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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.30779 of 2011

M/s. Central Mine Planning & Design Institute Ltd. ***Petitioner***

Mr. N.K. Mishra, Senior Advocate
-versus-

The Presiding Officer, Central Government Industrial Tribunal, Bhubaneswar and another ***Opposite Parties***

Mr. P.K. Parhi, A.S.G. for Union of India
Mr. J.M. Pattanaik, Advocate for Opposite Party No.2

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAİK

ORDER
09.05.2022

Order No.

Dr. S. Muralidhar, C.J.

09. 1. M/s Central Mine Planning & Design Institute Ltd. has filed this petition questioning an order dated 24th January 2011 passed by the Central Government Industrial Tribunal, Bhubaneswar (CGIT) in Tr. I.D. Case No.6 of 2001 deciding the preliminary issue of maintainability against the Petitioner and in favour of Opposite Party No.2-Workers' Union.
2. While directing notice to issue in the present petition on 20th December 2011, this Court permitted the Petitioner to file an application for adjournment of the main I.D. Case No.6 of 2001 before the CGIT and that interim order has continued for eleven years now.
3. The present dispute has its origins in an order dated 14th September 1992 passed by the Central Government referring the

following dispute for adjudication to the State Government Industrial Tribunal at Bhubaneswar:

“Whether the following demands of the National Coal Organization (Government of India) Employees Association, Darbhanga House, Ranchi, are legal and justified?

1. Special TA/DA be paid to all Drilling Camp Workers.

2. 16 paid festival holidays, 2 restricted holidays and 2 Saturdays off be extended to all drilling camp workers.

If so, to what relief the concerned workmen are entitled to?”

4. A written statement was filed by Opposite Party No.2- Workers' Union before the Tribunal raising the issue concerning all workers working in the drilling camps of the CMPDI all over the country in regard to the benefit of special TA/DA and in the matter of holidays or festivals. At one stage, the case was transferred to the Industrial Tribunal, Rourkela, but the Union for some reasons did not participate and the reference had to be returned to the Central Government. It was then revived on 7th September, 2000. Ultimately, the case was transferred to the CGIT, Bhubaneswar and renumbered as I.D. Case No.6 of 2001. On 29th November 2004, the present Petitioner prayed for taking up the issue of maintainability first. Later, it filed W.P.(C) No.1767 of 2006 in this Court in which an order was passed on 9th February 2006 directing the CGIT to dispose of the issue of maintainability first.

5. By the impugned order dated 24th January 2011, the CGIT held the reference to be maintainable.

6. Mr. N.K. Mishra, learned Senior Advocate for the Petitioner draws the attention of the Court to Section 7-B (1) of the Industrial Disputes Act, 1947 (ID Act) which sets out the conditions under which the Central Government “may, by notification in the Official Gazette, constitute one or more National Industrial Tribunals for adjudication of the industrial disputes”. The two conditions are that (i) the dispute should involve questions of national importance or (ii) are of such a nature that the industrial establishment situated in more than one State are likely to be interested in or effected by such disputes. According to Mr. Mishra the nature of the dispute referred for adjudication by the Central Government in the present case satisfies both the above requirements. In the circumstances, it is his submission that the word ‘may’ occurring in Section 7-B of the ID Act should be read as ‘shall’.

7. He urges that Section 7-B of the ID Act should be read with Section 10 (1-A) of the ID Act which states that if an industrial dispute involves question of national importance or is of such nature that industrial establishment situated in more than one State are likely to be interested in or affected by such dispute, the Central Government “may, whether or not it is the appropriate Government in relation to that dispute, **at any time**, by order in writing referred the dispute for any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a National Tribunal for adjudication”. Mr. Mishra places emphasis on the expression “at any time” and states that notwithstanding that the present dispute may have been pending before the CGIT, Bhubaneswar for over two decades, even now

the Central Government can refer the dispute for adjudication to a National Tribunal. According to him, it will be more convenient for all the parties, if a National Tribunal is constituted which could even have its sittings in Bhubaneswar.

8. The Court is not impressed with the above argument for the reason that first, the expression used both in Section 7-A as well as Section 10 (I-A) of the ID Act is 'may' as qualifying what the Central Government can do. It is not mandatory for the Central Government, even if the twin conditionalities are satisfied, to refer the disputes for adjudication to a National Tribunal. It may so happen that because of the placement of the parties, the dispute can well be adjudicated by a geographically proximate Tribunal. For instance, in the present case, although the Union which is espousing the workmen's cause is located in Ranchi, the Petitioner has its Offices in all over India and therefore, vis-à-vis both the parties, a CGIT at Bhubaneswar would be proximate and convenient for them to adjudicate the dispute.

9. Moreover, in the present day and age, when there are virtual courts, it is possible to have witnesses examined even at remote locations. The earlier apprehensions regarding inconvenience of parties would have to be re-visited. It is now possible for a Tribunal in Bhubaneswar to examine witnesses virtually all over the country, and therefore that inconvenience is a thing of the past.

10. Secondly, and most importantly, this dispute has been pending for more than three decades now and the Court does not consider it expedient at this stage to require the dispute to be referred to a National Tribunal for parties to start all over again

before that Tribunal. That would be most inconvenient to all the parties.

11. The Court has also perused the order passed by the CGIT in the present case negating the above contentions of the Petitioner. It has been rightly noticed, on the strength of the decisions of the Bombay High Court in *Life Insurance Corporation of India v. All India Insurance Employees' Association (1995) III LLJ Supp. 797 (Bom)* and the Andhra Pradesh High Court in *Indian Banks Association v. Workmen of Syndicate Bank (1998) 1 LLJ 233 (AP)* that in terms of Section 7-B of the ID Act read with Section 10 (1-A) thereof it is not mandatory for the Central Government to make a reference of a dispute which is of national importance to a National Tribunal.

12. For all of the aforementioned reasons, the Court is not persuaded that in the present case, the CGIT has erred in declining the prayer of the Petitioner as regards the maintainability of the dispute before the CGIT, Bhubaneswar. The writ petition is accordingly dismissed. The interim order passed in the present petition stands vacated. The CGIT is now requested to proceed with the adjudication as expeditiously as possible. The LCR be returned forthwith.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge