REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1033 OF 2022
(ARISING OUT OF PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO. 9456 OF 2020)

M/S. OIL AND NATURAL GAS CORPORATION LTD. .....APPELLANT(S)

VERSUS

THE PRESIDENT, OIL FIELD EMPLOYEES ASSOCIATION & ORS. ....RESPONDENT(S)

J U D G M E N T

ANIRUDDHA BOSE, J.

Leave granted.

2. The appellants before us are Oil and Natural Gas Corporation Limited (in short "ONGC"), a public sector undertaking engaged in the business of exploration and production of oil and gas. In this appeal, they assail a judgment of the Bombay High Court delivered on 30th January, 2020 in Writ Petition No. 13015 of 2019 in which the claims of workmen to be entitled to fixation of pay and other allowances as per an

award of the Central Government Industrial Tribunal No. II, ("Tribunal") Mumbai has been upheld with certain modification in the implementation part of that award. The controversy involved in this proceeding originates from a Direct Action notice raised by a Union (Oil Field Employees Association represented by their President-respondent no.1 in the present appeal) on 26th August, 2016. The workmen, whose cause the said Union were espousing, were engaged by and getting their salaries paid through different contractors appointed by the ONGC. ONGC's stand all along has been that these were contractors' workmen – and not workmen of ONGC. In fact, ONGC's case is that another settlement has been reached with the Unions representing majority of the contractors' workmen (over 77%) and that settlement arrived at on 19th September, 2016 is binding on all similar workmen including those represented by the respondent Unions. We shall address this issue later in this judgment. Earlier, there were three memoranda of understanding reached in the years 1992, 1995 and 2000 involving ONGC and different Unions representing the contract workmen working with the ONGC. These memoranda covered wages, allowances and other facilities to be provided by the contractors to the "contract labour". Copies of these memoranda

of understanding have been annexed at pages 93, 102 and 113 of the paperbook. The 2000 MoU had lapsed on 31st December, 2007.

3. There had been certain parallel developments on the industrial front involving ONGC and Unions espousing the cause of workmen engaged by their contractors, which cast a shadow on the dispute giving rise to this appeal. Six Unions representing workmen engaged by contractors had submitted a charter of 28 demands against ONGC and 57 of their contractors. This was admitted for conciliation. ONGC wanted to introduce a Fair Wage Policy ("FWP") to cover contract employees. Negotiation in that regard had started among the parties. A Memorandum of Settlement was signed on 19th September, 2016 (to which we have already referred) under which the FWP extended to contract labourers of Western Offshore Unit, Mumbai was agreed to be implemented at all work-centers of ONGC. This settlement, according to the appellants, was in terms of Section 12(3) read with Section 18(3)(d) of the Industrial Disputes Act, 1947 (the Act) and entailed upward revision of wages as also certain other measures of social protection including job security. The signatories to this settlement were contractors' representatives

and representatives of six Unions "In the presence of and representing principal employers" as also the Conciliation Officer. The representatives of ONGC signed in the capacity of representatives of the principal employer. The Tribunal and the High Court, however, held that the aforesaid arrangement was not settlement within the meaning of Section 18(3)(d) of the Act and was not binding on the workmen involved in the subject dispute. The Tribunal had also referred to certain order of status quo passed by the High Court to sustain its finding on this count. We shall however address this issue on merit, testing the reasoning of the High Court given in the impugned judgment.

4. The respondent-Oil Field Employees Association (the actual party-respondent no. 1 is the President of the Oil Field Employees Association) issued the Direct Action Notice on 26th August, 2016 to the appellants. This Union was registered in the year 2014 and claims to represent workmen engaged by contractors of the ONGC. On 19th September, 2016 itself, one P.D. Sunny, Conciliation Officer called the appellants and the first respondent for conciliation of dispute arising out of the notice for direct action of 26th August, 2016. On 26th September, 2016, a Charter of Demands was submitted before the

Conciliation Officer with a copy to the appellants. The main demand of the respondent no.1 was that wages and service conditions of the workmen engaged by the contractor should be at par with the regular employees of ONGC.

5. Thereafter, in course of conciliation proceeding the FWP was brought on record and the respondent no. 1 questioned the legitimacy of the FWP. The conciliation records subsequently were transferred from said P.D. Sunny to one Dr. S. Gunahari, Conciliation Officer & Regional Labour Commissioner (C), Mumbai. The latter recorded failure of conciliation and forwarded the failure report to the Central Government. The dispute then was referred by the Central Government to the Tribunal and it was registered as Ref. CGIT No.2/40 of 2017. The reference order was made by the Central Government on 18th September, 2017 in terms of Section 10(2A) (1) (d) of the Act. The order of reference was in the following terms:-

> "Whether the following demands of The President, Oil Field Employees Association are legal and justified?
>
> 1. To have uniform policies for all the workers irrespective of the contracts in the establishment of ONGC.
> 2. To get the MOU renewed with pay Revisions w.e.f. 1.1.2008.
> 3. To advise M/s. ONGC Management to release an advance of Rs.50,000/- per worker and to adjust it with the arrears after implementation of the Pay Revisions.

