

ORISSA HIGH COURT: CUTTACK.

W.P.(C). No. 20243 OF 2012

In the matter of an application under Articles 226 and 227 of
the Constitution of India

Shri Prafulla Kumar Nayak Petitioner

-Versus-

State of Odisha and others Opp. parties

For Petitioner : M/s. M.S. Rizvi &
A.K. Patnaik.

For opp. parties : M/s. B.P.Tripathy
(for O.P.No.5)

Decided on 10 .01.2013

PRESENT :

THE HONOURABLE SHRI JUSTICE M.M.DAS

AND

THE HONOURABLE SHRI JUSTICE C.R.DASH

M.M.Das,J.

The opposite party No.5 – Management, i.e.,
HINDALCO Industries Limited, entered its appearance through
Mr. B.P. Tripathy, Advocate, who filed the Vakalatnama.

2. The petitioner is the General Secretary of HINDALCO
Staff Association, who has filed this writ petition to declare the
references under Annexures – 1 series made by the Government
of Odisha, in its Labour and ESI Department under Section 10
(1) (d) of the Industrial Disputes Act, 1947 (hereinafter referred

to as 'the Act') to the Industrial Tribunal, Bhubaneswar as incomplete and to issue a direction to the opposite party – State Government to incorporate a further question, i.e., “whether the unfair labour practices adopted by M/s. HINDALCO Industries Limited under the Industrial Disputes Act, 1947 is legal and/or justified ?” in the order of reference.

3. Mr. Patnaik, learned counsel for the petitioner submits that the petitioner – association was aggrieved by the action of the management with regard to the non-recognition of protected workmen and change of designation, salary/wage structure as well as decision of the management with regard to “no work no pay” system inasmuch as the harassment caused by the management to the members of the petitioner - association by transferring some members to other sick industries outside Odisha. The petitioner – association put forth the above grievances before the labour authorities through numerous representations and the District Labour Officer, on 06.05.2001, directed the management to maintain status quo in the larger interest of the industries, as it was adopting unfair labour practices.

4. The facts disclose that in November, 2011, the petitioner – association submitted a list of protected workmen and a 41pt. Charter of demands before the Management. The said demands were revised by the association by submitting a

23pt. Charter of demand on 14.03.2012. The petitioner – association also gave a strike notice under Section 22 of the Act to the Management – opposite party No.5 that in the event, the demands are not fulfilled, the workmen, who are members of the petitioner – association will go on strike. This fact was also intimated to the Labour Officer, Sambalpur. After receiving the said notice, the District Labour Officer issued letters to the petitioner – association and the Management to attend his office for joint enquiry. The enquiry was adjourned to 16.04.2010.

Thereafter, the Management filed W. P. (C) No. 6352 of 2010 before this Court with regard to the said charter of demands. This Court passed an interim order on 5.4.2010 restraining the employees from going on strike. The said writ petition was ultimately dismissed. A review application was filed by the Management in which this Court clarified that the opp. parties, i.e., the Labour Commissioner, Deputy Labour Commissioner and the District Labour Officer-cum-Conciliation Officer, shall proceed further in the matter of taking necessary legal action in accordance with the provisions of the I.D. Act regarding the claim for grant of recognition to the seven office bearers as protected workmen.

5. It appears that ultimately, the conciliation proceeding was declared closed having failed and a failure report was submitted by the Conciliation Officer to the State

Government. The Government being satisfied that industrial dispute exists between the Management and the workmen represented through the General Secretary of the staff – association has made references of various questions on different issues separately to the Industrial Tribunal, Bhubaneswar.

6. The grievance of the petitioner is that no reference has been made with regard to the issue of unfair labour practice adopted by the Management for which the present writ petition has been filed. Various allegations have been made in the writ petition against the Management; inter alia, alleging that the Management has adopted unfair labour practices.

7. Unfair labour practice has been defined in section 2 (ra) of the Act, as any of the practices specified in the 5th Schedule of the Act. Section 25 (T) of the Act provides prohibition of unfair labour practice prescribing thereunder that no employer or workman or a Trade Union, whether registered under the Trade Unions Act, 1926 (26 of 1926) or not, shall commit any unfair labour practice. In the 5th Schedule of the Act, a number of instances, which amount to unfair labour practice, have been provided. *(emphasis supplied)*

8. On the above basis, Mr. Patnaik, learned counsel for the petitioner submitted that the references made by the Government is incomplete and a question should have been referred to the Tribunal as to whether unfair labour practices

adopted by M/s. HINDALCO Industries Ltd. under the Industrial Disputes Act is legal and/or justified.

9. Mr. B.P. Tripathy, learned counsel appearing for the Management, on the contrary, submitted that the State Government by applying its mind to the failure report submitted by the Conciliation Officer found out the questions which are required to be adjudicated as industrial dispute and has referred the same separately to the Tribunal under Annexure-1 series. He further submitted that the nature of allegation made by the petitioner is not only vexatious but also incomprehensive as the question which the petitioner wants to be referred to, is very general in nature and does not relate to any particular industrial dispute. According to Mr. Tripathy, unfair labour practice is a wide term which connotes all instances given in the 5th Schedule of the Act and the Government on receiving a failure report from the Conciliation Officer, if finds any particular instances of unfair labour practice adopted by the Management, such question may be referred to under section 10 (1)(d) of the Act to the Tribunal. According to him, a bare reading of section 25T of the Act would go to show that unfair labour practice can be attributed both to the employer as well as the workmen or a Trade Union, whether registered or unregistered, and both the employer and the

workmen are prohibited from committing unfair labour practice as contemplated under the Act.

A penal provision is provided under section 25U of the Act, which provides that any person who commits any unfair labour practice can be punished with imprisonment for a term which may extend to six months or with fine which may extend to Rs. 1000/- (Rupees one thousand) or with both. Therefore, According to Mr. Tripathy, adopting unfair labour practice in contravention of the provision of section 25T would entail imposition of punishment as prescribed in section 25U of the Act, in a criminal proceeding.

10. This Court on perusal of the failure report submitted by the Conciliation Officer under section 12 (4) of the Act, which has been annexed to the writ petition as Annexure-5, along with other documents, finds that the appropriate Government on due application of mind has made references of different disputes separately as at Annexure-1 series and the claim of the petitioner that the said reference is incomplete, without the question, i.e., "Whether unfair labour practices adopted by M/s. HINDALCO Industries Ltd. under the Industrial Disputes Act, 1947 is legal and/or justified ?" being referred to the Tribunal, cannot be accepted for the reason that the said question is not specific and is general in nature which cannot be adjudicated by the Industrial Tribunal, inasmuch as, if there is any instance of

unfair labour practice, the same, if proved in accordance with law, is punishable under the provisions of section 25U of the Act and the petitioner has an alternative remedy, which can be worked out.

11. In view of the above, we do not find any merit in the present writ petition, which accordingly stands dismissed.

.....
M.M. Das, J.

C.R.Dash, J. I agree.

.....
C.R.Dash, J.

**Orissa High Court, Cuttack.
January 10th , 2013/Biswal.**

