IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.7572 of 2023

Judgment Reserved on: 2.5.2024

Date of Decision: 14.05.2024

Reckitt Benckiser Healthcare India Pvt. Ltd. .....Petitioner

Versus

State of Himachal Pradesh & others ... Respondents

Coram:
Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting? [1] Yes.

For the Petitioner: Mr. Chander Uday Singh, Senior Advocate with Mr. R. Jawaharlal, Mr. Anil Bhat, Advocates (through Video Conferencing and Mr. Atul Jhingan, Advocate, for the petitioner.

For the Respondents: Mr. Rajan Kahol, Mr. Vishal Panwar and Mr. B.C.Verma, Additional Advocate Generals, with Mr. Ravi Chauhan, Deputy Advocate General, for respondent Nos.1 and 2/State.

Mr. V.D.Khidtta and Mr. Nishant Khidtta, Advocates, for respondent No. 3-Union.

Sandeep Sharma, Judge(oral):

Being aggrieved and dissatisfied with impugned reference/ order No.11-2/93 (LAB)/ID/2023/Baddi, dated 18th July 2023**(Annexure P-1)** passed by respondent No.2, whereby alleged "*Industrial Dispute"* came to be referred to Labour Court-cum-Industrial Tribunal, Shimla for adjudication, petitioner-Company has

[1] *Whether the reporters of the local papers may be allowed to see the judgment?*

approached this Court in the instant proceedings, praying therein to set-aside aforesaid order.

2. For having bird's eye view, facts relevant for adjudication of the case at hand are that on 27.11.1980, petitioner-Company was incorporated under the name and style of "*Paras Pharmaceuticals Private Limited",* but subsequently on account of its conversion from public to private company, its name came to be changed to "Paras *Pharmaceuticals Limited" w.e.f.*25.02.2000. On 12.06.2012, name of the petitioner-Company was again changed from "Paras *Pharmaceuticals Limited" to "Reckitt Benckiser Healthcare India Limited".* Since aforesaid company again came to be converted from public company to private company, its name was changed to "*Reckitt Benckiser Healthcare India Private Limited" w.e.f.15.05.2015.*

3. On account of business exigencies, petitioner-company entered into an agreement with Hindustan Food Limited ***(for short "HFL")*** on 15.12.2022 ***for*** transfer/sale of Baddi Plant on going concern basis, subject to fulfillment of certain conditions/formalities. Since, on account of aforesaid agreement of transfer/sale, change in management was to take place after some time and it was decided *interse* petitioner and HFL that till then workmen working in the petitioner-company would continue to be on the rolls of the petitioner-company. As per afore agreement executed *interse* HFL and

petitioner on 15.12.2022, HFL undertook to take over services of all the employees working at the Baddi Plant (a) without any break or interruption in employment;(b) on terms and conditions, which are in aggregate not less favourable than those applicable to the employees before the transfer; and (c) further, HFL shall reckon duration of the employment under Reckitt for the payment of any employment benefit under law or under terms of employment. Pursuant to aforesaid settlement *interse* petitioner and HFL, petitioner issued notice dated 15.12.2022 to all the employees/workmen, letter-cum-reply dated 24.12.2022 **(Annexure P-4)** and letter dated 13.01.2023 **(Annexure P-5)** to respondent No.3, thereby informing proposed transfer of Baddi Plant to HFL as well as undertaking given by private company that upon transfer of their employment to HFL, the workmen would become workmen/ employees of HFL with continuity of services on the conditions which in aggregate would be similar and in any case would not be less favourable to the existing conditions on which they are employed with the petitioner, before the proposed transfer of Baddi Plant to HFL.

4. Besides above, HLF vide letter dated 26.12.2022 **(Annexure P-6)** also notified to the workmen including respondent No.3-Union, confirming/ assuring the workmen that upon transfer of Baddi Plant to HFL, the workmen would be transferred as HFL's

employees/workmen with continuity of service and in aggregate on conditions which are not less favourable to their existing conditions, on which they are employed with the petitioner-Company before the transfer/sale of the Baddi Unit to HFL.

5. On 27.01.2023, respondent-Union claiming itself to be representative of the workmen employed in the Baddi Plant of the petitioner, sent a demand notice dated 27.01.2023 **(Annexure P-7)** raising therein demand of Rs. 35 lakhs as compensation to each member of respondent No.3-Union as a pre-condition of transfer of ownership of Baddi Plant to HFL. Upon receipt of the demand notice, Labour Officer, Baddi issued notice to the petitioner-Company and it vide reply dated 09.02.2023 **(Annexure P-8)** apprised the afore officer that transfer of ownership of the Baddi Plant would occur on a future date and as on date, the workmen are working under the petitioner. Petitioner also apprised Labour Officer that HFL has undertaken to comply with the proviso to Section 25 FF of the Industrial Dispute Act ***(hereinafter referred to as the Act),*** upon transfer of Baddi plant by the petitioner, therefore, service condition of the workmen working in the Baddi Plant would be fully protected in accordance with law. In nutshell, petitioner submitted before the Labour Court that no “industrial dispute” can be said to have been raised on behalf of the workmen with regard to proposed transfer of

ownership of Baddi Plant by the petitioner to HFL. However, fact remains that conciliation proceedings interse petitioner and Union resulted in failure and as such, Deputy Labour Commissioner vide order dated 18th July, 2023 made reference to the Labour Court-cum-Industrial Tribunal while exercising power under Section 10(1) of the Act in following manner:-