If not, to what relief the workmen are entitled to?"

6. ONGC questioned the legality of the order of reference in a writ petition filed in the High Court of Bombay (registered as Writ Petition No.5045 of 2018). This writ petition was not entertained by a Division Bench of the High Court and was rejected by an Order passed on 29th January, 2019. It was, inter-alia, held in this order:-

"8) It is further to be noted that in pursuance to the communication addressed by the Petitioner to the Chief Labour Commissioner, a Conciliation Officer vide his notice dated 15th September 2016 kept the matter for conciliation on 19th September, 2016 at 12:30 hrs. Perusal of the minutes would reveal that in the said meeting, the representative of the Petitioner as well as the Respondent No.3 were directed to do certain compliances. However, it appears that on same day i.e. 19th September 2016 at 15:00 hrs., settlement was entered into by the representatives of the certain Union and ONGC and 57 contractors of the ONGC. It is to be noted that though the said settlement was to be arrived on the same day, the Petitioner neither informed the Conciliation Officer in the present proceedings about such a settlement being arrived at. The conduct of the Petitioner in not bringing to the notice of the Conciliation Officer in the present proceedings, the settlement which was to arrive within hours with representative of certain Unions before some other Conciliation Officer, in our considered view is not a conduct befitting the employer who is an organ of State and State within the meaning of Article 12 of the Constitution of India.

9) It is further to be noted that though the Respondent No.3 and the Petitioner have completed their pleadings before the learned CGIT and though there were rounds of litigations, which reached upto this Court arising out of the interlocutory orders, the

> Petitioner has chosen to move this Court for ad-interim orders only after the matter was kept for their evidence. We are of the considered view that having consciously submitted to the jurisdiction of the learned CGIT, it is not now open for the Petitioner to complain at such a belated stage that the reference was not warranted.
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> 10) Apart from that the question as to whether the settlement arrived at between some of the Unions at one hand and the Petitioner's contractors on the other hand is binding on the Respondent No.3 and intervenors, can be very well looked into by the learned Tribunal in the proceedings before it.
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> 11) In that view of the matter, we are not inclined to entertain the present Petition in its extraordinary jurisdiction under Article 226 of the Constitution of India. The Writ Petition is therefore rejected."

7. In the reference, two other Unions participated and were impleaded as parties therein on the basis of their applications. These two Unions are Maharashtra Sanghatit Asanghatit Kamgar Sabha (respondent no.2) and Maharashtra Employees Union (respondent no.3).

8. The Tribunal by its Order passed on 17th July, 2019 in substance allowed the claim of the workmen articulated through the Unions and ordered:-

> "1. The reference is allowed.
>
> 2. It is declared that the demands of the union to have uniform policies for all the workers irrespective of contracts in the establishment of ONGC and to get the MOU renewed with pay revision w.e.f. 1.1.2008 are legal & justified.

3. First party management is directed to enter into MOU with second party unions with pay revision w.e.f. 1.1.2008 and implement the same within 2 months from the date of order.

4. On renewal of MOU the first party management is directed to pay arrears arising out of implementation of MOUs within 2 months from the date of order failing which concerned workmen would be entitled to interest @ 6% per annum on the arrears and other benefits to which they are entitled to on implementation of MOU."

9. The High Court sustained the award in the writ petition brought by ONGC on substantive issues but partly allowed the petition challenging the legality thereof, inter-alia, holding:-

> "20. Coming now to the reliefs formulated by it, it is but apparent that the tribunal does not appear to have applied its mind to individual revisions that may have to be made. As we have noted above, there is no infirmity in the conclusion of the tribunal that wage revisions had to be on the lines of MbPT settlement for the relevant period, but then based on related MbPT settlements, the court had to work out individual wage revisions for different categories of workmen, whose cause was espoused by the second party unions in the present case. The tribunal, firstly, had to work out individual revised wage scales and allowances for workmen at 12 Victoria Dock and Nhava Supply Base; it, then, had to formulate reasonable consolidated wages for workmen other than those working in 12 Victoria Dock and Nhava Supply Base. This the tribunal appears to have clearly failed to do. It left it to the parties to work out the individual revisions. That I am afraid is not possible. It is one thing to say that the basis of wage revision is available in a document and quite another to apply that basis to the individual facts of the case. For example, it is one thing to say that workmen other than those working in 12VD

and Nhava Supply Base were to be paid wages, that is, consolidated wages, worked out on the basis of minimum basic wages of the concerned categories of MbPT workers plus adjustments towards allowances, and quite another to actually provide for and stipulate such consolidated wages so calculated and adjusted. This was obviously for the tribunal to do and not for the parties to work out. The tribunal appears to have clearly missed this point. To that extent, the matter must go back to CGIT for determination of actual wage scales/allowances of workmen working in 12VD and Nhava Supply Base (based on MbPT scales/allowances) as well as other workmen covered by the reference (for consolidated wages based on MbPT scales and allowances).

21. The question then is of interim relief to be granted to these workmen pending consideration of the matter on remand by CGIT. It is a matter of fact, and probably a sad commentary on the times that we live in, that the last wage revision of these workmen occurred as far back as in 2000. That wage revision was applicable only till 31 December 2007 and till date, there has been no further revision in sight, though at least three revision periods have gone by. On these facts, this court is of a considered view that it would be in the interest of justice to at least direct ONGC to pay wages to the workmen concerned on the basis of what was agreed in the settlement of 19 September 2016 minus its condition of withdrawal of proceedings against ONGC. These would indeed be minimum wages that might in any case be payable to the concerned workmen, that is to say, even if the unions were wrong in the matter of calculation of wages in accordance with the particulars submitted with the statement of claim. If, on the other hand, they were right that the workmen were entitled to get wages in accordance with the particulars submitted by them, these interim revised wages could then be adjusted against such wages.

22. The writ petition is, accordingly, disposed of by setting aside the operative order passed by CGIT and remitting the reference, being Reference No.CGIT-2/40 of 2017, to CGIT-2, Mumbai for a fresh decision on (i) individual

> wage scales and (ii) consolidated wages payable, respectively, to the contract workmen of ONGC working at (i) 12 Victoria Dock and Nhava Supply Base and (ii) the other workmen covered by the reference. It is made clear that such determination must be in the light of what has been observed above, in particular that the wage revision/s of these workmen has/have to be on the lines of the wage revision/s applicable to workmen of MbPT, which are placed before the court (i.e. MbPT settlements applicable for the periods from 2007 to 2011 and from 2012 to 2016).
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> 23. The tribunal is requested to accord top priority to this determination and dispose of the reference as expeditiously as possible and preferably within a period of eight months from the date this order is pointed out to the tribunal. To that end, either party may appear before the tribunal with notice to the other side and produce an authenticated copy of this order. The tribunal may thereupon fix the schedule of hearings and decide the reference accordingly.
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> 24. Pending hearing and final disposal of the reference on remand, interim wages shall be paid to the concerned workmen by ONGC for the whole of the period of revision in accordance with MoS of 19 September 2016 and also prospectively from the month of March 2020.
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> 25. Since the operative part of the award of CGIT has been set aside, pending criminal proceedings for non-implementation of the award shall not be proceeded with."

10. The workmen, whose cause the three Unions espouse were those who were inducted by contractors and were getting their salaries paid through the contractors only. The main claim of the workmen was for having a uniform policy for all workmen, irrespective of contracts under which they were engaged in the

matter of wages and allowances. Last of the memoranda of understanding signed in the years 1992, 1995 and 2000 was executed on 29th December, 2000. The wage revision provided for in the last memorandum of December, 2000 was to operate till 31st December, 2007. Primarily, signatories to these memoranda are the appellants-employer and the Unions. The respective contractors were not signatories to these memoranda. One of the major characteristics of the terms contained therein, though not specifically spelt out in the memoranda themselves, is that the wages and allowances agreed upon therein were linked to the lines of settlement signed between Mumbai Port Trust (earlier Bombay Port Trust) and their workmen. We shall henceforth refer to that settlement as MbPT Settlement. These memoranda classified contract employees in two categories, one set working for Victoria Dock 12 and Nhava Supply base and the other set working at various other locations including Mumbai and Uran. There was variance in pay and allowance between these two categories of workmen. This was in the case of 1992 settlement whereas the 1995 settlement followed similar line of categorisation, but included workmen engaged in Panvel

to Mumbai and Uran. The same form of categorisation was there in the "2000 Settlement."

