M/S Ariane Orgachem Pvt.Ltd vs Wyeth Employees Union & Ors on 29 April, 2015

Equivalent citations: AIR 2016 SUPREME COURT 1761, 2015 (7) SCC 561, 2016 LAB. I. C. 2163, 2016 (3) ABR 456, 2016 (3) ADR 383, 2016 (2) AJR 617, AIR 2016 SC (CIVIL) 1526, (2015) 145 FACLR 985, (2015) 4 LAB LN 277, (2016) 1 MAH LJ 656, (2015) 3 PAT LJR 381, (2015) 6 SERVLR 483, (2015) 3 SCT 65, (2015) 5 SCALE 679, (2015) 3 JLJR 211, (2015) 2 CURLR 478, 2015 (2) KLT CN 99.1 (SC)

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Bench: C. Nagappan, V.Gopala Gowda

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.246 OF 2009

M/S ARIANE ORGACHEM PVT. LTD. …APPELLANT
Vs.
WYETH EMPLOYEES UNION & ORS. …RESPONDENTS
WITH
C.A. NO. 247 OF 2009

J U D G M E N T

V. GOPALA GOWDA, J.

I.A.No.2 of 2015 in C.A.No.247 of 2009 for substitution of the name of the appellant-Company is ordered.

These appeals are directed against the common impugned judgment and order dated 16.8.2007 passed by the High Court of Judicature at Bombay in Writ Petition No.444 of 2007, whereby the High Court quashed the order of the Deputy Commissioner of Labour, Mumbai, dated 14.8.2006 and directed him to refer the industrial dispute of the concerned workmen as per their demand dated 14.11.2005, for adjudication of the matter to the Industrial Tribunal under Section 10(1)(d) of the Industrial Disputes Act, 1947 (for short “the Act”).

Since both the appeals are filed against the common impugned judgment and order of the High Court, for the sake of convenience, we would refer to the brief facts of C.A.No.246 of 2009 which are stated hereunder:

> The appellant-Company, M/s. Ariane Orgachem Pvt. Ltd. was established to manufacture and market drugs which are manufactured by it. The appellant-Company, have taken over the alleged loss incurring pharmaceutical factory of M/s. Wyeth Ltd. respondent No.3 herein (appellant-Company in C.A.247 of 2009), situated at 146, LBS Marg, Ghatkopar, Mumbai, along with its permanent employees, pursuant to an agreement dated 25.6.2004 and the sale deed dated 30.6.2004. The letters were issued to the workmen by the appellant in this regard, to the effect that they would be employed under its management without any interruption in their services.

On 30.08.2004, the appellant-Company acquired the erstwhile manufacturing facility of M/s. Wyeth Ltd.-respondent No.3 and on 31.8.2004, the respondent No.3 issued letters to its workmen working in its erstwhile factory, informing them about the sale and transfer of the ownership and management of the said factory to the appellant-Company in accordance with the provision of Section 25-FF of the Act. They were further informed that their services will not be interrupted due to such transfer and their services will be treated as continuous and uninterrupted for the purpose of retiral/terminal benefits. Thereafter, all the workmen whose employment came to be transferred from M/s Wyeth Ltd. to the appellant-Company started drawing their wages/salary and all other benefits like advance, LTA and leave, etc. from the appellant.

On 2.9.2004, the respondent no.1-Wyeth Employees Union (for short "the Union"), which is the recognized Union under the Provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short "the MRTU & PULP Act"), filed Complaint (ULP) No. 534 of 2004, before the Industrial Court challenging the sale and transfer of employment of the employees but no interim relief was granted by the Industrial Court, hence, all the workmen came on the rolls of appellant-Company and started drawing wages from it.

The appellant claimed that it has framed Voluntary Retirement Scheme (for short "VRS") on 12.4.2005 for the workmen, offering amounts, tax free, to each workman with all other dues such as gratuity, ex-gratia, provident fund, leave encashment etc. which was operative from 12.4.2005 to 30.4.2005. On 15.04.2005, 45 out of the total 143 workmen applied for the said VRS and collected the VRS payments and the remaining workmen collected the VRS payments on 20.04.2005 and 21.04.2005. After the payment of the VRS benefits, the workmen were relieved from their services by the appellant- Company.

It is further stated by the appellant-Company that on 26.4.2005, the first respondent-Union through its General Secretary, unconditionally withdrew Complaint (ULP) Nos. 534 of 2004, 714 of 2004 and 771 of 2004, confirming to the court that all the workmen had availed the VRS and the Union did not want to pursue the cases.