" 1. ***Whether the transfer of undertaking affected through agreement dated 15.12.2022(copy enclosed) between the factory Manager M/s Reckitt Benckiser Healthcare Pvt. Ltd, R/o Village Sandholi, Tehsil Baddi, District Solan, H.P. and Hindustan Foods Limited, Regd. Officer No.3, Level-3, Centrium Phonix Marked City, 15, Lal Bahadur Shastri Road, Kula (West), Mumbai, Maharashtra-40070, without any notice to the workers Reckitt Worker Union, Baddi, Village Sandoli, Baddi, Tehsil Baddi, District Solan, HP-173205 and without making any settlement with the Reckitt Worker Union Baddi qua their demand notice dated 27.01.2023 (copy enclosed) is legal and justified? If not, then what relief of legal consequent service benefits, the members of Reckitt Worker Union Baddi are entitled for and from whom? If yes, then what are its legal consequences upon the services of workers."***

2. Whether the dispute raised by Reckitt Worker Union Baddi through demand notice dated 27.01.2023 is legal and justified? If yes, then what consequential relief of service benefit s the workers are entitled to and from whom? If not, then what are its legal effect upon the services of workers?"

6. In the aforesaid background, petitioner has approached this Court in the instant proceedings, praying therein to set-aside aforesaid order passed by Labour Court.

7. Pursuant to the notices issued in the instant proceedings, respondent Nos. 1 to 3 have filed their separate replies, wherein facts, as taken note hereinabove, are not in dispute, rather stand admitted.

8. Precisely, the grouse of the petitioner as has been highlighted in the petition and further canvassed by Mr. Chander Uday Singh, learned Senior Advocate, duly assisted by Mr. Atul Jhingan, Advocate, is that Deputy Labour Commissioner, Himachal Pradesh, while passing impugned order dated 18th July 2023, thereby making reference to the Labour Court, failed to take note of the reply filed by the petitioner-Company to the show cause notice, wherein it specifically apprised Officer/ Labour Commissioner that no “industrial dispute”, if any, exists interse petitioner and respondent No.3- Union, rather interest of the workmen working in the petitioner-company has been duly protected, while entering into transfer/sale agreement with HFL. Learned Senior Counsel representing the petitioner further argued that though documentary evidence was adduced on record suggestive of the fact that information with regard to proposed transfer/sale of Baddi Plant to HFL was brought to the notice of all the workers/workmen as well as Union, but yet tribunal below proceeded

to make reference, stating therein whether transfer/undertaking effected through agreement dated 15.12.2022 between petitioner-company and HFL without any notice to the workers of petitioner and without making any settlement with respondent No.3 qua their demand notice dated 27.01.2023 is legal and justified. While making this Court peruse notice issued to the workmen as well as respondent No.3 i.e Union vis-à-vis reference notification dated 18th July, 2023, whereby dispute came to be referred to Labour Court-cum-Industrial Tribunal, learned Senior counsel representing the petitioner submitted that before entering into an agreement of transfer and sale, notices were issued to worker individually as well as to union.

9. Learned Senior Counsel while referring to Section 10(1) of the Act, also submitted that before making reference, if any, respondent No.2 was required to form an 'opinion' as to whether an 'industrial dispute' exists and only upon formation of such positive opinion, he could by ordering in writing refer such "Industrial Dispute" to the Labour Court. He submitted that since Baddi Plant was not transferred and otherwise as per proposed transfer HFL had agreed to comply with the proviso of Section 25FF of the Act, respondent No.2 ought not have made reference. He further submitted that respondent No.2 has failed to exercise jurisdiction or jurisdiction exercised by him is contrary to the mandate of Section 10(1) of the

Act as held by Full Bench of this Court in **Jai Singh vs. State of Himachal Pradesh, 2022 SCC OnLine H.P. 1020,** which will be discussed later in the judgment.

10. Learned Senior counsel representing the petitioner further submitted that since pursuant to agreement dated 15.12.2022 transfer of Baddi unit had to take place on 15.12.2023, coupled with the fact that HFL had agreed to comply with the provisions contained under Sections 25 FF of the Act, there was otherwise no question of violation of Section 25FF of the Act. He further submitted that had petitioner not issued notice with regard to transfer of Baddi Plant to HFL, there would have been no occasion for the workers or respondent No.3- Union, to submit demand notice. It is only after they were served intimation notice with regard to transfer, respondent No.3 submitted demand. While making this Court peruse demand notice, learned Senior counsel submitted that once workers working in the petitioner-company were not being retrenched, there was otherwise no question of demanding compensation. He further submitted that otherwise also other demands as contained in aforesaid demand notices were duly taken care of in the agreement of transfer/sale and as such, there was no occasion, if any, for respondent No.2 to make the reference to Labour Court-cum-Industrial Tribunal. He further submitted that bare perusal of the

material available on record clearly reveals that there is no “industrial dispute”, if any, interse petitioner and workers of the petitioner-company and as such, impugned order passed without jurisdiction deserves to be quashed and set aside. He further submitted that impugned order of reference does not reflect the real dispute between the parties, rather same being based on erroneous appreciation/presumption of facts deserves to be quashed and set-aside. Lastly, learned Senior counsel representing the petitioner, submitted that impugned reference has sought adjudication on issue No.2 that includes that no settlement has been entered by the petitioner and the workmen in respect of transfer of factory, which is not a legal requirement. He submitted that no consent, if any, is required when the transfer actually and finally gets completed. He further submitted that to transfer company or one of its unit, it is the prerogative of the management and in this process workers have no role to play.

