriate Government may add them to the said reference either at the time when the reference is initially made or during the pendency of the said reference proceedings; but in every case, such additions can be made before the award is submitted. Now, if such

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persons are added to the reference, the Industrial Tribunal may in exercise of its powers under s. 18 (3)(b) summon them to appear before it.

(iv) The material words in s. 18 (3)(b) are the same as they were originally included in s. 18(b), and so, the implied power which could be exercised by the Industrial Tribunal under s. 18(b) can now be exercised by it under s. 18(3)(b). If the Tribunal thinks that the parties who were summoned to appear before it were so summoned without proper cause, it may record its ,opinion to that effect and then the award

which it pronounces would not be binding on them.
(v) 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 s. 18(3)(b). If it appears to the Industrial Tribunal that a party named in the order of reference does not completely or adequately represent the interest either of the employer or of the employee, it may direct the joining of other persons necessary to represent such interest. Similarly if the union specified in the reference does not represent all the employees 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? It is in the light of this test that the implied power of the Tribunal to add parties must be held to be limited.
P. G. Brooks, Receiver appointed by the Trustees for the mortgagee debenture holders of the Madras Electric Tramways (1904) Ltd. v. Industrial Tribunal, Madras, A.I.R. 1954 Mad. 369, Radhakrishna Mills Ltd., Peelamadu, Coimbatore Ltd. v. Special Industrial Tribunal, Madras, A.I.R. 1954 Mad. 606 and Anil Kumar Upadhaya v. P. K. Sarkar, A.I.R., 1961 Cal. 60, referred to
(vi) The question on whom would rest the liability to Pay the respondents' claim as a result of contract between the appellant and Hindustan Steel raises an entirely different dispute and such dispute would be wholly foreign to the industrial dispute which has been referred to the Tribunal for adjudication.
(vii) The question as to who is the employer as between the appellant and Hindustan Steel is a substantial dispute between them and cannot be regarded as incidental in any sense. Where the appropriate Government desires that the question as to who the employer is should be determined, it generally makes a reference in wide enough terms and includes as parties to the reference different persons who are alleged to be the employers.

JUDGMENT:

CIVIL APPELLATE JURISDICTION,:Civil Appeal No. 611 of 1963. Appeal by special leave from the judgment and order dated January 10, 1962, of the Orissa High Court in O J.C. No. 128 of 1961.

N. C. Chatterjee, G. Narayanaswamy, J. B. Dadachanji, O. C. Mathur and Ravinder Narain, for the appellant.

S. V. Gupte, Additional Solicitor-General, G. B. Pai and R. H. Dehbar, for respondent No. 3.

April 1. 1964. The judgment of the Court was delivered by GAJENDRAGADKAR, C. J.-The short question which this, appeal by special leave raises for our decision is in relation to the construction of s. 18 (3)(b) of the Industrial Disputes Act, 1947 (No. 14 of 1947) (hereinafter called 'the Act'). This question arises in this way. An industrial dispute in regard to the payment of bonus arose between the appellant Hochtief Gammon and the respondents, its workmen, represented by the Rourkela Workers Union, Rourkela. This dispute was referred for adjudication to the Industrial Tribunal, Orissa by the Government of Orissa on the 14th November, 1960. After the reference was received by the Tribunal, it passed an order on the 17th November, 1960 that notice of the reference should be issued to the parties concerned. Purporting to give effect to this order, the office of the Tribunal issued notices not only to the appellant and the respondents, but also to the Deputy General Manager of M/s Hindustan Steel Ltd. This was so done apparently because a copy of the notification of the Government of Orissa containing the order of references had been served on the said Dy. General Manager. After the notice issued by the Tribunal was received by the Dy. General Manager of the Hindustan Steel Ltd. he appeared before the Tribunal and urged that the Hindustan Steel Ltd. was not concerned or interested in the dispute and should not be added as a party to the reference.

Meanwhile, the appellant made an application to the Tribunal on the 21st March, 1961 and contended that the interests of M/s Hindustan Steel Ltd. and the appellant were common in the proceedings pending before the Tribunal, and so, M/s Hindustan Steel Ltd. should be joined as a party. In this application, the appellant alleged that M/s Hindustan Steel Ltd. was a necessary party, because the material documents which may have to be proved in the proceedings were with the said concern and, in fact, the enquiry in question would not be complete without the said concern being joined as a party. The Tribunal then considered the question of joining M/s Hindustan Steel Ltd. as a party and held that it would decide the matter later. Meanwhile, the Tribunal directed that M/s Hindustan Steel Ltd. which had appeared in response to the notice issued to it should remain present during the hearing of the reference on the merits.