After several months of accepting the VRS, the respondent-Union raised the demand seeking their reinstatement in the Company of respondent no.3. In response to the said demand, the appellant-Company replied that all the workmen had taken the VRS benefits and they were not the workmen of either the appellant-Company or the third respondent's Company anymore, therefore,

no industrial dispute could be raised by or on their behalf by the respondent-Union. On 12.12.2005, the respondent-Union, wrote a letter to the Assistant Commissioner of Labour, seeking his intervention in respect of their demand with the Company. On 01.08.2006, the Conciliation Officer sent the failure report to the Assistant Commissioner of Labour, subsequent to which on 14.08.2006, the office of the Deputy Labour Commissioner which took cognizance of the failure report declined to make an order of reference to the Industrial Tribunal stating thereby that there was no industrial dispute in existence between the parties.

Thereafter, the newly elected leadership of the first respondent-Union under the representation of its new General Secretary aggrieved by the order of refusal to make an order of reference to the Industrial Tribunal by the Deputy Commissioner of Labour filed Writ Petition No. 444 of 2007 before the High Court urging various legal grounds and questioning the correctness of the same.

The High Court in exercise of its power quashed the order dated 14.8.2006 passed by Deputy Commissioner of Labour, Mumbai, who has refused to make an order of reference to the Industrial Tribunal for its adjudication of the industrial dispute between the parties. The High Court has held that the acceptance of the benefits by the concerned workmen from the appellant may not establish the fact that no force or compulsion was exercised by the appellant and this is the most contentious and disputed question of fact which could not have been decided by the State Government in exercise of its administrative power. The High Court has held that the subjective satisfaction of the subject matter of an industrial dispute between the parties by the State Government is therefore, vitiated in law and making an order of reference in respect of the concerned workmen is absolutely essential in this regard. Thus, the High Court by issuing a writ of mandamus, directed the Deputy Labour Commissioner to make an order of reference to the Industrial Tribunal with regard to the demand of industrial dispute raised by the Union dated 14.11.2005 on behalf of the concerned workmen, for its adjudication under Section 10(1)(d) of the Act. Aggrieved by the impugned judgment of the High Court, these appeals have been filed by the appellant-Companies, praying this Court to set aside the same contending that the High Court has exceeded its jurisdiction in passing the impugned judgment and order.

It is urged by Mr. C.U. Singh, the learned senior counsel on behalf of the appellant-Company that the VRS benefits were accepted by the concerned workmen between 15.4.2005 to 25.4.2005 and the cheques which were issued to them towards their voluntary retirement benefits were encashed by them. Therefore, raising the industrial dispute by the concerned workmen after lapse of 7 months, from the date of acceptance of the VRS benefits, is wholly untenable in law. It has been further contended by him that many concerned workmen have cleared their bank loans such as housing loans, Co- operative Society/Co-operative bank loans and the appellant-Company has received intimations from the Banks/Societies to stop deducting and remitting loan instalments from their salaries.

It has been further contended by him that the former Joint Secretary of the respondent no.1-Union had withdrawn the Complaint (ULP) Nos. 534 of 2004 and 714 of 2004 and Complaint (ULP) No.771 of 2004, after stepping into the witness box and confirming to the Court that all the workmen had availed the VRS benefits and the first respondent-Union did not wish to pursue the

cases. Therefore, the demand raised by the first respondent-Union on behalf of the concerned workmen through its General Secretary contending that they have not availed the VRS benefits under the scheme is only an afterthought and the same does not amount to an industrial dispute and therefore, there is no dispute for the Industrial Tribunal to adjudicate. The Deputy Labour Commissioner has rightly arrived at the conclusion on the basis of the facts on hand and declined to make an order of reference to the Industrial Tribunal for adjudication of the same. This important aspect of the case has not been taken into consideration by the High Court while quashing the order of refusal to make an order of reference to the Industrial Tribunal and it has erroneously issued a writ of mandamus to the Deputy Commissioner of Labour against the appellant by directing him to make an order of reference of the industrial dispute on the demands raised by first respondent-Union on behalf of the concerned workmen.

