

NON REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 1497 OF 2011

M/S PEE VEE TEXTILES LTD.APPELLANT

Vs.

STATE OF MAHARASHTRA & ORS.RESPONDENTS

J U D G M E N T

V.GOPALA GOWDA, J.

This appeal is directed against the impugned judgment and order dated 20.01.2010 passed by the High Court of Judicature at Bombay, Nagpur Bench in Writ Petition No. 2069 of 2009, for setting aside the impugned order and quashing the order of reference dated 18.2.2009 passed by the State Government of Maharashtra - respondent No.1 herein, raising certain questions of law and urging grounds in support of the same.

2. The factual matrix and the rival legal contentions urged on behalf of the parties are

briefly stated hereunder with a view to find out whether the impugned judgment and order warrants interference by this Court in this appeal.

3. The appellant is the employer and respondent nos. 4 to 8 herein are the representatives of its workmen. The workmen raised an industrial dispute under the provisions of the Bombay Industrial Relations Act, 1946 (for short "the B.I.R. Act") read with the relevant provisions of the Bombay Industrial Relations Rules, 1947 (for short "the B.I.R. Rules") in relation to the service conditions of the workmen for payment of variable dearness allowance (VDA) to be given to all categories of workmen, in the industrial establishment of the appellant with an increased rate from time to time as per the Government notification dated 1.4.1993. The third respondent - Assistant Commissioner of Labour, Nagpur, the Conciliation Officer, before whom the workmen raised an industrial

dispute in relation to the above service conditions of the workmen, has issued a notice to the appellant either to settle the matter or he will refer the industrial dispute to an appropriate Industrial Tribunal/Labour Court for adjudication of the same in accordance with law. The appellant filed objection statement on 14.4.2008 before the Assistant Commissioner of Labour, *inter alia*, stating that no industrial dispute was existing between the workmen and the employer with regard to the claim of variable dearness allowance as per the Government notification dated 1.4.1993, as the appellant employer and the elected representatives of the workmen who were elected as per Section 28 of the B.I.R. Act, have signed the settlements with regard to the variable dearness allowance as per the settlements dated 06.05.1993, 12.06.1996, 29.04.1998, 07.02.2000, 09.05.2003 and lastly on 16.04.2006, which was in force for a period of 3 years i.e. upto 31.03.2009. Since the

industrial dispute could not be settled between the parties in the conciliation proceedings and in the light of the legal objections raised by the appellant, the Assistant Commissioner of Labour forwarded the failure report to the Commissioner of Labour - the second respondent herein, under Section 64 of the B.I.R Act. The Commissioner of Labour published the failure report and forwarded the same with his recommendation to the State Government to make an order of reference of the industrial dispute to the Industrial Tribunal having the jurisdiction for adjudication as the objection raised by the appellant does not have any legal standing. The State Government, after examining the matter, referred the same for adjudication to the Industrial Tribunal, Nagpur, as per the point of dispute in exercise of its powers conferred under Section 73(2) of the B.I.R. Act vide its order dated 18.02.2009. Aggrieved by the same, the appellant filed a writ petition before the High Court which was also dismissed

by passing the impugned judgment. Hence this appeal.

4. Mr. V.A.Mohta, the learned senior counsel appearing for the appellant has contended that raising of the industrial dispute by the workmen and getting an order of reference made by the State Government to the Industrial Tribunal for adjudication of the dispute between the parties is not maintainable in law as the last settlement dated 16.04.2006 entered into between the appellant and the representatives of the workmen was in operation for a period upto 31.3.2009 as per the provisions of the B.I.R. Act and covered the variable dearness allowance in the said settlement. Therefore, it is contended by him that the workmen could not have raised the industrial dispute in this regard and the same could not have been referred to the Industrial Tribunal by the State Government for its adjudication in exercise of the power conferred upon the State Government under Section 73 (1)

& (2) of the B.I.R. Act. Further, it has been urged that accepting the failure report received from the third respondent by the second respondent without considering the statement of objections filed by the appellant-employer, is in contravention to Sections 54, 57 and 64 of the B.I.R. Act. As the order of reference made by the State Government to the Industrial Tribunal, Nagpur was without jurisdiction; the same should have been quashed by the High Court in exercise of its extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India. It is also contended by the learned senior counsel for the appellant that without giving a proper hearing to the appellant-employer, the order of reference made by the State Government to the Industrial Tribunal is not in accordance with Chapter X of the B.I.R. Act and therefore, the same is liable to be quashed.

5. Further, it is contended that the

industrial dispute raised by the workmen-respondent as per the Charter of demands in form "L" under Section 42(2) of the B.I.R Act, is covered by the provision of Section 64 (a) (III) of B.I.R. Act, as the registered settlement between the parties includes variable dearness allowance along with the clause in the settlement that the representatives of the workmen shall not place any other demand on the appellant during the "agreement period" which will entail financial burden upon it. This factual aspect of the case was neither considered by the Conciliation Officer nor the State Government at the time of making an order of reference to the Industrial Tribunal nor by the High Court while examining the correctness of the order of reference. In support of the above contentions, reliance has been placed by him upon the provisions of Section 64 clause (a) (III) of the B.I.R. Act, which reads thus :-

"64(a)(iii)- by reason of a

direction issued under sub-Section (2) of Section 114 (or by reason of any other provisions of this Act) the employers and employees concerned are in respect of the dispute bound by a registered agreement, settlement, submission or award."

6. Further, it is contended by the learned senior counsel, placing reliance upon Section 114(2) of the B.I.R. Act, which provision enables the State Government to give a direction to the representatives of the workmen and the appellant after affording an opportunity to them and publish the notification in the Official Gazette that the settlement dated 16.04.2006 is binding between parties under the above said provisions of the Act, which is not done by it. It is further contended that the above settlement, which is in force, is entered into by the appellant-employer with the elected representatives of the workmen, as per Section 28 of the B.I.R. Act. Therefore, the State Government, before exercising its statutory power to make an order of reference to the Industrial Tribunal, should

have seen that the commencement of the conciliation proceedings conducted by the Conciliation Officer, under Section 55 of the B.I.R. Act is erroneous in law as he has not considered the material objections filed by the appellant at the time of submitting the failure report to the State Government through the second respondent.

7. On the other hand, Mr. Shivaji M. Jadhav, the learned counsel on behalf of the workmen-respondent nos. 4 to 8 herein, has contended that the workmen are justified in raising the industrial dispute in relation to the service condition of the variable dearness allowance fixed by the State Government vide its notification referred to supra, issued under the provisions of the Minimum Wages Act, 1948 and therefore the order of reference made by the State Government to the Industrial Tribunal is legally correct as it has subjectively satisfied itself at the time of exercising its power and further it was of the view that the

industrial dispute raised by the concerned workmen by submitting the Charter of demands submitted to the appellant and the Conciliation Officer is legally justifiable. It has rightly exercised its power to make an order of reference to the Tribunal after following the procedure contemplated under Section 64 of the B.I.R. Act, on the dispute raised by the workmen. It is further contended that the Conciliation Officer after holding the conciliation proceedings has submitted the failure report to the second respondent under Section 58(2) of the B.I.R. Act, as the employer was not willing to settle the dispute raised by the concerned workmen. Therefore, it was the statutory duty cast upon the Conciliation Officer to send the failure report to the Chief Conciliation Officer for further action in the matter after ascertaining the facts and circumstances in relation to the dispute and for the reason that in his opinion, the settlement could not be arrived at between

the parties. Therefore, the State Government has rightly exercised its statutory power under the provision of Section 73(2) of the B.I.R. Act to make an order of reference to the Tribunal, which provision is a non-obstante clause. The power conferred upon it under the provisions of the Act, provides that it may, at any time refer the industrial dispute for adjudication to the Industrial Court/Tribunal, if on the report submitted by the Conciliation Officer or otherwise, it is satisfied that the industrial dispute is not likely to be settled between the parties by any other means. He has submitted his failure report along with the objection letter which was filed by the appellant. The Chief Labour Commissioner forwarded the same to the State Government stating that the industrial dispute raised by the concerned workmen with regard to the claim of the variable dearness allowance fixed by the State Government vide its notification referred to supra, is neither covered under the

settlements referred to supra upon which reliance is placed by the appellant nor there is any legal impediment for the State Government to exercise its power under Section 73 (1) & (2) of the B.I.R. Act, to make an order of reference to the Industrial Tribunal for its adjudication. Therefore, the order of reference made by the Government is legal and valid.

8. The High Court in exercise of its jurisdiction and after considering the relevant aspects of the case has come to the conclusion that the exercise of power by the State Government under Section 73 (1) & (2) of the B.I.R. Act is legal and valid. It has further held that the dispute raised by the respondent-workmen is an industrial dispute and the dispute was not settled by the employer on account of the stand taken by it before the Conciliation Officer. The exercise of power by the State Government cannot be interfered with as it has rightly concluded after subjective

satisfaction that the dispute raised by the workmen requires to be adjudicated by the Industrial Tribunal in accordance with law as it has got merit to be considered. The learned standing counsel on behalf of the State Government has adopted the submissions made on behalf of the workmen in justification of the order of reference and the impugned judgment.

9. After hearing the learned counsel for the parties, it is necessary for us to examine the rival legal contentions urged on behalf of the parties with a view to find out as to whether the appellant-employer is entitled for the relief as sought by it.

