REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 4076-4077 OF 2019
[Arising out of S.L.P.(C)Nos.25341-42 of 2017]

Globe Ground India Employees Union ... Appellant

Versus

Lufthansa German Airlines & Anr. ... Respondents

J U D G M E N T

R. Subhash Reddy,J.

1. Leave granted.

2. These appeals are directed against the judgment and order dated 24.11.2016 passed in L.P.A. No.107 of 2016 and order dated 14.7.2017 in R.P.No.146 of 2017 by the High Court of Delhi at New Delhi.

3. Necessary facts in brief for disposal of these appeals are that, the appellant workers' union raised the industrial dispute which was referred by the Central Government to Industrial Tribunal-cum-Labour Court by an order dated

04.02.2010. The question which was referred for adjudication by the Industrial Tribunal reads as under:-

> "Whether the action of the Management of M/s Globe Ground India Private Ltd., New Delhi, a subsidiary of Lufthansa German Airlines (Carrier), in closing down their establishment on 15.12.2009 and retrenching the services of 106 workmen (as per annexure) is justified and legal? To what reliefs are the workmen concerned entitled?"

4. The aforesaid reference order was sent by the Government to the Presiding Officer of Tribunal and also to the second respondent herein. There was no communication of such reference to, Lufthansa German Airlines. Before the Industrial Tribunal, the appellant workers' union filed a statement on 10.3.2010, *inter alia* stating that the second respondent company is a subsidiary of the first respondent and was providing ground handling and ancillary services at the Indira Gandhi International Airport and airports located in different places like Calcutta, Mumbai, Bengaluru, Chennai, Hyderabad etc. The second respondent Globe Ground Private Limited is a company, and is a joint venture formed by Globe Ground Deutschland GmbH and the Bird Group with 51% and 49% shares respectively. In December, 2008, the Bird

Group had floated another company, Bird Worldwide Flight Services Ltd. which has undertaken ground handling and ancillary services to international airlines. In the claim petition filed before the Industrial Tribunal, it is the specific case of the appellant that, the new company which has started ground handling services from January, 2009, is utilising the same equipment belonging to the second respondent. On the information furnished by the first respondent that they would stop ground handling services from the International Airlines at Delhi w.e.f. 15.12.2009, the members of the appellant's union were issued termination notices and the same is in violation of Sections 25-F, 25-G, 25-O and 25-N and other provisions of the Industrial Disputes Act, 1947. It is the allegation of the appellant that the first respondent has not closed down or stopped the business in India. It is also specifically alleged that the new company has retained most of the employees who worked earlier except the trade union activists. As claimed before the Industrial Court, it is the case of the appellant that management i.e. the second respondent should reinstate left out workmen in service by extending the benefit of

continuity of service and full wages. Before the Industrial Court, the second respondent herein has filed reply. In the reply filed, while denying various allegations made by the claimant, the second respondent as a fact has stated that the second respondent was providing handling services to the Lufthansa German Airlines.

5. Though, no relief is claimed against the first respondent i.e. the Lufthansa German Airlines, the appellant's union has filed an application for impleadment of the first respondent in ongoing proceedings relating to industrial dispute. There was an order allowing the application filed by the appellant earlier, which was set aside by the High Court in the Writ Petiton by remitting the matter back for fresh consideration and subsequently the Industrial Tribunal has passed an order dated 12.12.2013, impleading the first respondent as a party, mainly on the ground that the first respondent was a holding company of the second respondent. Aggrieved by the order dated 12.12.2013, the first respondent i.e. Lufthansa German Airlines has filed Writ Petition (Civil) No.1255 of 2014 before the High Court of Delhi at New Delhi, which was

allowed by the learned Single Judge by judgment dated 21.04.2014, by setting aside the order dated 12.12.2013 passed by the Industrial Tribunal. Aggrieved by the order of the learned Single Judge, the appellant employees' union has filed *intra court* appeal under clause X of the Letters Patent, in L.P.A No. 107 of 2016 which is dismissed by the Division Bench of the High Court by the impugned order dated 24.11.2016. Further petition seeking review of the said order in R.P. No.146 of 2017, is also ended in dismissal by an order dated 14.7.2017. Questioning the order dated 24.11.2016 in L.P.A No.107 of 2016 and further order dated 14.7.2017 passed in R.P.No.146 of 2017, the appellant is before us in these appeals.

6. We have heard at length Sri Colin Gonsalves, learned senior counsel appearing for the appellant and Sri Chander Uday Singh, learned senior counsel appearing for respondent No.1.

7. Learned senior counsel Sri Colin Gonsalves, appearing for the appellant herein, has submitted that the second respondent was a subsidiary of the first respondent and was providing ground handling and other ancillary services to

the first respondent at the Indira Gandhi International Airport and other airlines. The first respondent had a subsidiary, namely, Globe Ground Deutschland GmbH, for the ground handling work and the second respondent herein Globe Ground India Pvt. Ltd. is a joint venture formed by Globe Ground Deutschland GmbH and the Bird Group with 51% and 49% shares, respectively. In December, 2008, the Bird Group had floated a new company, Bird Worldwide Flight Services Ltd. to provide ground handling services by utilizing the same equipment and vehicles which belonged to the second respondent. The workmen of the second respondent were deployed by the new company to operate the said equipment and provide ground handling and ancillary services. It is submitted that only pursuant to instructions of the first respondent to the second respondent on 9.12.2009 that they would stop availing ground handling services from 15.12.2009 the workmen of the appellant's union were terminated. By referring to the claim-petition filed before the Tribunal, it is stated that the first respondent is a necessary and proper party to the proceedings. It is submitted that this Court has to look into by lifting corporate veil, to examine