11. Appearing on behalf of the appellants Mr. Cama, learned senior counsel, has primarily argued on two points. His first submission has been that the reference itself was not maintainable as none of the workmen the Unions were representing or espousing the causes of were employed by the appellants. He has pointed out the definition of workmen in Section 2(s) of the Act in this behalf. The other point on which submission was advanced by him was that the Settlement arrived at on 19th September, 2016 covered all the employees of contractors, considering the provisions of Section 18(3)(d). The Unions have been represented by Mr. Pallav Shishodia, learned senior counsel and Mr. Shaligram G. Mishra, respondent no. 1 appearing in person. The stand of the Unions on the other hand has been that the concerned workmen were actually employees of the appellants and before the Tribunal itself, it was their case that their engagement by the contractor would not by itself make them contractors' employees. It is also their stand that the settlement of 19th September, 2016 could not be treated to be one under Section 18(3)(d) of the Act to bind the workmen

represented by the three Unions in this appeal. First, it has been contended that the said settlement has not taken final shape as certain procedural aspects for conclusion thereof is yet to be taken. It has also been argued on their behalf that the said settlement related to contractors' workmen only whereas the workmen involved in the present proceeding were not employees of the contractors who had signed the said settlement. On the other hand, the workers represented by the Union are working in the establishment of the appellants for a long period of time and they claimed to be entitled to the service benefits directly from ONGC.

12. The Tribunal rejected the objection on jurisdictional ground taken on the point that the concerned workmen were not employees of the appellants and hence no dispute could lie with ONGC. The Tribunal has also given the finding that the FWP could not be treated as fair settlement as it entailed withdrawal of the proceedings lodged by individual workmen or Unions. It has been urged on behalf of the respondents that many of these proceedings were for regularization or absorption directly into the appellant company, a dispute which has intricate link with the controversy involved in the present proceeding. Mr. Cama has asserted that the finding

of the High Court on facts was perverse, and, on that count, he invited interference by this Court in exercise of its jurisdiction under Article 136 of the Constitution of India. He has relied on the decisions of this Court in the cases of **Workmen of the Food Corporation of India vs. Food Corporation of India** [(1985) 2 SCC 136], **Parimal Chandra Raha & Ors. vs. Life Insurance Corporation of India and Ors.** [(1995) Supp (2) SCC 611], **Indian Petrochemicals Corporation Ltd. and Anr. vs. Shramik Sena & Ors.** [(1996) 6 SCC 439] and **Steel Authority of India Ltd. & Ors. vs. National Union Waterfront Workers & Ors.** [(2001) 7 SCC 1] in support of his submission that the workmen of the contractor would not become the workmen of the principal employer. He has also cited the case of **Secretary, State of Karnataka & Ors. vs. Uma Devi & Ors**. [(2006) 4 SCC 1] to contend that there could not be backdoor entry of contractors' employees directly into the establishment of the principal employer. This genre of cases has been cited mainly in support of two propositions of law urged on behalf of the appellants. First is that there must be a jural relationship brought about by an agreement to establish employer-employee relationship between contractors' employees and

that of the principal employer. Secondly, abolition of contract labour in certain industries does not result in automatic absorption of the workmen engaged by them in the concerned establishment. In the case of **Parimal Chandra Raha** (supra), however, it has been held that where there was statutory requirement of maintaining of canteens and the canteens of the respondent corporation had become part of the establishment, the contractors engaged from time to time in reality were agencies of the corporation and were only a veil between the corporation and canteen workers. In the case of **Steel Authority of India Limited** of 2001 (supra), it has been held that abolition of contract labour in certain in any part of an establishment by a notification under Section 10(1) of the Contract Labour (Regularization and Abolition) Act, 1970 (1970 Act) automatically does not lead to absorption of contract labour working in those parts directly in the establishment concerned. The case of **Indian Petrochemicals** (supra) mainly follows the ratio laid down in the case of **Parimal Chandra Raha** (supra). The proposition of law laid down in the case of **Steel Authority of India Limited vs. Union of India & Ors.** reported in [(2006) 12 SCC 233] is that mutually destructive plea that the employees were

of contractor and the principal employer could not be taken. The ratio of the decision of **Uma Devi** (supra) also would not apply in the facts of the present case. Here, the issue is not of backdoor entry into an establishment but finding out subsisting status of a set of workmen on the question as to who is their actual employer. For determination of the fate of the dispute raised by Unions, adjudication of the former question becomes inevitable.

13. Mr. Cama has emphasised on the ratio of the case of **Mukand Ltd. vs. Mukand Staff and Officers' Association** [(2004) 10 SCC 460]. In this judgment it has been held:-

> **"**23. We have already referred to the order of reference dated 17-2-1993 in paragraph supra. The dispute referred to by the order of reference is only in respect of workmen employed by the appellant Company. It is, therefore, clear that the Tribunal, being a creature of the reference, cannot adjudicate matters not within the purview of the dispute actually referred to it by the order of reference. In the facts and circumstances of the present case, the Tribunal could not have adjudicated the issue of salaries of the employees who are not workmen under the Act nor could it have covered such employees by its award. Even assuming, without admitting, that the reference covered the non-workmen, the Tribunal, acting within its jurisdiction under the Act, could not have adjudicated the dispute insofar as it related to the "non-workmen."