10. After careful examination of the legal pleas urged in this civil appeal with reference to the relevant provisions of Sections 54, 57, 58, 64 and 73(2) of the B.I.R. Act, we are of the view that the challenge to the order of reference made by the State Government to the Industrial Tribunal cannot be interfered with on the plea of the appellant that the dispute

raised by the workmen is not an industrial dispute as it is covered under the settlements and particularly, the settlement of 2006, is wholly untenable in both facts and in law and therefore the same is liable to be rejected.

11. The settlement referred to supra for the period from 2006 to 2009 upon which strong reliance has been placed by the appellant contending that it is binding upon the parties as it is in force, has been considered by us in this appeal. We have to answer the same in the negative for the reason that the industrial dispute which was raised by the workmen is not covered either under the said settlement or in the earlier settlements as the demand of the workmen is based on State Government notification of 1993, which has fixed the dearness allowance under the provisions of Minimum Wages Act, 1948, which is also one of the service conditions of workmen and the same is not included in the settlements. Therefore, the dispute raised by the workmen is an

industrial dispute in terms of the definition of Section 3(17) of the B.I.R. Act. The legal contention raised by the appellant regarding the maintainability of the Charter of demands submitted by the concerned workmen in the said dispute to the appellant during the existence of the settlement is wholly untenable in law in view of Section 73 (1) & (2) of the B.I.R. Act, which reads thus :-

"73. State Government may refer industrial dispute to industrial court for arbitration.-

Notwithstanding anything contained in this act, the State Government may, at any time, refer an Industrial dispute to the arbitration of the Industrial court, if on a report made by the Labour Officer or otherwise it satisfied that -

(1) by reason of the continuance of the dispute -

(a) a serious outbreak of disorder or a breach of the public peace is likely to occur; or

(b) serious or prolonged hardship to a large section of the community is likely to be caused; or

(c) the industry concerned is likely to be seriously affected or the prospects and scope for

employment therein curtailed; or
(2) the dispute is not likely to be settled by other means; or
(3) it is necessary in the public interest to do so."

13. The statutory power conferred upon the State Government under Section 73 (1) & (2) of the B.I.R. Act is wider, as it is the *non-obstante* clause power, the provision of which states that notwithstanding anything contained in the Act, which is referable to the other provisions of the Act including the settlements arrived at under the provisions of the B.I.R. Act, the State Government may refer an existing industrial dispute to either the Industrial Tribunal or Labour Court for adjudication, on the failure report submitted by the Chief Labour Commissioner. The Assistant Labour Commissioner has rightly conducted the conciliation proceedings under Section 55 of the B.I.R. Act on the Charter of demands of the workmen in view of the fact that Section 55 of the B.I.R. Act, provides for the commencement

of the conciliation proceedings on receipt of statement of a case under Section 54 of the B.I.R. Act. The date of commencement of the proceedings shall be communicated by the Conciliation Officer to the parties concerned. Section 64(a)(iii) of the B.I.R Act, provides that the conciliation proceedings ought not to be commenced/ conducted in respect of industrial dispute in view of Section 114 (2) of the B.I.R. Act or by reason of any other provisions of the B.I.R. Act. Much emphasis is placed upon the above provision of the Act by the learned senior counsel on behalf of the appellant in relation to the dispute governed by the registered settlements between the parties. However, the said provision of the Act will also be subject to Section 73(2) of the B.I.R. Act. On the Charter of demands raised by the workmen representatives, the Assistant Labour Commissioner has rightly commenced the conciliation proceedings by following the procedure contemplated under the above

provisions of the B.I.R. Act and the B.I.R. Rules as it mandates him to do so, since the dispute raised by the workmen with regard to VDA could not be settled between the parties as the appellant-employer has taken the stand that the industrial dispute raised by the workmen does not exist as it is covered under the settlements between the parties which is in force and binding upon them. Objection statement is filed by them before the Labour Commissioner against the failure report by placing strong reliance upon the settlements. The same is considered by the State Government and it has opined that the dispute raised by the workmen is an existing industrial dispute in terms of Section 3 (17) of the B.I.R. Act and the same is not settled between the parties. Therefore, the State Government has rightly exercised its statutory power conferred under Section 73 (1) & (2) of the B.I.R. Act, to make an order of reference to the Industrial Tribunal for its adjudication as per the points

of dispute referred to it. Even assuming for the sake of the argument that the demand of variable dearness allowance is covered under the settlement of 2006, non termination of the same by either of the parties does not affect the right of the workmen to raise the industrial dispute in relation to the variable dearness allowance fixed by the State Government in its notification. Therefore, the contention raised on behalf of the appellant that the Charter of demands raised by the workmen in relation to the payment of variable dearness allowance as per the notification is illegal and therefore, the conciliation proceedings should not have been held by the Conciliation Officer as the same is in violation of Section 64 (a)(iii) of the B.I.R. Act and exercise of power by the State Government under Section 73 (1) & (2) of the B.I.R. Act is bad in law, cannot be accepted by this Court, as the said contentions are wholly untenable in law. Hence, the same are liable to

be rejected.