11. To the contrary, learned Additional Advocate General representing respondent Nos.1 and 2 and Mr. Nishant Khidtta, learned counsel representing respondent No.3 supported the impugned order and vehemently argued that once industrial dispute stands referred to Labour Court-cum-Industrial Tribunal, this Court has no jurisdiction to interfere in the same. Above named counsel,

while making this court peruse impugned order dated 18.07.2023 vehemently argued that reference made to Industrial Tribunal is based upon positive opinion formed by the appropriate Government (respondent No.2) and as such, no interference is called for. They submitted that respondent No.2 has exercised jurisdiction vested in it under Section 10(1) of the Act and after forming the opinion that "Industrial Dispute" exists has rightly referred such dispute to the learned Labour Court-cum-Industrial Tribunal for adjudication of dispute on merit and as such, there is no illegality or perversity in the same.

12. Learned counsel representing the respondents while making this Court peruse Section 10(1) of the Act submitted that where the appropriate government is of opinion that any industrial dispute exists or is apprehended, it may at any time refer such dispute to the Labour Court. They stated that since on account of settlement of transfer arrived interse petitioner and HFL, there is apprehension of industrial dispute, respondent No.2 rightly accepted the demand notice and made reference to the Labour Court-cum-Industrial Tribunal. Learned counsel representing the respondents further submitted that before making reference attempt was made to resolve the dispute through conciliation but since parties failed to resolve the same, it can be safely presumed that industrial dispute arose interse

parties, which could otherwise be decided by making reference to the Labour Court-cum-Industrial Tribunal.

13. While fairly admitting factum with regard to receipt of notice of said petitioner with regard to proposed transfer of petitioner-company to HFL, learned counsel representing the respondents submitted that since there is apprehension that transferee company i.e HFL would not abide by the terms and conditions contained in the transfer/sale agreement, coupled with the fact that workmen had been working for years together in petitioner company, no illegality can be said to have been committed by respondent No.2, while making reference to the Labour Court-cum-Industrial Tribunal. Lastly, learned counsel representing the respondents submitted that otherwise also, question with regard to existence of Industrial dispute, if any, interse petitioner and its workers can be decided by the Labour Court in the dispute referred by the appropriate Government while exercising power under Section 10(1) of the Act.

14. Having heard learned counsel representing the parties and perused the material available on record vis-à-vis reasoning assigned in the impugned order, there appears to be merit in the contention of learned Senior counsel representing the petitioner that respondent No.2 while passing aforesaid impugned order failed to take note of the material adduced on record by petitioner-company.

Bare reading of reference made through impugned order suggests that workers of the petitioner-company as well as Union of workers respondent No.3 were not apprised by the petitioner-company with regard to proposal of transfer of Baddi Unit to M/s HFL and demand notice dated 27.01.2023 was also not paid any heed by the petitioner. However, material available on record as well as reply filed by the respondents itself suggests that pursuant to notice issued by Labour Commissioner, entire material was placed on record by the petitioner including copy of notice issued to each worker as well as to Union, thereby apprising factum with regard to proposed transfer of Baddi Unit to HFL. Similarly, this Court finds that petitioner issued a notice dated 15.12.2022 to all the employees/workmen and letter-cum-reply dated 24.12.2022 and letter dated 13.01.2023 to respondent No.3, thereby informing factum of proposed transfer of Baddi Plaint to HFL. Vide aforesaid communication, petitioner also assured the workmen that upon transfer of their employment to HFL, the workmen would become workmen/employees of HFL with continuity of services on the conditions which in aggregate would be similar and in any case would not be less favourable to the existing conditions on which they are employed with the petitioner before the proposed transfer of Baddi Plant to HFL.

15. No doubt, respondent No.3-Union sent a demand notice dated 27.01.2023, raising inter-alia demand for payment of Rs. 35 lac as compensation to each workman as a pre-condition to transfer of ownership of Baddi Plant to HFL but afore demand being contrary to the scope and ambit of Section 25FF of the Act, rightly came to be not considered by the petitioner. If, aforesaid demand notice dated 27.01.2023 is read in its entirety vis-à-vis assurance given by the petitioner-company in notice dated 15.12.2022 to all the employees/ workmen and letter-cum- reply dated 24.12.2022 and letter dated 13.01.2023, it can be safely concluded that other two conditions contained in demand notice were duly taken care of.

16. Careful perusal of provisions of Section 25-FF of the Act clearly reveals that workmen are not entitled to any compensation on account of transfer, if any, of the petitioner-company to other company. At this stage, it would be apt to take note of provision contained under Section 25-FF of the Act, which reads as under:-

> **25FF. Compensation to workmen in case of transfer of undertakings:-**Where the ownership or management of an undertaking is transferred, whether by agreement or by operation of law, from the employer in relation to that undertaking to a new employer, every workman who has been in continuous service for not less than one year in that undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:
>
> Provided that nothing in this section shall apply to a workman in any case where there has been a change of employers by reason of the transfer, if—

> (a) the service of the workman has not been interrupted by such transfer;
>
> (b) the terms and conditions of service applicable to the workman after such transfer are not in any way less favourable to the workman than those applicable to him immediately before the transfer; and
>
> (c) the new employer is, under the terms of such transfer or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by the transfer.]"