14. As regards the lack of jurisdiction of the Tribunal to determine or adjudicate the dispute between the appellants and the workmen represented by the three Unions, perusal of the award does not reveal that this point was pressed before the Tribunal by the employer. We accept that the Tribunal could not go beyond the disputes that were referred to it, as held in the case of **Mukand Ltd.** (supra). But legality of the order of reference was challenged by ONGC in Writ Petition(C) No. 5045 of 2018. In the judgment of the Division Bench, which we have already quoted, it was opined on the aspect of jurisdiction of the Tribunal, that it was not open for the petitioner to complain at such a belated stage that the reference was not warranted. In the judgment of the High Court under challenge before us, this question was dealt with and it was held :-

> "5. Apropos the first objection of Mr. Talsania, which, according to him, goes to the root of the matter, it must be noted at the very outset that the jurisdiction of the tribunal in the present case to adjudicate the reference was never questioned by ONGC on the ground that the workmen represented by the second party were not 'workmen' within the meaning of section 2(s) of the Act, particularly, because they were employees of contractors and not of ONGC. If this issue was not part of the lis before the reference court, there was no way it could be raised before the writ court. The issue is, after all, a mixed issue of law and facts; it would have to be adjudicated first before the trial court upon foundational pleadings in that behalf being led before it, before the writ court, in its scrutiny

of the order of the trial court, could be asked to go into it.

6. Mr. Talsania, however, submits that the fact that these workmen were employees of contractors is not really in dispute; the reference itself termed them as workmen engaged through contractors. The question is not whether the workmen were engaged through contractors. That may indeed be an apparent position. The question is whether, by reason of perennial nature of the work at the premises of the principal employer, and having regard to the circumstances bearing on their service and service conditions, whether the workmen could be said to be in reality employees of the principal employer despite the apparent position that they were engaged through contractors. Indeed, there was a clear statement on the part of the workmen in the statement of claim of the second party that they were in fact and in reality workmen of ONGC and not of the contractors. No doubt, in its written statement, ONGC contested this position, and in their rejoinder second party No.2 union reiterated its statement that the contract/s was/were sham and bogus. It is apparent from the impugned award of the tribunal, however, that this issue was not pressed by ONGC at the hearing. The issue anyway reflected on the jurisdiction of CGIT to adjudicate the reference and ONGC did not choose to contest the jurisdiction on the issue. Had the issue been pressed by ONGC before the reference court, the second party would have led appropriate evidence in support of its case in this behalf. It obviously chose not to do so, because this question was not debated by ONGC before the reference court. Could the second party be then visited with the consequence of having to deal with this issue merely on the basis of the material available before this court at the stage of a scrutiny under Articles 226 or 227 of the Constitution of India. The answer would be an emphatic “no”. The second party would most certainly be seriously inconvenienced if it were now required to sustain its plea in the statement of claim of the workmen being in reality employees of ONGC, without having had an opportunity to lead evidence in support of such case before trial court. For whatever reasons, ONGC found it worth its while not to contest the jurisdiction of the tribunal in the reference and this court, sitting as a writ court, must leave the matter at that and not scrutinize it any further.”

15. On the question of raising issue of lack of jurisdiction before the Tribunal, the cases of **Rattan Lal Sharma vs. Managing Committee, Dr. Hari Ram (Co-Education) Higher Secondary School & Ors.** [(1993) 4 SCC 10], **Secretary to Govt. of India and Others vs. Shivram Mahadu Gaikwad** [(1995) Supp (3) SCC 231] and **Kalyani Sharp India Ltd. vs. Labour Court No.1, Gwalior & Anr.** [(2002) 9 SCC 655] were relied upon by the appellants. We accept, as a proposition of law, that if irregularity or illegality committed by a Tribunal touches upon the jurisdiction to try and determine over a subject dispute is altogether beyond its purview, that question would go to the root of the matter and it would be within the jurisdiction of the superior court to correct such error. In the case of **Kalyani Sharp India Ltd.** (supra) raising a plea on application of law was found permissible at the appellate stage before this Court, but in that case no fresh investigation of fact was required. But in the facts of the present case, it is not the question of inherent lack of jurisdiction on the part of the Tribunal. The question of jurisdiction, as held by the High Court was a mixed question of fact and law. Both the cases of **Rattan Lal Sharma**(supra) and **Kalyani Sharp India Ltd.** (supra) arose out of admitted fact. In the case of **Shivram**