It is further contended by the learned senior counsel on behalf of the appellant that the first respondent-Union has not made any allegation against the appellant, regarding the alleged coercion and fraud played by the appellant in obtaining the voluntary retirement letters, either in the demands submitted to the appellant or before the Conciliation Officer. Therefore, raising the said contention by the first respondent-Union for the first time before this Court, without it being first raised before the Industrial Tribunal and the Conciliation Officer is not permissible in law as held by this Court in the case of Bishundeo Narain & Anr. v. Seogeni Rai & Anr.[1] Further, it is contended that in view of Section 59 of the MRTU and PULP Act, there is an express bar on the first respondent to raise an industrial dispute against the appellant-Company. This legal aspect of the case has been considered by this Court in the cases of M/s. Mahabir Jute Mills Ltd., Gorakhpur v. Shri Shibban Lal Saxena & Ors.[2] and Govind Sugar Mills Ltd. & Anr. v. Hind Mazdoor Sabha & Ors.[3] Further, the said allegations made by the first respondent-Union with regard to the alleged coercion upon the concerned workmen by the appellant is not factually correct and the same cannot be considered by this Court as it is a frivolous and incorrect statement of fact made on behalf of the first respondent-Union with a view to raise frivolous industrial dispute against the appellant-Company and the respondent No.3.

The learned senior counsel has further placed reliance upon the following decisions of this Court in Bank of India & Ors. v. O.P. Swarnakar & Ors.[4], A.K. Bindal & Anr. v. Union of India & Ors.[5], Punjab National Bank v. Virender Kumar Goel & Ors.[6], Punjab & Sind Bank & Anr. v. S. Ranveer Singh Bawa & Anr.[7] and Bank of India & Ors. v. K.V. Vivek Ayer & Anr.[8] in support of the proposition of law that once the VRS is obtained and accepted by the concerned workmen along with all other monetary benefits, the same would amount to availing benefits of the scheme and no claim can be made by the concerned workmen against the employer for its reconsideration and no order of reference can be made for the industrial dispute by the appropriate government as the same does not exist for adjudication. Therefore, the principle of estoppel is applicable on the concerned workmen to raise an industrial dispute against the appellant- Company and the respondent No.3 herein on the subject matter of voluntary retirement, for the reason that once they have accepted the voluntary retirement from their services and withdrawn all the monetary benefits which were paid to them by the appellant, they cannot raise the industrial dispute in this regard as the same is not permissible in law. He has further placed reliance upon the judgments of this Court in the cases of Gyanendra Sahay v. Tata Iron & Steel Co. Ltd.[9] and Vice-Chairman & Managing Director,

A.P.S.I.D.C. Ltd. & Anr. v. R. Varaprasad & Ors.[10], wherein the aforesaid principles of law have been reiterated by this Court.

Further, it has been contended by him that the scope of judicial review power of the High Court to examine the order passed by the State Government in exercise of its administrative power in the writ petition is very limited as has been held by this Court in the cases of Secretary, Indian Tea Association v. Ajit Kumar Barat & Ors.[11] and ANZ Grindlays Bank Ltd. v. Union of India & Ors.[12] Therefore, the learned senior counsel has submitted that the impugned judgment and order is required to be interfered with by this Court in exercise of its jurisdiction as the exercise of judicial review power by the High Court is bad in law which cannot be allowed to sustain.

On the other hand, Mr. Sanjay Singhvi, the learned senior counsel on behalf of the first respondent-Union has sought to justify the impugned judgment and order passed by the High Court contending that the Deputy Labour Commissioner acting as a delegatee of the State Government has erroneously refused to make an order of reference to the Industrial Tribunal on the demands raised by the workmen and he has committed a grave error in law and therefore, the High Court has rightly exercised its extraordinary and supervisory jurisdiction and quashed the same by issuing a writ of mandamus. The learned senior counsel has further contended that the Deputy Commissioner of Labour in fact and in law is not a delegatee of the State Government and therefore, he could not have legally made an order of refusal to make an order of reference of the industrial dispute to the Industrial Tribunal for its adjudication. It has been further contended by him that the signatures of the concerned workmen were obtained on blank papers and there was no VRS scheme introduced by the appellant. Hence, the question of seeking voluntary retirement from their services does not arise. Further, the respondent No.3-M/s. Wyeth Ltd., the Company in which the concerned workmen were working initially had intimated the stock exchange about the stoppage of its manufacturing operations at the Company's plant at LBS Marg, Ghatkopar, Mumbai. Therefore, it is clear that the said Company wanted to discontinue and close down the factory and terminate the services of the concerned workmen from their services. However, being a profitable Company, with profit making operations, the Company has resorted to achieve its end through a subterfuge by obtaining the signatures of the concerned workmen on the blank papers by using undue influence, coercion etc. in order to circumvent the provisions of Section 25(O) of the Act. Therefore, the alleged voluntary retirement of the concerned workmen, is a disputed question of fact, as the workmen are contending that they have not voluntarily submitted any application for voluntary retirement from their services to the appellant-Company which fact is seriously disputed by the appellant and therefore, the same is required to be adjudicated by the competent Industrial Tribunal and not referring the said dispute between the parties by the State Government to it is an arbitrary and unjustified exercise of power which is not within the jurisdiction of the State Government, in exercise of its administrative power under the provisions of Section 10(1)(d) read with the Third Schedule of the Act. For the above reason itself, the High Court is justified in quashing the impugned order in the writ petition by passing the impugned judgment and order which does not warrant interference by this Court in exercise of its appellate jurisdiction in these appeals.