This order did not satisfy the appellant, because it wanted a specific direction from the Tribunal to add M/s Hindustan Steel Ltd. as a party to the reference. That is why the appellant moved the Orissa High Court under Art. 226 of the Constitution and prayed that the order passed by the Tribunal refusing to deal with the matter should be set aside and M/s Hindustan Steel Ltd. should be joined as a party to the reference before it. This writ petition, however, failed, because the High Court took the view that it was premature. The High Court observed that the Industrial Tribunal had not yet passed a final order under s. 18(3)(b) of the Act, and so, without expressing any opinion on the merits of the controversy between the parties, the High Court treated the application as incompetent because it was premature. Against this decision, the appellant has come to this Court by special leave; and on its behalf, Mr. Chatterjee has contended that the Industrial Tribunal has jurisdiction to add a party to the proceedings before it and that on the merits, M/s Hindustan Steel Ltd. should be added as a necessary party. That is how the main question which arises for our decision is to determine the scope and effect of the provisons of s. 18(3)(b) of the Act.

In dealing with this question, it is necessary to consider the provisions of s. 18(b) in the Act as it was first enacted, and then consider the provisions of s. 18(3)(b) as they now stand. Under the original Act, section 18 consisted of four clauses (a), (b), (c) and (d). We are concerned in the present appeal

with clause (a) and (b). Section 18(a) and (b) read thus: -

> "A settlement arrived at in the course of conciliation proceedings under this Act, or an award which is declared by the appropriate Government to be binding under sub-section (2) of section 15 shall be binding on:
>
> (a) all parties to the industrial dispute
>
> (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board of Tribunal, as the case may be, records the opinion that they were so sum-

moned without proper cause".

The first question which we have to consider is, did s. 18(b), as it then stood, postulate an implied power in the Tribunal to add persons as parties to the proceedings who are other than those who were parties to the industrial dis- pute? It will be noticed that clause (a) refers to all parties to the industrial dispute, whereas clause (b) refers to all other parties summoned to appear. The word "other" seems to suggest that the parties summoned to appear to whom clause

(b) refers are not identical with the parties to the industrial dispute specified by clause (a) Section 2(k) of the Act defines an 'industrial dispute', inter alia, as meaning any dispute or difference between employers and workmen; so that parties to the industrial dispute under clause (a) would mean persons between whom the dispute has arisen as prescribed by s. 2(k), and so, clause (b) contemplates persons other than those who are actually and directly involved in the dispute which is the subject-matter of reference under section 10. Thus, s. 18(b) seems to contemplate that persons other than parties to the industrial dispute may be summoned before the Tribunal. That takes us to the question as to who can summon these parties'? Section 11(3) of the Act prescribes, inter alia, that the Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, when trying a suit in respect of the matters specified in clauses

(a) to (d); clause (a) refers to enforcing the attendance of any person and examining him on oath; cl. (b) has reference to the power to compel the production of documents and material objects; cl. (c) is in respect of issuing commissions for the examination of witnesses; and clause (d) is in respect of such other matters as may be prescribed. It is thus clear 'chat the power to add a party to the proceedings pending before a Tribunal which may be exercised under the Code of Civil Procedure under 0.1 r. 10 is not included in s. 11(3), and there is no other section which confers such a power on the Tribunal Therefore, if s. 18(b) contemplates that persons other than parties to the industrial dispute can be summoned, there is no specific provision conferring power on the Tribunal to summon them, and that inevitably suggests that the power must be read as being implicit in s. 18(b) itself.

In this connection, it is necessary to refer to s. 10 as it then stood. Section 10(1) then consisted of three clauses which read thus: -

"If any industrial dispute exists or is apprehended, the appropriate Government may, by order in writings:-

(a) refer the dispute to a Board for promoting a settlement thereof; or

(b) refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or

(c) refer the dispute to Tribunal for adjudication".

It is significant that so far as the reference to the Tribu- nal is concerned, s. 10(1)(c) empowered the appropriate Gov- ernment to refer the dispute to the Tribunal, and unlike clause (b), this clause did not take within its sweep any matter appearing to be connected with or relevant to the dispute; so that in regard to the power to refer an industrial dispute to the Government Tribunal for its adjudication, the appropriate Government could make a reference of the dispute itself and was not expressly clothed with the power to refer any matter appearing to be connected with, or relevant to, such a dispute. The result of these relevant provisions clearly seems to be that if the Industrial Tribunal, while dealing with an industrial dispute, came to the conclusion that persons other than those mentioned as parties to the industrial dispute were necessary for a valid determination of the said dispute, it had the power to summon them; and if such persons were summoned to appear in the proceedings, the award that the Industrial Tribunal may ultimately pronounce would be binding on them. Since in cases where persons were added as parties to an industrial dispute were likely to raise the question as to whether the joinder of the parties was justified or not, s. '18(b) required that the Tribunal should record its opinion as to whether these persons had been summoned without proper cause. Thus, we are inclined to take the view that Mr. Chatterjee is right in contending that s. 18(b) as it ,originally stood, postulates that the Tribunal had an implied power to summon parties, other than parties to the industrial dispute, to appear in the proceedings before it. That naturally raises the question about the extent of this power.