17. Though, perusal of aforesaid provision of law, suggests that where the ownership or management of an undertaking is transferred by agreement or by operation of law, from one employer to another, every workman, who is in continuous service of previous owner for not less than one year shall be entitled to notice and compensation in accordance with the provisions of section 25F, as if he/she had been retrenched, however, aforesaid provision is subject to certain conditions as provided in proviso (a) to (c). In case service of the workman is not interrupted by such transfer and terms and conditions of service applicable to the workman after such transfer are not in any way less favourable to the workman than those applicable to him immediately before the transfer and under the terms and conditions of such transfer, new employer is legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by the transfer, there shall be no requirement of issuance

of notice under Section 25-FF of the Act nor any compensation in lieu of retrenchment, if any, is required to be paid.

18. At this stage, reliance is placed upon the judgment rendered by Hon'ble Apex Court in **Anakapalle Cooperative Agricultural and Industrial Society Limtied vs. Workmen and others, AIR 1963 SC 1489**, wherein it has been held as under:-

> "17.The scheme of the proviso to s. 25-FF emphasizes the same policy. If the three conditions specified in the proviso are satisfied, there is no termination of service either in fact or in law, and so, there is no scope for the payment of any compensation. That is the effect of the proviso. Therefore, reading section 25-FF as a whole. it does appear that unless the transfer falls under the proviso, the employees of the transferred concern are entitled to claim compensation against the transferor and they cannot make any claim for reemployment against the transferee of the undertaking. Thus, the effect of the enactment of s.25-FF is to restore the position which the Legislature had apparently in mixed when s. 25-FF Was originally enacted on September 4, 1956. By amending s. 25-FF, the Legislature has made it clear that if industrial undertakings are transferred, the employees of such transferred undertakings should be entitled to compensation, unless, of course, the continuity in their service or employment is not disturbed and that can happen if the transfer satisfies the three requirements of the proviso".

19. Reliance in this regard is also placed upon the judgment passed by Hon'ble Apex Court in **Central Inland Water Transport Corpn. Ltd. v. Workmen, (1974) 4 SCC 696,** wherein it has been held as under:

> **"17.** The effect of Section 25-FF which is explained by this Court in *Anakapalli Cooperative Agricultural and Industrial Society Limited* v. *Workmen* [AIR 1963 SC 1489 : (1963) 1 Supp SCR 730 : 1962 (2) Lab LJ 621] is, so far as it is relevant,

> as follows: (*i*) the first part of the section postulates that on a transfer of the ownership or management of an undertaking, the employment of workmen engaged by the said undertaking comes to an end, and compensation is made payable because of such termination (p. 745); (*ii*) in all cases to which Section 25-FF applies, the only claim which the employees of the transferred concern can legitimately make is a claim for compensation against their employers. No claim can be made against the transferee of the said concern, (p. 746); (*iii*) By the present Section 25-FF the Legislature has made it clear that if industrial undertakings are transferred, the employees of such transferred undertakings should be entitled to compensation, unless, of course, the continuity in their service or employment is not disturbed and that can happen if the transfer satisfies the three requirements of the proviso (p. 746) and (*iv*) Since Section 25-FF provides for payment of benefit on the basis that the services of the employees stand terminated, neither fair play nor social justice would justify the claim of the employees that they ought to be re-employed by the transferee (p. 748). That being the position in law under Section 25FF, the former employees of the Company who were not absorbed by the Corporation can hardly make out a claim against the transferee Corporation either for compensation on termination of their service following the transfer or for re-employment. The claim at any rate of the employees in List II as against the Corporation under Section 25-FF was clearly misconceived".

20. If the aforesaid judgments are read in its entirety, it clearly reveals that in case the three conditions specified in the proviso are satisfied, there is no termination of service either in fact or in law, and as such, there is no scope for the payment of any compensation. It has been further held in the aforesaid judgment that bare reading of section 25-FF as a whole suggest that the employees

on account of the transfer can otherwise claim compensation against the transfer, if the three conditions remain unsatisfied.

21. Since in the case at hand careful perusal of extract of transfer/sale deed executed interse petitioner and HFL reveals that petitioner-company before effecting transfer of its one of the unit at Baddi, specifically took an undertaking from HFL that all the employees will be transferred to HFL without any break or interruption in employment and on terms and conditions which are in aggregate not less favourable than those applicable immediately before the transfer, there was otherwise no requirement, if any, of the petitioner-company to pay compensation, which otherwise in terms of provision contained in Section 25-FF of the Act could have been only paid in the event of retrenchment. Since while effecting transfer/sale agreement, services of none of the workman ever came to be retrenched, rather assurance came to be made that they would continue to work on the same and similar condition, there was no occasion, if any, for respondent No.3 to claim compensation of Rs. 35 lac, which otherwise in the given facts and circumstances appears to be totally illegal and an attempt to extract money.