It has been further contended by the learned senior counsel for the first respondent-Union that the appellant-Company is owned and controlled by the Runwal group, which is a builder/developer and

it has entered into a sham arrangement with M/s Wyeth Ltd. on 30.8.2004 purporting it to be an alleged transfer of the ownership of its undertaking in favour of the appellant. However, it is a transfer of the assets of the Company only without the transfer of the business of the appellant in the connected appeal (respondent no.3 herein) and the same cannot be said to be a genuine transfer of undertaking of M/s Wyeth Ltd. in accordance with law and in terms of Section 25 FF of the Act. The said action of appellant-Company and the respondent no.3 herein is in violation of the provisions of Section 25(O) of the Act.

Thus, it is urged by the learned senior counsel that in view of the aforesaid reasons the question of the alleged transfer of the workmen from M/s. Wyeth Ltd. to the appellant-Company is only a ruse and was done only with a view to acquire the property for real estate development. Therefore, the factual contentious issue of the alleged voluntary retirement of the concerned workmen and the acceptance of the monetary benefits by them need to be adjudicated by the competent Industrial Tribunal under an order of reference of the industrial dispute which has to be referred by the State Government. This aspect of the matter has not been considered by the State Government at the time of passing an order declining to exercise its administrative power to make an order of reference to the Industrial Tribunal for its adjudication of the existing industrial dispute between the workmen and the employer effectively.

Further, it has been contended by the learned senior counsel that the alleged VRS benefits said to have been given to the concerned workmen is a false plea pleaded by the appellant-Company before the Conciliation Officer to justify their illegal action and the same requires scrutiny by the Industrial Tribunal on the basis of the evidence that has to be adduced by the parties. The findings of fact need to be recorded by it after adjudication of the dispute that is required to be referred to it by the State Government in exercise of its administrative power under the provisions of the Act.

It has been further contended by the learned senior counsel on behalf of the first respondent that after the resignation of the earlier General Secretary of the first respondent-Union was accepted, a new Committee of the respondent-Union was elected. Thereafter, it decided to take up the issue of illegal termination of services of the concerned workmen by the appellant-Company. Further, the Deputy Labour Commissioner, who has acted as the delegatee of the State Government, has not looked into the fact that it took about 2 to 3 months for the new Committee of the first respondent-Union to take over the affairs of the Union which was running under the guidance of its former General Secretary and to act in the matter of the forced termination of the concerned workmen from their services. The petition submitted to the Conciliation Officer by the respondent-Union specifically pleads that “neither any voluntary scheme was ever framed nor published by the appellant” and the concerned workmen have not retired from their services voluntarily. This aspect of the matter has not been taken into consideration by the Conciliation Officer as well as the appropriate State Government at the time of passing the order refusing to make an order of reference to the Industrial Tribunal for adjudication of the industrial dispute. The State Government has also not noticed the relevant fact that the former General Secretary, without the proper authorisation from either the first respondent-Union or the concerned workmen, withdrew the earlier complaints referred to supra, filed on behalf of the concerned workmen. Further, the State Government has failed to consider the fact that the appellant-Company has stated about the VRS

being published for the concerned workmen for the first time, only before it and not before the Conciliation Officer in the earlier proceedings. Further, due to coercion and fear, the workmen were compelled to sign on the blank papers and the purported voluntary retirement letters alleged to have been submitted to the appellant were not considered by it. The first respondent-Union called upon the appellant-Company to produce the Resolution passed by its Board before the Conciliation Officer, with regard to the alleged VRS and the order of approval said to have been granted by the Income Tax Authority for such scheme. The same were not produced by the appellant before the Conciliation officer. The State Government at the time of passing its order ought to have considered this important factual aspect of the matter before refusing to pass an order to make a reference to the Industrial Tribunal regarding the dispute between the parties in relation to their illegal termination. For this reason also, the High Court is justified in quashing the order of refusal to make an order of reference and therefore, it is rightly justified in issuing a writ of mandamus to the State Government to make an order of reference to the jurisdictional Industrial Tribunal for adjudication of the industrial dispute between the parties.