Mahadu Gaikwad (supra) it was the limitation question which went to the root of the matter. This case arose out of a proceeding before the Central Administrative Tribunal. Point was taken before the Tribunal by the Union of India but was not addressed to in the judgment of the Tribunal. So far as the present proceeding is concerned, as reflected in the judgment under appeal, there was a clear statement on the part of the workmen in the statement of the second party (Union) before the Tribunal that in fact and reality, the concerned workmen were employees of ONGC and were not of the contractors. This was denied by the ONGC but in their rejoinder the said Union reiterated their stand that the contracts were sham and bogus. In the award, certain other reference orders were cited which involved adjudication of the question as to whether contracts between ONGC's contractors and workmen engaged by them were sham and bogus. (Ref. No. CGIT I 16, 17, 18 and 19/2005) or not and if the said workmen in reality were ONGC's workmen only. In the case of **Steel Authority of India of 2001** (supra), it has been laid down that in cases where plea is raised that a contract is found to be sham and nominal, a camouflage to suppress the actual status of a workman vis-à-vis who his employer is, the

veil could be pierced to find out the such status. If to this perspective is added the fact that earlier three MoUs were entered into directly by ONGC with the Unions representing contractors' workmen, this question does not remain a question of law alone, to be sustained with the aid of the ratio of the cases of **Rattan Lal Sharma** (supra), **Shivram Mahadu Gaikwad** (supra) and **Kalyani Sharp India Ltd.** (supra). Signatories to the earlier MoUs were the appellants and the Unions and Section 30(2) of the Contract Labour (Regulation and Abolition) Act, 1970 permits contract labourers to enter into agreements with principal employers. Thus, by themselves, the aforesaid MoUs would not establish that the contract workmen are workmen of the principal employer. But the circumstances which we have narrated clearly point to the relationship between the appellants and the workmen represented by the respondent Unions in that direction. The stand that the concerned workmen were employees of the principal employer were not specifically outlined in the reference, but was implicit therein. In the reference order the dispute therein was between ONGC and the Union. The Charter of Demand was also raised against ONGC. The Tribunal examined the issue and returned its finding which

was upheld by the High Court. This was a finding of fact. In the case of **National Engineering Industries Limited vs. State of Rajasthan & Ors.** [(2000) 1 SCC 371] it has been held that the Industrial Tribunal is the creation of statute and it cannot go into the question on validity of the reference. That issue ought to be considered by the High Court, according to the appellants. So far as the present proceeding is concerned, the High Court has considered that question and we do not find any error in the approach of the High Court in deciding the jurisdiction question against the appellants.

16. Next comes the issue as to whether the settlement of 19th September, 2016 was binding on the Unions who are before us as respondents, having regard to the provisions of Section 18(3) (d) of the Act. Section 18 of the Act stipulates:-

> "**18. Persons on whom settlements and awards are binding**.- (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.
> (2) Subject to the provisions of sub-section (3), an arbitration award which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.
> (3) A settlement arrived at in the course of conciliation proceedings under this Act or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A or an award of a Labour Court, Tribunal or National Tribunal

> which has become enforceable 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, arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, records the opinion that they were so summoned without proper cause;
> (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
> (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part."

17. In the case of **Ramnagar Cane and Sugar Company Ltd. vs. Jatin Chakravorty & Ors.** [(1960) 3 SCR, 968], the binding nature of a settlement on all persons employed in an establishment has been explained, having regard to Section 18(3)(d) of the Act. This principle was reaffirmed in the case of **General Manager, Security Paper Mill, Hoshangabad vs. R.S. Sharma and Others** [(1986) 2 SCC 151]. It has been laid down in the case of **Ramnagar Cane and Sugar Company Ltd.** (supra):-

> "5. In appreciating the merits of the rival contentions thus raised in this appeal it is necessary to bear in mind the scheme of the Act. It is now well settled that an industrial dispute can be raised in regard to any matter

only when it is sponsored by a body of workmen acting through a union or otherwise. When an industrial dispute is thus raised and is decided either by settlement or by an award the scope and effect of its operation is prescribed by Section 18 of the Act. Section 18(1) provides that a settlement arrived at by agreement between the employer and the workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement; whereas Section 18(3) provides that a settlement arrived at in the course of conciliation proceedings which has become enforceable shall be binding on all the parties specified in clauses (a), (b), (c) and (d) of sub-section (3). Section 18(3)(d) makes it clear that, where a party referred to in clauses (a) or (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part, would be bound by the settlement. In other words, there can be no doubt that the settlement arrived at between the appellant and the Employees' Union during the course of conciliation proceedings on February 25, 1954, would bind not only the members of the said Union but all workmen employed in the establishment of the appellant at that date. That inevitably means that the respondents would be bound by the said settlement even though they may belong to the rival Union. In order to bind the workmen it is not necessary to show that the said workmen belong to the Union which was a party to the dispute before the conciliator. The whole policy of Section 18 appears to be to give an extended operation to the settlement arrived at in the course of conciliation proceedings, and that is the object with which the four categories of persons bound by such settlement are specified in Section 18, sub-section (3). In this connection we may refer to two recent decisions of this Court where similar questions under Section 19(6) and Section 33(1)(a) of the Act have been

> considered. (Vide: Associated Cement Companies Ltd., Porbandar v. Workmen [Civil Appeal No. 404 of 1958 decided on 3.3.1960] and New India Motors (P.) Ltd. v. K.T. Morris."