22. Though, at this stage, Mr. Nishant Khidtta, Advocate learned counsel representing respondent No.3 attempted to argue that no consent, if any, of the workers or its union was taken by the

petitioner before entering into transfer/sale agreement with HFL, but such plea of him being contrary to the provisions of Section 25-FF of the Act and as such, deserves outright rejection. Bare perusal of Section 25-FF of the Act, nowhere suggests that consent is pre-requisite for transfer, rather underlying object of Section 25-FF is to establish a continuity of service and to secure benefits otherwise available to a workman, if a break in service to another employer was accepted. Reliance in this regard is placed upon the judgment rendered by Hon'ble Apex Court in **Mettur Beardseel Limited vs. Workman and another, (2006)9 Supreme Court Cases 488,** wherein it has been held as under:-

> **"10.** Elaborate arguments were advanced on the question as to whether an employee's consent is a must under Section 25-FF of the Act. The common law rule that an employee cannot be transferred without consent, applies in master-servant relationship and not to statutory transfers. Though great emphasis was laid by learned counsel for the respondent on *Jawaharlal Nehru University* v. *Dr. K.S. Jawatkar* [1989 Supp (1) SCC 679 : 1989 SCC (L&S) 501 : (1989) 11 ATC 278] , a close reading of the judgment makes it clear that the common law rule was applied. But there is not any specific reference to Section 25-FF or its implication. There is nothing in the wording of Section 25-FF even remotely to suggest that consent is a pre-requisite for transfer. The underlying purpose of Section 25-FF is to establish a continuity of service and to secure benefits otherwise not available to a workman if a break in service to another employer was accepted. Therefore, the letter of consent of the individual employee cannot be a ground to invalidate the action."

23. Reliance is also placed upon the judgment rendered by Hon'ble Madras High Court in ***Spencer Group Aerated Water Factory Employees' Union and Others Versus Industrial Tribunal and Others,*** **1996 SCC OnLine Mad 1109,** wherein it has been held as under:-

> "**6.** Held, having given a careful consideration to all the above decisions there is no hesitation in holding that after the advent of Section 25-FF of I.D. Act there is no scope for invalidating the transfer of the ownership of management of an undertaking whether by agreement or by operating of law on the ground that consent of the workmen had not been obtained. All that the workmen are entitled to is notice and compensation in accordance with the provisions of Section 25-F of the I.D. Act. If the workman was in continuous service for not less than one year and that two only if the provision to Section 25-FF of I.D. Act was not attracted. Where the proviso to Section 25-FF of the Act is attracted and these conditions are satisfied, the workman is not entitled to notice and compensation in accordance with Section 25-F of the I.D. Act from the Transferror Company."

24. Having perused terms of reference vis-à-vis material adduced on record by the petitioner pursuant to notice sent by Labour Commissioner, this Court is persuaded to agree with learned Senior counsel representing the petitioner that no "Industrial Dispute", if any, ever arose interse petitioner and respondent- union.

25. At this stage, it would be apt to take note definition of Industrial Dispute Act as provided under Section 2 (K)of the Act, which reads as under:-

> ***" Section 2(K):- "Industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."***

26. Though, Sh. Nishant Khidtta, learned counsel representing respondent No.3 while referring to aforesaid definition made a serious attempt to persuade this Court to agree with his contention that dispute referred for adjudication strictly falls in the definition of "*Industrial Dispute*", however, this Court is not convinced with the aforesaid argument of learned counsel for respondent No.3. It is not in dispute that at the time of making reference workers working in the company were the employees of the petitioner-company because admittedly pursuant to transfer/sale agreement dated 15.12.2022 transfer, if any, had to become final on 16.12.2023 as contended by learned Senior counsel representing the petitioner, meaning thereby transferee company i.e. HFL would have taken charge of management of the company on 16.12.2023. At the time of making reference neither there was any kind of dispute or difference between the petitioner and its workers, rather at that stage petitioner-company while making its worker apprised of the factum with regard to proposed transfer/sale, specifically assured workmen of the petitioner-company that upon transfer they would become workmen/ employees of HFL with continuity of service on the conditions which in aggregate would be similar and in any case would not be less

favourable to the existing conditions on which they are employed with the petitioner . Since at that relevant time there was no dispute with regard to service condition, if any, interse petitioner and workers of the petitioner-company, no dispute, if any, could have been said to exist interse petitioner and its workers. Moreover, demand notice, which otherwise never came to be submitted to the petitioner, rather straightway was submitted before the office of Labour Commissioner, itself suggests that illegal demand of compensation to the tune of Rs. 35 lac was made. Though, there were two other demands as taken note hereinabove, but same already stood taken care of by the petitioner-company while executing transfer/sale agreement dated 15.12.2022 with HFL. While interpreting Section 2 (k) of the Act, wherein Industrial Dispute came to be defined, Hon'ble Apex Court in **Shambu Nath Goyal vs. Bank of Baroda,** (1978) 2 Supreme Court Cases 353, held as under:**-**

> "**5.** A bare perusal of the definition would show that where there is a dispute or difference between the parties contemplated by the definition and the dispute or difference is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person there comes into existence an industrial dispute. The Act nowhere contemplates that the dispute would come into existence in any particular, specific or prescribed manner. For coming into existence of an industrial dispute a written demand is not a *sine* qua *non*, unless of course in the case of public utility service, because Section 22 forbids going on strike without

giving a strike notice. The key words in the definition of industrial dispute are “dispute” or “difference”. What is the connotation of these two words? In *Beetham* v. *Trinidad Cement Ltd.* [(1960) 1 All ER 274, 279 : 1960 AC 132] Lord Denning while examining the definition of expression “Trade dispute” in Section 2(1) of Trade Disputes (Arbitration and Inquiry) Ordinance of Trinidad observed:

> “By definition a ‘trade dispute’ exists whenever a ‘difference’ exists; and a difference can exist long before the parties became locked in a combat. It is not necessary that they should have come to blows. It is sufficient that they should be sparring for an opening.”