14. Apart from the power of the State Government to make an order of reference in relation to the industrial dispute raised by the workmen, we have seen the settlement dated 16.04.2006, in relation to the senior workers' increment in the pay scale, which increased to Rs.15 per day in back wages and the junior workers' pay scale increased to Rs.19 per day in back wages. Therefore, there is no VDA fixed so far as these workmen are concerned. As per clause (2) of the settlement, that has fixed the VDA only in relation to the learners in the Weaving Section. Hence, the said settlement does not take away the right of the workmen to raise an industrial dispute in relation to the VDA. Therefore, the workmen are justified in submitting the Charter of demands in relation to VDA as per the Government notification w.e.f. 1.4.1993. The absence of the VDA clause is specifically mentioned in the Charter of demands submitted by the respondent workmen.

Hence, the contention by the learned senior counsel that what is raised by the workmen and referred to the Industrial Tribunal is not an industrial dispute is devoid of merit, both on facts and in law and does not warrant consideration by this Court.

15. In our considered view, the High Court, no doubt, has referred to and considered all these aspects and has rightly held that the appellant has not disputed the fact that the workmen raised the dispute and the same was not acceded by the appellant. Therefore, the conciliation proceedings under Section 55 of the B.I.R. Act were held to be valid. The grievance of the appellant that the industrial dispute raised by the workmen is not tenable has been rightly rejected by the High Court after recording the findings and reasons holding that the industrial dispute between the parties exists and the exercise of its power in relation to making an order of reference is a subjective satisfaction of the State

Government. Therefore, the view taken by the High Court that the plea taken by the employer in the writ petition proceedings cannot be the subject matter for its judicial review is the correct approach for the reason that the State Government on the basis of materials on record has arrived at the right conclusion and opined that there exists an industrial dispute for the claim of VDA between the parties and the same has been referred to the Industrial Tribunal, for its adjudication as the conciliation proceedings have failed as the appellant-employer has not acceded to the demands of the workmen and entered into a settlement with the representatives of the workmen. Therefore, the High Court has rightly held that there is no ground for interference with the order of reference made by the State Government to the Industrial Tribunal. The writ petition is rightly dismissed by the High Court which does not call for interference by this Court in exercise to its appellate jurisdiction.

16. The employer has been incessantly challenging the order of reference made with regard to the variable dearness allowance as fixed by the State Government in its notification w.e.f. 1.4.1993. The workmen have been denied the legitimate monetary benefits for which they are legally entitled to and the same is denied to them for the last 21 years by taking untenable pleas and by not acceding to the Charter of demands made by the workmen by placing reliance upon the settlements which are not applicable to the demands raised by the workmen as the same is contrary to the Government notifications. Further, the appellant has been questioning the power of the State Government under Section 73 (1) & (2) of the B.I.R. Act, to make an order of reference to the Industrial Tribunal by taking untenable contention under Section 64 (a)(iii) of the B.I.R. Act. The said provision of the Act is subject to exercise of power by the State Government under Section 73 (1) & (2) of the

B.I.R. Act, which has rightly been done by the State Government in the instant case. The appellant-employer has been litigating the matter since 2009, thereby stalling the adjudication proceedings, which warrants imposition of exemplary costs to be paid to the workmen by the appellant for the reasons stated supra. The workmen will also be entitled to get interest at the bank rate on the monetary benefits of VDA that may be determined by the Industrial Tribunal on the order of reference, if decided in their favour.

17. For the aforesaid reasons, we pass the following order:-

I.The civil appeal is dismissed with exemplary cost of Rs. 1,00,000/- payable to the workmen within 4 weeks from the date of receipt of copy of this order.

II.We direct the Industrial Tribunal to adjudicate the dispute in relation to

the variable dearness allowance fixed in the notification dated 1.4.1993 and subsequent notifications issued by the State Government and pass an award within six months from the date of receipt of the copy of this order. If, the order of reference made to the Industrial Tribunal is answered in favour of the workmen, the Tribunal is directed to award an interest in favour of the workmen on the monetary benefits of VDA on the basis of fixed deposit rate by any one of the nationalized banks.

JUDGMENT

.....J.
[V. GOPALA GOWDA]

.....J.
[C. NAGAPPAN]

New Delhi,
December 10, 2014