The learned senior counsel has further urged that the failure report of the dispute was addressed to the Additional Commissioner by the Conciliation Officer on 1.8.2006, but the Deputy Commissioner of Labour called for the file from the Conciliation Officer and declined to exercise his power under Section 10(1)(d) read with the Third Schedule of the Act, without adverting to a single contention urged on behalf of the workmen in the petition submitted before the Conciliation Officer by the first respondent-Union. The non-consideration of the claim made by the respondent-Union on behalf of the concerned workmen by the Deputy Commissioner of Labour at the time of refusing to pass an order of reference, not only vitiates the impugned order in the writ petition on account of non application of mind by the alleged delegatee of the State Government but also vitiated in law for the reason that the Deputy Commissioner of Labour is not the competent officer to make an order of reference to either the Industrial Tribunal or the Industrial Tribunal. The Additional Commissioner of Labour is the only competent authority who is the delegatee of the State Government as per the notification dated 9.8.2003 issued by the Ministry of Labour, Government of Maharashtra and therefore, he alone could have passed an order of reference under Section 10(1)(d) of the Act. Thus, the order of refusal to make an order of reference of the existing industrial dispute between the parties to the Industrial Tribunal is void ab initio in law as the same has not been exercised by competent officer as the delegatee of the State Government. On this ground itself the impugned judgment and order of the High Court is justified in quashing the order of refusal to make an order of reference regarding the industrial dispute to the Industrial Tribunal.

With reference to the above mentioned rival legal contentions urged on behalf of the parties, we have carefully examined the impugned judgment and order, with a view to find out whether the High Court is justified in quashing the order of refusal to make an order of reference regarding the industrial dispute raised by the first respondent-Union on behalf of the concerned workmen to the Industrial Tribunal for its adjudication. We answer the same in the affirmative in favour of the first respondent-Union for the following reasons:-

> It is an undisputed fact that the concerned workmen are the employees of M/s Wyeth Ltd. who is the respondent no.3 herein and the appellant in the connected appeal.

The contention urged by the learned senior counsel on behalf of the respondent-Union is that the alleged transfer of the undertaking of M/s Wyeth Ltd. in favour of the appellant-Company is not a genuine transfer and it is a sham one, as it is a transfer of the assets of the Company only not the transfer of business of M/s Wyeth Ltd. Therefore, the same is not in conformity with the provisions of Section 25FF of the Act. This aspect of the matter requires adjudication by the Industrial Tribunal in order to find out the correctness of the plea, whether the transfer of the undertaking M/s Wyeth Ltd. in favour of the appellant is genuine or not and whether the concerned workmen have accepted the retiral benefits and other monetary claims voluntarily, as pleaded by the appellant. This complicated question of fact and law could not have been decided by the alleged delegatee of the State Government in exercise of its administrative power, as he is not the competent authority on behalf of the State Government to make an order of reference to the Industrial Tribunal. The conclusion arrived at by the High Court is supplemented with the reasons arrived at by this Court. Therefore, quashing of the order of refusal to make an order of reference by the High Court is perfectly legal and valid which need not be interfered with by this Court in exercise of its jurisdiction.

The other important factual aspect of the case is whether the voluntary retirement of the concerned workmen was forced or not is required to be produced by the parties before the Industrial Tribunal for its detailed examination and scrutiny. The fact that certain documents were sought to be summoned at the instance of first respondent-Union during the conciliation proceedings from the appellant-Company by the Conciliation Officer which were not produced by it is one more important factor which is required to be considered by the Industrial Tribunal under Section 10(1)(d) read with the Third Schedule of the Act in exercise of its original jurisdiction to resolve the disputed questions of fact. Further, the VRS produced on record by the Management gives it the discretion to arbitrarily fix the compensation varying from Rs.50,000/- to Rs.7,11,000/-, which if proved, would be considered as arbitrary and there would be a grave miscarriage of justice to the concerned workmen. This aspect of the matter has been ignored by the Deputy Labour Commissioner, who has erroneously refused to make an order of reference to the Industrial Tribunal for its adjudication of the existing industrial dispute.