6. Thus the term “industrial dispute” connotes a real and substantial difference having some element of persistency and continuity till resolved and likely if not adjusted to endanger the industrial peace of the undertaking or the community. When parties are at variance and the dispute or difference is connected with the employment, or non-employment or the terms of employment or with the conditions of labour there comes into existence an industrial dispute. To read into definition the requirement of written demand for bringing into existence an industrial dispute would tantamount to re-writing the section.”

27. In the aforesaid judgment, Hon'ble Apex Court has held that the key words in the definition of Industrial dispute as defined under Section 2(k) of the Act are dispute or difference. It has held that when parties are at variance and the dispute or difference is connected with the employment, or non- employment or the terms of employment or with the conditions of labour there comes into existence an “*industrial dispute*”. Most importantly, Hon'ble Apex Court in the aforesaid judgment held that to read into definition the

requirement of written demand for bringing into existence an industrial dispute would tentamount to re-writing the section.

28. Having perused the aforesaid judgment in its entirety , this Court finds force in the submission of learned Senior counsel representing the petitioner that merely by submitting demand notice, respondent-union cannot be permitted to claim that *"industrial dispute"* exist interse petitioner and workmen.

29. Next question, which arises for consideration of this Court is "whether Labour Commissioner without ascertaining the correctness of the demand and existence of industrial dispute, if any, could straightway make reference to the Labour Court-cum-Industrial Tribunal". Answer to aforesaid question has been already answered in case titled **Jai Singh versus State of Himachal Pradesh, 2022 SCC online HP 1020,** wherein Full Bench of this Court having taken note of various judgments passed by Hon'ble Apex Court, categorically held that appropriate government in discharging the administrative function of taking a decisions to make or refuse to make reference of the industrial dispute under Section 10(1) of the Act, has to apply its mind on relevant considerations and has not to act mechanically as a post office.

30. It would be profitable to reproduce paras No 12 and 28 of the aforesaid judgment herein below:-

"12. Earliest judgment on the subject is by Constitution Bench of the Supreme Court in *State of Bombay* v. *K.P. Krishnan*, AIR 1960 SC 1223, which held that Section 10(1) of the Act confers wide and even absolute discretion, on the Government either to refer or to refuse to refer, an industrial dispute. An obligation is imposed on the Government to refer the dispute unless of course it is satisfied that the notice is frivolous, or vexatious or that considerations of expediency required that a reference should not be made. However, while making an order refusing to make reference, the appropriate Government is not expected to consider factors which are extraneous or irrelevant or not germane. Even in dealing with the question as to whether or not it would be expedient to make a reference, the Government must not act in punitive spirit but must consider the question fairly and reasonably and take into account only relevant facts and circumstances. This judgment was followed by the Supreme Court later in *Madya Pradesh Irrigation Karamchari Sangh* v. *State of M.P.*, (1985) 2 SCC 102 and *V. Veeranajan* v. *Government of Tamil Nady*, (1987) 1 SCC 479.

"28. Following principles of law can, therefore be culled out from series of the precedents discussed above, as to the effect of delay in demanding/making reference of the industrial dispute to the Labour Court/Industrial Tribunal under Section 10(1) of the Act:—

i) That the function of the appropriate Government while dealing with question of making reference of industrial dispute under Section 10(1) of the Act, is an administrative function and not a judicial or quasi judicial function.

ii) That the Government before taking a decision on the question of making reference of the industrial dispute has to form a definite opinion whether or not such dispute exits or is apprehended.

iii) That whether or not the industrial dispute exists or is apprehended in the meaning of Section 10(1) of the Act can be decided by the appropriate Government alone and not by any other authority including by this Court.

iv) That the appropriate Government in discharging the administrative function of taking a decision to make or refuse to make, reference of the industrial dispute under Section 10(1) of the Act, has to apply its mind on relevant considerations and has not to act mechanically as a post office.

v) That while forming an opinion as to whether the industrial dispute exists or is apprehended, the appropriate Government is not entitled to adjudicate the dispute itself on merits.

vi) That the delay by itself does not denude the appropriate Government of its power to examine advisability of making reference of the industrial dispute but the delay would certainly be relevant for deciding the basic question whether or not the industrial dispute “exists” which also includes the decision to find out whether on account of delay the dispute has ceased to exist or has ceased to be alive or has become stale or has faded away.

vii) That whether or not a dispute is alive or has become stale or non-existent, would always depend on the facts of each case and no rule of universal application can be laid down for the same.

viii) That even if Section 10(1) of the Act empowers the appropriate Government to form an opinion “at any time” on the question whether any “industrial dispute” “exists or is apprehended”, and there is no time limit prescribed for taking such a decision, yet such power has to be exercised by the appropriate Government within a reasonable time.

ix) That the period for making reference of industrial dispute is co-extensive with the existence of dispute because the factum of the “existence” or “apprehension of the dispute” is conditioned by the effect of the delay on the liveliness of the dispute

x) That the appropriate Government in arriving at the decision to make a reference of industrial dispute or otherwise, in the context of delay, may examine whether the workman or the Union has been agitating the matter before the appropriate fora so as to keep the dispute alive, which however, does not necessarily mean that in a

case where such action has not been initiated, the dispute has ceased to exist.