Same proposition of law was reiterated in the case of **Barauni Refinery Pragatisheel Shramik Parishad vs. Indian Oil Corporation Ltd.** [(1991) 1 SCC 4].

18. In the case of **ANZ Grindlays Bank Ltd. vs. Union of India & Ors.** [(2005) 12 SCC 738], this Court, while testing a reference found no subsisting industrial dispute and the reference was set aside. This authority also does not assist the appellants in the facts of the present case.

19. Now we shall test the appellants' arguments on binding effect of the settlement dated 19th September, 2016 on the workmen whose cause the respondent Unions are espousing before us. The High Court dealt with this question in the following manner:-

> "13. That brings us to the question as to whether the MoS of 19 September 2016, even if it were to be termed as a settlement in the course of a conciliation proceeding, could be said to be a fair settlement so as to bind workmen who were not party to it. The tribunal, in the present case, has arrived at an unequivocal finding that the settlement could not be termed as fair. It, particularly, has taken into account the fact that the MoS of 19 September 2016 required the workmen concerned to withdraw their legitimate disputes and complaints on the issues of regularization, etc. as a condition of settlement. It is

> important to bear in mind in this behalf that when the reference was made, there were about 1300 workmen, covered by the earlier MoU 29 December 2000, who were originally sought to be protected as against about 2000 of total number of contract employees with ONGC working in Mumbai, Panvel, Uran and Nhava. The other employees were not covered by the MoUs executed earlier by ONGC with the unions. If these other workmen and their union/s were to agree to a fair wage policy, which is not on the basis of the earlier MoUs executed between ONGC and the unions, such policy, on the basis of such agreement, cannot be termed as a fair policy for the workmen covered by the earlier MoUs and whose references or complaints for their legitimate demands were pending before various industrial adjudicators. Anyway, on the facts available before this court, the conclusion of the Tribunal that the MoS of 19 September 2016 could not be termed as a fair settlement, particularly, for the workmen covered by the earlier MoUs, cannot be termed as perverse. This court cannot bring itself to hold that no reasonable person could have given any such finding. The finding is clearly supported by some evidence; it does take into account all relevant and germane circumstances and materials; and it does not consider any non-germane or irrelevant circumstance or material. It must, in that case, pass muster as a possible conclusion, which is not amenable to judicial scrutiny either under Article 226 or 227 of the Constitution of India."

20. The appellants' case is that Unions representing above 77 percent of the workmen engaged by the contractors had agreed to that settlement. In the case of **Tata Engineering and Locomotive Co. Ltd. vs. Their Workmen** [(1981) 4 SCC 627], this Court permitted a settlement to be binding which was assailed by a set of workmen. In that case, one set of Unions had entered into a settlement which had been assented to by 564 out of 635 daily-rated workmen. The finding of the Tribunal

was that the settlement was not just and fair. This Court, however, allowed the appeal of the employer and set aside the award. But this judgment is not an authority for the proposition that a different set of workmen cannot raise an industrial dispute claiming to be workmen directly under the principal employer. Recognition of such right of minority workmen would be apparent from paragraph 12 of the said report [(1981) 4 SCC 627], which reads:-

> **"12.** There is no quarrel with the argument addressed to us on behalf of the workers that mere acquiescence in a settlement or its acceptance by a worker would not make him a *party* to the settlement for the purpose of Section 18 of the Act [vide *Jhagrakhan Collieries (P) Ltd.* v. *G.C. Agarwal, Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Jabalpur* [(1975) 3 SCC 613 : 1975 SCC (L&S) 63 : AIR 1975 SC 171 : (1975) 2 SCR 873]]. It is further unquestionable that a minority union of workers may raise an industrial dispute even if another union which consists of the majority of them enters into a settlement with the employer (vide *Tata Chemicals Ltd.* v. *Workmen* [(1978) 3 SCC 42 : 1978 SCC (L&S) 418 : AIR 1978 SC 828 : (1978) 3 SCR 535]). But then here the Company is not raising a plea that the 564 workers became parties to the settlement by reason of their acquiescence in or acceptance of a settlement already arrived at or a plea that the reference is not maintainable because the Telco Union represents only a minority of workers. On the other hand the only two contentions raised by the Company are:
>
> > "(*i*) that the settlement is binding on all members of the Sanghatana including the 564 mentioned above because the Sanghatana was a party to it, and
> >
> > (*ii*) that the reference is liable to be answered in accordance with the

> settlement because the same is just and fair."