In dealing with this question, it is necessary to bear in mind one essential fact, and that is that the Industrial Tribunal is a Tribunal of limited jurisdiction. Its jurisdiction is to try an industrial dispute referred to it for its adjudication by the appropriate Government by an order of reference passed under s. 10. It is not open to the Tribunal to travel materially beyond the terms of reference, for it is well-settled that the terms of reference determine the scope of its power and jurisdiction from case to case. Section 10 itself has been subsequently amended from time to time. Act 18 of 1952 made substantial amendments in s. 10. One of these amendments was that s. 10(1)(d) now empowers the appropriate Government to refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule, or the Third Schedule, to a Tribunal for adjudication. In other words. under s. 10(1)(d), the appropriate Government can refer to the Industrial Tribunal not only a specific industrial dispute, but can also refer along with it matters appearing to be connected with, or relevant to, the said dispute. In that sense. the power of the appropriate Government has been enlarged in regard to the reference of industrial disputes to the Tribunal.

Section 10(4) which was also added by the same amending Act provides, inter alia, that the jurisdiction of the Indus- trial Tribunal would be confined to the points of dispute specified by the order of reference, and adds that the said jurisdiction may take within its sweep matters incidental to the said points. In other words, where certain points of dispute have been referred to the Industrial Tribunal for adjudication, it may, while dealing with the said points, deal with natters incidental thereto, and that means that if, while dealing with such incidental matters, the Tribunal feels that some persons who are not joined to the reference should be brought before it, it may be able to make an order in that behalf under s. 18(3)(b) as it now stands. Section 10(5) has now conferred power on the appropriate Government to add to, the reference other establishments, groups or classes of establishments of a similar nature, if it is satisfied that these establishments are likely to be interested in, or affected by, such dispute. In other words, if industrial dispute is referred to a Tribunal for adjudication, and in area within the territorial jurisdicton of the appropriate Government there are other establishments which would be affected by, or interested in, such a dispute, the appropriate Government may add them to the said reference either at the time when the reference is initially made, or during the pendency of the said reference proceedings; but in every case, such additions can be made before the award is submitted. Now, if such persons are added to the reference, the industrial Tribunal may in exercise of its powers under s. 18(3)(b) summon them to appear before it.

Section 18(b) with which we began, has also been amended by Act 36 of 1956, and it has now been renumbered. As a result. s. 18(b) is now included in s. 18(3)(b). Section 18(3) provides, inter- alia, that an award passed by an Industrial Tribunal which has become enforceable shall be binding on:

> (a) all parties to the industrial disputes;
>
> (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the, Tribunal records the opinion that they were so called without proper cause.

The material words in s. 18(3)(b) are the same as they were originally included in s.18(b), and so, the implied power which could be exercised by the Industrial Tribunal under s. 18(b) can now be exercised by it under s. 18(3)(b). If the, Tribunal thinks that the parties who were summoned to appear before it were so summoned without proper cause, it may record its opinion to that effect and then the award which it'. pronounces would not be binding on them.

Reverting then to the question as to the effect of the power which is implied in s. 18(3)(b), it is clear that this power cannot be exercised by the Tribunal so as to enlarge materially the scope of the reference itself, because basically the jurisdiction of the Tribunal to deal with an industrial dispute is -derived solely from the order of reference passed by the appropriate Government under s. 10(1). 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 s. 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 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 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.

This question has been considered by the Madras High Court in two reported decisions. In P. G. Brooks, Receiver appointed by the Trustees for the mortgage debenture holders of the Madras Electric Tramways (1904) Ltd. v. The Indus- trial Tribunal, Madras & Ors.,(1) the Division Bench of the said High Court has held that s. 18(b) by necessary implica- tion gives power to the Tribunal to add parties. It can add necessary or proper party. He need not be the employer or the employee. In that particular case, the party added was the Receiver and it was found that unless the Receiver was added as a party to the reference proceedings, the adjudica- tion itself would become ineffective. In the words used by the judgement, the party added was not a rank outsider or a disinterested spectator, but was a Receiver who was vitally concerned with the proceedings before the Tribunal and whose presence was necessary to make the ultimate award effective, valid and enforceable.