xi) That the appropriate Government can, as per Section 10(1) of the Act, take a decision on the question of making reference "at any time", thus implying that there is no limitation in taking such decision and the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to such proceedings.

xii) That the appropriate Government while taking a decision on the question of making reference, need not provide an elaborate opportunity of hearing to the workman but it is under an obligation to consider his explanation for delay in making the demand.

xiii) That in cases where the appropriate Government while examining the question of making a reference of industrial dispute arrives at a decision that the question that on account of delay the dispute has ceased to exist or alive, would require elaborate examination of the evidence, it may while making a reference of the industrial dispute, additionally formulate question on this aspect to be decided as preliminary issue while simultaneously also making a reference on the industrial dispute to be decided as secondary issue.

xiv) That even in a case where reference has been made to the Industrial Court after prolonged delay, such Court would be entitled to mould the relief by declining whole or part of the back wages.

xv) That even when a reference is made by appropriate Government in a case after huge and enormous unexplained delay, the industrial Court would be entitled to return the reference since such Court judiciously exercises its wide jurisdiction under Section 11-A of the Industrial Disputes Act and is under obligation to consider whether in such like situation any relief at all could be granted to the workman."

31. It is quite apparent from bare reading of aforesaid law laid down by Full Bench of this Court, which is based upon various

pronouncement made by Hon'ble Apex Court that appropriate Government, while considering/making reference in terms of Section 10(1) of the Act, requires to apply its mind to ascertain whether industrial dispute, if any, exists or not. Firstly, after having perused correctness and genuineness of the demand raised on behalf of the workmen, authority concerned needs to form an opinion that industrial dispute exist and only thereafter, it can proceed to make reference. In case reference made in the instant petition is tested on the anvil of aforesaid settled proposition of law, this Court has no hesitation to conclude that authority concerned, while making reference under Section 10(1) of the Act has not bothered at all to go through the reply as well as documents adduced on record by the petitioner-Company, who in uncertain terms apprised authority concerned that prior to entering into transfer/sale agreement, notices were issued to the workers, apprising therein that it intends to transfer/sale Baddi Plant to HFL, who has further undertaken to take the services of all the workers without any break or interruption in employment and on terms and conditions, which are in aggregate not less favourable than those applicable to them in the petitioner-Company.

32. Factum with regard to issuance of notice specifically came to be placed before appropriate authority, but yet, while framing reference, it posed question to the Labour Court-cum-Industrial

Tribunal that whether transfer of undertaking through agreement dated 15.12.2022 executed *interse* petitioner and HFL, is without any notice and without making any settlement *interse* workers and petitioner-company. Since petitioner-Company at the time of making transfer/ sale agreement with HFL, specifically issued notice to the workmen detailing therein, terms and conditions, which by no stretch of imagination could be said to be unfavourable to the workmen, appropriate authority could not have concluded existence, if any, of industrial dispute. Similarly, factum of raising of demand by workmen, which ultimately was made basis by the appropriate authority to form an opinion with regard to existence of industrial dispute, itself suggests that notices were issued to the workers by the petitioner as well as union with regard to intention of the petitioner-company to transfer/sale the Baddi Plant to HFL. Since, at no point of time petitioner expressed its intention to retrench its worker, rather while apprising them with regard to execution of transfer/sale agreement with HFL, assured them that their service condition would remain same and in any eventuality, would not be less favourable to those applicable to them prior to proposed transfer and during their employment with the petitioner, there was no requirement, if any, at that stage for petitioner company to comply with the provision contained under section 25 F of the Act, which provides for issuance

of notice of one month and in lieu thereof, compensation, if any. It is not understood on what basis respondent-Union made unreasonable demand of compensation to the tune of Rs. 35 lac, compensation, if any, could have been demanded by workers of the petitioner-company if they were thrown out by the petitioner-company at that relevant time.

33. Since, in the case at hand, petitioner-Company by way of notice, specifically apprised its workers that there shall be no change in the terms and conditions of the service and they would not be less favourable to those applicable immediately prior to such transfer, coupled with the fact that at that relevant time, no order, if any, was ever passed that they were retrenching the services of the workers of the petitioner-Company, there was no occasion for appropriate authority to arrive at a conclusion that *"industrial dispute*" exists interse parties. It is not in dispute, rather stands admitted that relevant extract with regard to service condition of workmen as contained in transfer/sale agreement was made available to the Office of Labour Commissioner during conciliation proceedings, meaning thereby authority was fully aware with regard to terms and conditions contained in the sale /transfer agreement, perusal whereof clearly reveals that interest of the workers was duly taken care of by the petitioner-Company, if it so, action of Labour Commissioner making

reference in terms of Section 10(1) of the Act cannot be said to be justifiable, rather same being not based upon the material adduced on record by the parties deserves to be rectified in accordance with law.

34. Mr. Nishant Khidtta, learned counsel representing respondent No.3-Union while making this Court peruse provision contained under Section 10(1) of the Act, vehemently argued that very existence of industrial dispute is not pre-requisite for making reference, rather authorities responsible for making reference having taken note of apprehension of the workmen can proceed to make reference. Though, having perused the provision contained under Section 10(1) of the Act, this Court finds force in the submission of learned counsel representing respondent-Union that industrial dispute can be referred on the basis of apprehension, but next question which needs determination, is that on what basis authority concerned would conclude apprehension, if any, of industrial dispute of workmen.