Further, there are serious allegations made against the appellant-Company by the workmen regarding the alleged coercion, undue influence and force used on them for obtaining their signatures on blank papers, which needs to be examined very carefully by the Industrial Tribunal after recording evidence from both the parties. Prima facie, the absence of documentary evidence produced by the appellant-Company to show that the VRS was framed by it and converting the signatures of the concerned workmen obtained on the blank papers amounts to forced termination of the services of the concerned workmen which is a disputed question of fact which requires adjudication by the competent Industrial Tribunal and therefore, the demand regarding the alleged termination of the concerned

workmen is required to be referred to the Industrial Tribunal by the State Government. The non consideration of this aspect of the matter in the order dated 14.08.2006 passed by the Deputy Labour Commissioner highlighting only the factual aspect pleaded by the appellant-Company unilaterally and not referring to the facts pleaded on behalf of the concerned workmen by the first respondent-Union is once again totally marred by non application of mind on the part of the Deputy Commissioner of Labour, apart from the fact that the Deputy Labour Commissioner has no competency to exercise his power under the provisions of Section 10(1)(d) of the Act, either to make reference or to refuse to make reference to the Industrial Tribunal. On the above grounds also, the impugned judgment and order of the High Court is not required to be interfered with by this Court in these appeals. Reliance has been placed upon the decision of this Court by the learned senior counsel on behalf of the first respondent-Union in the case of National Insurance Co. Ltd. v. Boghara Polyfab Pvt. Ltd.[13], wherein this Court has held thus:

"26. When we refer to a discharge of contract by an agreement signed by both parties or by execution of a full and final discharge voucher/receipt by one of the parties, we refer to an agreement or discharge voucher which is validly and voluntarily executed. If the party who has executed the discharge agreement or discharge voucher, alleges that the execution of such discharge agreement or voucher was on account of fraud/coercion/undue influence practiced by the other party and is able to establish the same, then obviously the discharge of the contract by such agreement/voucher is rendered void and cannot be acted upon. Consequently, any dispute raised by such party would be arbitrable." Further, the failure report of the conciliation proceedings is not the sufficient material evidence to arrive at the conclusion by the State Government to decline to exercise its statutory power under the provisions of Section 10(1)(d) read with the Third Schedule of the Act either to make/or not to make an order of reference. The refusal to make an order of reference by the State Government's delegatee amounts to determination of the existing dispute between the parties by the State Government in the absence of relevant and material evidence on record which ought not to have been done by him while exercising his power under Section 10(1)(d) of the Act. In this regard, the High Court has rightly placed reliance upon the case of Ram Avtar Sharma & Ors. v. State of Haryana & Anr.[14], the relevant para of which reads thus:

"11. The appropriate Government being the Central Government in this case declined to make a reference as per its order dated December 9, 1983 in which it is stated that 'the action of the management in imposing on the workmen penalty of removal from service on the basis of an enquiry and in accordance with the procedure laid down in the Railway Servants (Discipline & Appeal) Rules. 1968 is neither malafide nor unjustified. The appropriate Government does not consider it necessary to refer the dispute to the Industrial Tribunal for adjudication.' Ex facie it would appear that the Government acted on extraneous and irrelevant considerations and the reasons hereinbefore mentioned will mutatis mutandis apply m respect of present order of

the Government under challenge. Therefore for the same reasons, a writ of mandamus must be issued.

12. Accordingly all the writ petitions are allowed and the rule is made absolute in each case. Let a writ of mandamus be issued directing the appropriate Government in each case namely the State of Haryana in the first mentioned group of petitions and the Central Government in the second petition to reconsider its decision and to exercise power under Section 10 on relevant and considerations germane to the decision. In other words, a clear case of reference under Section 10(1) in each case is made out." Further, the High Court has rightly adverted to various judgments of this Court including Bombay Union of Jornalists v. State of Bombay[15] wherein it was held thus:

"6. .....it would not be possible to accept the plea that the appropriate Government is precluded from considering even prima facie the merits of the dispute when it decides the question as to whether its power to make a reference should be exercised under Section 10(l)read with Section 12(5), or not. If the claim made is patently frivolous, or is clearly belated the appropriate Government may refuse to make a reference. Likewise, if the impact of the claim on the general relations between the employer and the employees in the region is likely to be adverse, the appropriate Government may take that into account in deciding whether a reference should be made or not. It must, therefore, be held that and prima facie examination of the merits cannot be said to be foreign to the enquiry which the appropriate Government is entitled to make in dealing with a dispute under Section 10(1)....." Therefore, in the present case, the dispute raised by the respondent-Union on behalf of the concerned workmen is neither patently frivolous nor is it a belated claim of the concerned workmen. The contention of the learned senior counsel for the appellant that the workmen are barred from raising the industrial dispute on the ground of estoppel, is also rejected by this Court in view of the fact that estoppel is a principle of equity which deals with the effect of contract and not with its cause. It does not mean that a void or voidable contract cannot be adjudicated by the Industrial Tribunal/courts merely because the concerned workmen have accepted the voluntary retirement as pleaded by them and other benefits from the appellant as per the case of National Insurance Co. Ltd. (supra).