(1) A.I.R. 1954 Mad. 369.

In Radhakrishna Mills Ltd. Peelamedu, Coimbatore Dt. v. The Special Industrial Tribunal, Madras & Ors.(1) a single Judge of the Madras High Court followed the earlier decision, though in this case, a party that was summoned by the Tribu- nal had been added to the reference by the State Government under s. 10(5) of the Act.

In Anil Kumar Upadhaya v. V. P. K. Sarkar & Ors.(2), learned single Judge of the Calcutta High Court has accepted the same view. In that case, the Trustee of the Provident Fund in question who had not been impleaded originally to the reference were summoned by the Tribunal and the Court held that in the absence of the Trustees, the award would have become nugatory. It would be noticed that in all these decisions, the implied power of the Tribunal to summon ad- ditional parties in the reference proceedings is confined only to cases where such addition appeared to be necessary for making the reference complete and the award effective and enforceable. Such a power cannot be exercised to extend the scope of the reference and to bring in matters which are not the subject-matter of the reference and which are not incidental to the dispute which has been referred. That takes us to the question as to whether the appellant is justified in contending that M/s Hindustan Steel Ltd. is a necessary party to the present proceedings before the in- dustrial Tribunal, and should, therefore, be added as such. Mr. Chatterji has raised two contentions in support of his plea that M/s Hindustan Steel Ltd. is a necessary party. The first contention is that if it is ultimately found that the respondent's claim for bonus for the relevant year is well foundecd as a result of the contract between the appellant and M/s Hindustan Steel Ltd the liability to pay the said bonus would rest, with the said concern and not with the appellant. The appellant, according to

Mr.Chatterjee, is a firm constituted only for a single venture for undertaking the execution of the work of construction and foundation and civil engineering works at Rourkela: it has been engaged by the said concern of M/s Hindustan Steel Ltd. as its agent and in that behalf an agreement has been executed between the parties. Mr. Chatterjee referred us to some of the relevant clauses of this agreement in support of his plea that the liability for bonus, if established by the respondents against the appellant, would be not the appellant's but of M/s Hindustan Steel Ltd. We do not propose to examine the merits of this contention, because we are satisfied that even if Mr. Chatterjee's contention is well-founded by reference to the relevant clauses of the agreement between the parties, that cannot make M/s Hindustan Steel Ltd. a necessary party within the meaning of s. 18(3)(b).

(1) A.I.R. 1954 Mad. 606.

(2) A.I.R. 1961 Cal. 60.

This contention raises an entirely different dispute between the appellant and its alleged principal and such a dispute would be wholly foreign to the industrial dispute which has In been referred to the Tribunal for its adjudication. The next contention raised by Mr. Chatterjee is that M/s Hindustan Steel Ltd. is a necessary party because it is the, said concern which is the employer of the respondents and not the appellant. In either words, this contention is that though in form the appellant engaged the workmen whom the respondent union represents, the appellant was actingas the agent of its principal and for adjudicating upon the industrial dispute referred to the Tribunal by the State of Orissa, it is necessary that the principal, viz., M/s Hindustan Steel Ltd. ought to be added as a party. In dealing with this argument, it is necessary to bear in mind the fact that the appellant does not dispute the respondent Union's case that the workmen were employed by the appellant. It would have been open to the State Government to ask the Tribunal to consider who was the employer of these workmen and in that case, the terms of reference might have been suitably framed. Where the appropriate Government desires that the question as to who the employer is should be determined, it generally makes a reference in wide enough terms and includes as parties to the reference different persons who are alleged to be the employers. Such a course has not been adopted in the present proceedings, and so, it would not be possible to hold that the question as to who is the employer as between the appellant and M/s Hindustan Steel Ltd. is a, question incidental to the industrial dispute which has been referred under s. 10(1)(d) This dispute is a substantial dispute between the appellant and M/s Hindustan Steel Ltd. and cannot be regarded as incidental in any sense, and so, we think that even this ground is not sufficient to justify the contention that M/s Hindustan Steel Ltd. is a, necessary party which can be added and summoned under the implied powers of the Tribunal under s. 18(3)(b).

The result is, though we accept Mr. Chatterjee's argument that s. 18(3)(b) postulates the existence of an implied power in the Tribunal to add parties and summon them, in the present case that power cannot be exercised, because having regard to the limited nature of the implied power, M/s Hindustan Steel Ltd. cannot be regarded as a necessary party under the provisions of s. 18(3)(b). The appeal accordingly fails and is dismissed with costs.

Appeal dismissal.