35. Reliance in this regard is placed upon the judgment passed by Hon'ble Apex Court, in case titled **Telco Convoy Driver's Mazdoor Sangh v. State of Bihar, (1989) 3 SCC 271**, wherein it has been held as under:

> **"13.** Attractive though the contention is, we regret, we are unable to accept the same. It is now well settled that, while exercising power under Section 10(1) of the Act, the function of the appropriate

Government is an administrative function and not a judicial or quasi-judicial function, and that in performing this administrative function the Government cannot delve into the merits of the dispute and take upon itself the determination of the lis, which would certainly be in excess of the power conferred on it by Section 10 of the Act. See *Ram Avtar Sharma* v. *State of Haryana* [(1985) 3 SCC 189 : 1958 SCC (L&S) 623 : (1985) 3 SCR 686] ; *M.P. Irrigation Karamchari Sangh* v. *State of M.P.* [(1985) 2 SCC 103 : 1985 SCC (L&S) 409 : (1985) 2 SCR 1019] ; *Shambhu Nath Goyal* v. *Bank of Baroda, Jullundur* [(1978) 2 SCC 353 : 1978 SCC (L&S) 357 : (1978) 2 SCR 793] .

14. Applying the principle laid down by this Court in the above decisions, there can be no doubt that the Government was not justified in deciding the dispute. Where, as in the instant case, the dispute is whether the persons raising the dispute are workmen or not, the same cannot be decided by the Government in exercise of its administrative function under Section 10(1) of the Act. As has been held in *M.P. Irrigation Karamchari Sangh case* [(1985) 2 SCC 103 : 1985 SCC (L&S) 409 : (1985) 2 SCR 1019] , there may be exceptional cases in which the State Government may, on a proper examination of the demand, come to a conclusion that the demands are either perverse or frivolous and do not merit a reference. Further, the Government should be very slow to attempt an examination of the demand with a view to declining reference and courts will always be vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of valid disputes, and that to allow the Government to do so would be to render Section 10 and Section 12(5) of the Act nugatory.

15. We are, therefore, of the view that the State Government, which is the appropriate Government, was not justified in adjudicating the dispute, namely, whether the convoy drivers are workmen or employees of TELCO or not and, accordingly, the impugned orders of the Deputy Labour Commissioner acting on behalf of the Government and that of the Government itself cannot be sustained."

36. Similarly, in case titled **Avtar Sharma v. State of Haryana, (1985) 3 SCC 189,** Hon'ble Apex Court held that while exercising power under Section 10 of the Act to refer an industrial dispute to Tribunal for adjudication, appropriate government discharges an administrative function and not judicial/quasi-judicial function, meaning thereby, that appropriate government cannot act in excess of powers granted to it under Section 10 of the Act.

37. In the aforesaid judgments, Hon'ble Apex Court while holding that under Section 10(1) of the Act function of the appropriate government is administrative function and not a judicial or quasi judicial function and while performing administrative function, it cannot delve into the merits of the dispute and take upon itself the determination of the *lis*, which would certainly be in excess of the power conferred by Section 10(1) of the Act**.**

38. There cannot be any quarrel with the aforesaid proposition of law because, while ascertaining the dispute, if any, authority responsible to make reference under Section 10(1) of the Act certainly cannot delve into the merits of the dispute, but at the same time it cannot be disputed that before arriving at a conclusion that industrial dispute , if any, exist in the parties, authority concerned needs to form an opinion which can only be formed on the basis of material adduced on record by the parties.

39. Though, in the earlier part of the Judgment, this Court has already held that no *"industrial dispute*" exists interse petitioner and workmen but at same time this Court also finds merit in the submission of learned Senior Counsel representing the petitioner that there was nothing on record which could help authority concerned to agree with the submission made on behalf of the workmen that there is 'apprehension' of industrial dispute. As has been taken note hereinabove, petitioner-company while apprising workmen with regard to execution of transfer/sale agreement specifically assured them that their service condition will not be changed and same shall not be in any way less favourable to those applicable to them immediately before such transfer. If it is so, it is not understood that on what basis it could be concluded by the authority that there is apprehension of dispute. Since transferee company HFL itself undertook to not to change the service condition and as of today there is nothing on record to suggest that attempt, if any, either by petitioner or transferee company ever came to be made to change the service condition, this Court is not persuaded to agree with the submission of learned counsel representing respondent No.3-Union that there is apprehension of Industrial dispute. Had Transferee Company not agreed with the condition imposed by the petitioner-company that service conditions of the workmen would not be changed, respondent-

Union could be right in contending that there is apprehension of dispute in the event of change of the management. Since transferee company had otherwise to take control of the management pursuant to agreement of transfer/sale in December, 2023 and before that nothing was done on their part suggestive of the fact they after taking over the management attempted to change the service condition, appropriate authority could not have concluded existence of "*industrial dispute*", if any, interse petitioner-Company and workmen that too on the basis of apprehension.

40. Consequently, in view of the detailed discussion made hereinabove as well as law taken into consideration, this Court finds merit in the present petition and accordingly same is allowed and impugned order/reference No.11-2/93 (LAB)/ID/2023/Baddi, dated 18th July 2023**(Annexure P-1)** passed by respondent No.2, is quashed and set-aside. Pending applications, if any, also stand disposed of.

(Sandeep Sharma),
Judge

May 14, 2024
(shankar)