Having regard to the facts and circumstances of the case and the contentions urged on behalf of the learned counsel for the parties, we have come to the conclusion that these are the disputed questions of fact in this case, which requires determination on the basis of evidence by the Industrial Tribunal and therefore, a valid reference has to be made to it by the State Government. The various decisions relied upon by the learned senior counsel Mr. C.U. Singh on behalf of the appellant referred to supra are misplaced and have no application to the fact situation of the present case.

Further, the High Court has not considered another important aspect of the case, namely, that the Deputy Commissioner of Labour is not entrusted with the power under Section 10(1) (d) of the Act as the delegatee of the State Government as per the new Notification dated 09.08.2003, issued by the Industries, Energy and Labour Department, Mantralaya, Mumbai in exercise of its power conferred under Section 39(b) of the Act which is produced on record. As per the said notification, the State of Maharashtra has conferred its power upon the Labour Commissioner and the Additional Labour Commissioner to exercise its power under Section 10(1),(2) & (3) and other provisions of the Act. There is no other notification produced by the employer either before the High Court or this Court to show that the Deputy Labour Commissioner has got power as the delegatee of the State Government to make an order of reference under the provisions of Section 10(1)(d) read with the Third Schedule of the Act to the Industrial Tribunal. On this ground also, the order of the Deputy Labour Commissioner, refusing to make an order of reference regarding the industrial dispute of the concerned workmen is vitiated in law, as the same is void ab initio in law and therefore, quashing of the said refusal order by the High Court is perfectly justified.

The appellant-Company has also contended that the respondent-Union has also raised the legal question regarding the competency of the Deputy Labour Commissioner in passing the order of reference for the first time before this Court and the same was not raised before the High Court, therefore, the same shall not be permitted to be raised in these proceedings and this Court need not go into this aspect of the matter which is wholly untenable in law. This contention raised by the learned senior counsel for the appellant is rejected as the said contention is contrary to the issues/principles laid down by the Privy Council and this Court in the following judgments:

In Connecticut Fire Insurance Co. v Kavanagh[16], Lord Watson has observed as under:

“When a question of law is raised for the first time in a court of last resort, upon the construction of a document, or upon facts either admitted or proved beyond controversy, it is not only competent but expedient, in the interests of justice, to entertain the plea.” The aforementioned view of the Court of Appeal have been relied upon by this Court in Gurcharan Singh v Kamla Singh[17]. Therefore, with regard to the above mentioned aspect regarding the plea of the competency of the Deputy Labour Commissioner to pass an order of refusal to make a reference, although is being raised before this Court for the first time, is based on admitted facts. Hence, in accordance with the view taken by the Court of Appeal in Connecticut Fire Insurance Co. case (supra) and this Court in Gurcharan Singh case (supra), the argument advanced by the first respondent- Union deserves to be considered by this Court. Similar view has also been taken by this Court in the cases of VLS Finance Limited v. Union of India[18] and Greater Mohali Area Development Authority v. Manju

Jain[19], wherein it has been held that pure question of law can be raised at any stage of litigation. In National Textile Corporation v. Naresh Kumar Jagad[20], it has been held by this Court that a new ground raising pure legal issue for which no inquiry or proof is required, can be raised at any stage. Further, in the case of Port Trust v Hymanshu International[21], this Court has held thus:

"2..... The plea of limitation based on this section is one which the court always looks upon with disfavour and it is unfortunate that a public authority like the Port Trust should, in all morality and justice, take up such a plea to defeat a just claim of the citizen. It is high time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. Of course, if a government or a public authority takes up a technical plea, the Court has to decide it and if the plea is well-founded, it has to be upheld by the court, but what we feel is that such a plea should not ordinarily be taken up by a government or a public authority, unless of course the claim is not well- founded and by reason of delay in filing it, the evidence for the purpose of resisting such a claim has become unavailable....." The conclusion arrived at by the High Court that the order of refusal to make an order of reference of the existing industrial dispute to the Industrial Tribunal by the Deputy Commissioner of Labour is bad in law and it has rightly issued the writ of mandamus to the State Government and the Deputy Commissioner of Labour for the reason that the employer has been litigating the matter before the High Court for several years and the High Court, based on the pleadings and evidence on record, must have felt that the disputed questions of fact pleaded by the parties warrant the adjudication of the dispute effectively by the Industrial Tribunal. Therefore, we do not find any reason to set aside the order of writ of mandamus issued by the High Court to the State Government represented by the Deputy Labour Commissioner.