21. In the case of **ITC Ltd. Workers' Welfare Association & Anr. vs. Management of ITC Ltd. & Anr.** [(2002) 3 SSC 411], it has been, inter-alia, held:-

> "14. In answering the reference the industrial adjudicator has to keep in the forefront of his mind the settlement reached under Section 12(3) of the Industrial Disputes Act. Once it is found that the terms of the settlement operate in respect of the dispute raised before it, it is not upon to the Industrial Tribunal to ignore the settlement or even belittle its effect by applying its mind independent of the settlement unless the settlement is found to be contrary to the mandatory provisions of the Act or unless it is found that there is non-conformance to the norms by which the settlement could be subjected to limited judicial scrutiny...."

22. In the instant case we do not find the settlement of 19th September, 2016 to be one which would be binding on the minority Union. That was a settlement essentially between the contractors and workmen engaged by the former. The appellants were only consenting parties to the settlement. This position of the appellants is apparent from the description of the parties to the said settlement, which records:-

> "MEMORANDUM OF SETTLEMENT ARRIVED AT UNDER SECTION 12(3) OF THE INDUSTRIAL DISPUTES ACT, 1947 BEFORE SHRI B.B. BHATNAGAR, CONCILIATION OFFICER & DY. CLC(C), AS A RESULT OF AND IN THE COURSE OF

CONCILIATION PROCEEDINGS HELD ON 19.09.2016 AND SIGNED BY THE CONTRACTORS, EMPLOYERS OF CONTRACT WORKERS DEPLOYED FOR PERFORMANCE OF CONTRACTS IN ONGC LIMITED, WESTERN OFFSHORE UNIT MUMBAI INCLUDING PANVEL, URAN AND NHAVA, AND CONTRACT WORKERS REPRESENTED THROUGH TRANSPORT & DOCK WORKERS UNION-MUMBAI, ONGC (BOP) KARMACHARI SANGHATANA PETROLEUM EMPLOYEES UNION, GENERAL EMPLOYEES ASSOCIATION, ONGC GENERAL KAMGAR SANGHATANA AND NHAVA SHEVA PORT & GENERAL WORKERS UNION, AS MENTIONED BELOW OVER CHARTER OF DEMANDS, INCLUDING REVISION OF WAGES AND OTHER SERVICE CONDITIONS OF CONTRACT WORKERS IN WESTERN OFFSHORE UNIT."

23. The dispute out of which the present appeal arises relates to the question as to whether the workmen engaged by the contractors would be entitled to pay at par with other workmen of the employer and demand to that effect was raised with the appellants only. The respondent Unions claimed to be, in reality, employees of ONGC and the demand was raised upon the latter, and not on their contractors. The nature of their demand was thus different particularly as regards the status of the workmen, i.e., their claim to be workmen of ONGC. Thus, the settlement of 19th September, 2016, in which the employers were the contractors cannot bind the subject-dispute, where the appellants have been found to be the employer on the basis of materials considered

by the High Court. Their engagement by the contractors cannot be the sole basis for determining their status as workmen of contractors.

24. For these reasons, we accept the High Court's affirmation of Tribunal's finding that the settlement of 19th September, 2016 did not bind the workmen whose cause the respondent Unions are espousing. The finding of the Tribunal that the settlement involving implementation of the FWP was not just and fair, which finding has been sustained by the High Court is essentially a finding on facts based on appreciation of evidence. We are of the opinion that such finding is not tainted by any element of perversity. The ratio of the decision in the case of **ITC Ltd. Workers' Welfare Association** (supra) would not apply in the facts of the present case.

25. Having held so, we would not like to interfere with the relief directed to be given by the High Court. The scope of jurisdiction of the Industrial Court is wide and in appropriate cases it has the jurisdiction even to make a contract. In our opinion, the directives issued by the Tribunal, as modified by the High Court are reasonable and cannot be termed as perverse. In the case of **Steel Authority of India** of 2006 (supra), referring to the

Contract Labour (Regulation & Abolition) Act, 1970 it was opined:-

> "20. The 1970 Act is a complete code by itself. It not only provides for regulation of contract labour but also abolition thereof. Relationship of employer and employee is essentially a question of fact. Determination of the said question would depend upon a large number of factors. Ordinarily, a writ court would not go into such a question."

So far as the judgment under appeal is concerned, the High Court has taken a similar approach and we do not intend to take a different view. The principle of limited interference would apply to a proceeding of this nature under the 1947 Act.

26. The appeal is accordingly dismissed and the impugned judgment is sustained. Interim order, if any, shall stand dissolved.

27. Other applications, if any, stand disposed of.

28. There shall be no order as to costs.

.....J.
(L. NAGESWARA RAO)

.....J.
(ANIRUDDHA BOSE)

NEW DELHI;
FEBRUARY 04, 2022