The reliance placed upon the various judgments of this Court by the learned senior counsel for the appellant on merits of the alleged voluntary retirement of the concerned workmen need not be examined in these appeals by this Court, as those judgments have no application to the fact situation of the present case and it would be premature to apply the said principles to the fact situation at this stage, particularly, having regard to the legal contentions urged by the learned senior counsel on behalf of the respondent-Union.

The learned senior counsel on behalf of the appellant-Company has further contended that the dispute raised by the first respondent-Union on behalf of the concerned workmen under the provisions of the Act and the request made by it to refer the industrial dispute to the Industrial Tribunal for its adjudication is barred under Section 59 of the MRTU & PULP Act. The aforesaid contention is wholly untenable in law for the reason that the cause of action for the present complaint under the provisions of the Act is with regard to the illegal action on the part of the appellant-Company in obtaining the alleged voluntary retirement letters from the

concerned workmen, whereas, the proceedings under the MRTU & PULP Act are in respect of the alleged transactions between the appellant-Company and M/s Wyeth Ltd. which has resulted in the transfer of the services of the workers from M/s. Wyeth Ltd. to the appellant-Company which cause of action in respect of these proceedings arose on 30.8.2004. Thus, the present dispute is with regard to the so-called "Voluntary Retirement" of the concerned workmen which took place on 15.4.2005 and 20th/21st April, 2005, wherein the subject matter is whether such "Voluntary Retirement" was obtained by undue influence, coercion, fraud, etc. and whether the workmen are entitled to reinstatement with full back wages and continuity of service. Therefore, the subject matter of the complaint under the provisions of MRTU & PULP Act and the subject matter of the industrial dispute raised by the first respondent-Union under the provisions of the Act are totally different as they arise out of different cause of action. Hence, the contention urged in this regard by the learned senior counsel on behalf of the appellant- Company must fail.

Hence, in our considered view the impugned judgment and order passed by the High Court is perfectly legal and valid and the same does not call for interference by this Court except with certain modification in the operative portion of the order of the High Court, namely, with regard to the direction given to the State Government represented by the Deputy Labour Commissioner which is not in accordance with the notification referred to supra. The said direction has to be given to the Additional Labour Commissioner (in accordance with the Notification dated 09.08.2003) to make an order of reference to the Industrial Tribunal within six weeks from the date of receipt of the copy of this order as the matter has been pending at the reference making stage itself for several years at the instance of the appellant-Company and the respondent no.3 herein.

We therefore, issue the direction to the State Government represented by its delegatee, the Additional Commissioner of Labour, to make an order of reference to the competent Industrial Tribunal within six weeks from the date of receipt of the copy of this judgment. We further direct the Industrial Tribunal to decide the case within six months from the date of receipt of such order of reference after affording an opportunity to both the parties and to pass appropriate award.

The Industrial Tribunal shall not be influenced by the observations made in this judgment. The Industrial Tribunal shall examine the case of the parties with reference to the evidence that may be produced on record by them and the rival legal contentions that would be urged on behalf of the parties may be considered at the time of adjudication of the dispute and the same has to be adjudicated on its own merit uninfluenced by the observations made in the judgment.

These appeals are dismissed with costs of Rs. one lakh in each appeal towards the cost of these proceedings, for the reason that they have caused delay in referring the dispute to the Industrial Tribunal for its adjudication. The same shall be deposited

before the Industrial Tribunal immediately after the order of reference is made to it and before the parties are called upon to file their respective claims and the said amount shall be paid to the concerned workmen proportionately through the first respondent-Union. The order dated 24.9.2007 granting stay of the impugned order shall stand vacated.

……J. [V.GOPALA GOWDA]
.....J. [C. NAGAPPAN] New Delhi, April 29, 2015

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[1] (1951) SCR 548
[2] (1975) 2 SCC 818
[3] (1976) 1 SCC 60
[4] (2003) 2 SCC 721
[5] (2003) 5 SCC 163
[6] (2004) 2 SCC 193
[7] (2004) 4 SCC 484
[8] (2006) 9 SCC 177
[9] (2006) 5 SCC 759
[10] (2003) 11 SCC 572
[11] (2000) 3 SCC 93
[12] (2005) 12 SCC 738
[13] (2009) 1 SCC 267
[14] (1985) 3 SCC 189
[15] AIR 1964 SC 1617
[16] (1892) A.C 473, 480 (PC)
[17] (1976) 2 SCC 152
[18] (2013) 6 SCC 278
[19] (2010) 9 SCC 157
[20] (2011) 12 SCC 695
[21] (1979) 4 SCC 176

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