whether the first respondent is a necessary and proper party or not. It is submitted that for all practical purposes the first respondent is a controlling company and having regard to the claim made in the claim petition, the first respondent is a necessary and proper party. It is the contention of the learned senior counsel that the well reasoned order passed by the Industrial Tribunal is set aside by the learned Single Judge and the same is confirmed by the Division Bench by the impugned order without assigning valid reasons. In support of his plea, learned senior counsel has placed reliance on the judgment in the case of **Hochtief Gammon** vs. **Industrial Tribunal, and others**[1] and the judgment in the case of **Hussainbhai** vs. **Alath Factory Thezhilali Union and others**[2] and the judgment in the case of **Grindlays Bank Ltd.** vs. **Central Government Industrial Tribunal and others**[3]**.**

8. On the other hand, Sri Chander Uday Singh learned senior counsel, appearing for the first respondent, has submitted that the first respondent was never the employer of the workmen of the appellant's union. It is submitted

1 AIR 1964 SC 1746
2 (1978) 4 SCC 257
3 1980 (Supp) SCC 420

that the termination notice to the members of the appellant's union were issued by the second respondent and further, by taking us to the reference order which is referred for adjudication by the Industrial Tribunal, it is submitted that the first respondent is neither a necessary nor a proper party to the proceedings before the Industrial Court. Further by referring to communication dated 10.12.2009 addressed by the appellant's union, it is submitted that the said notice was issued only to the second respondent protesting against the closure of business and retrenchment of the employees in New Delhi International Airport. Further by referring to the reference order, it is submitted that by seeking impleadment of the first respondent, the appellant cannot seek to expand the scope of the reference. Learned senior counsel by referring to Section 10(4) of the Industrial Disutes Act, 1947 has also submitted that the appropriate Government has specified the points of dispute for adjudication, the Tribunal shall confine its adjudication to those points only and matters incidental thereto. As such, it is submitted that to answer the reference which is referred by the Government, the first

respondent is neither a necessary nor proper party. He further submitted that, the parent company is not liable for the acts of its subsidiary. Reliance is placed on the judgment of this Court in the case of **Balwant Rai Saluja and another vs. AIR India Limited and others**[4] and also on the judgment in the case of **Kasturi** vs. **Iyyamperumal and others**[5]**.**

9. In the rejoinder affidavit, learned counsel for the appellant, has submitted that if ultimately reference is ordered in favour of the appellant's union, no fruitful purpose will be served to the members of the union as submitted that for all practical purposes the first respondent is to be considered as an employer. It is submitted that in such view of the matter, the first respondent is to be impleaded as a party respondent in the reference proceedings, before the Industrial Tribunal.

10. Having heard learned counsel on both sides, we have perused the material placed on record. The only question which is required to be considered is whether, the first respondent – Lufthansa German Airlines is to be impleaded as

4 (2014) 9 SCC 407
5 (2005) 6 SCC 733

a party respondent or not, in adjudication proceedings to answer the reference referred by the Central Government to the Industrial Tribunal-cum-Labour Court vide order dated 4.2.2010. From a reading of the reference, which is referred to Industrial Tribunal, it is clear that the reference which is required to be answered by the Industrial Tribunal is that, whether the action of the Management of M/s Globe Ground India (Pvt.) Limited, in closing down their establishment on 15.12.2009 and retrenching the services of 106 workmen is justified and legal. At this stage, it is apt to refer to Section 10 of the Industrial Disputes Act. It is clear from the above said section, whenever, the appropriate Government refers the points of dispute for adjudication, the Labour Court or the Tribunal or the National Tribunal, as the case may be, shall confine its adjudication to those points only and matters incidential thereto.

11. Whenever, an application is filed in the adjudication proceedings, either before the Industrial Tribunal in a reference made under the Industrial Disputes Act, 1947 or any other legal proceedings, for impleadment of a party who

is not a party to the proceedings, what is required to be considered is whether such party which is sought to be impleaded is either necessary or proper party to decide the lis. The expressions "necessary" or "proper" parties have been considered time and again and explained in several decisions. The two expressions have separate and different connotations. It is fairly well settled that necessary party, is one without whom no order can be made effectively. Similarly, a proper party is one in whose absence an effective order can be made but whose presence is necessary for complete and final decision on the question involved in the proceedings.

12. Learned senior counsel Sri Colin Gonsalves appearing for the appellant, in support of his argument that the first respondent is a holding company of the employer of workmen, as such the first respondent is a necessary and proper party, has placed reliance on the judgment in the case of **Hochtief Gammon** vs. **Industrial Tribunal, and others** (supra). In the aforesaid judgment while considering the scope of Sections 18(3)(b), 11(3), 10(1) of the Industrial Disputes Act, this Court has considered powers of the Tribunal to add

necessary and proper parties. In the said judgment this Court has held that if the employer named in reference does not fully represent the interests of the employer as such, other persons who are interested in the undertaking of the employer can be joined. But at the same time in the very said judgment it is held that, the test always must be is the addition of the party necessary to make adjudication itself effective and enforceable?

13. In another judgment relied upon by the learned senior counsel for the appellant in the case of **Hussainbhai vs. Alath Factory Thezhilali Union and others** (supra), this Court has prescribed the test for determining, workmen employed by independent contractor to work in employer's factory, whether such workmen are workmen of the factory or not. In this judgment, this Court has held that the presence of intermediate contractors with whom alone workers have immediate or direct relationship *ex contractu* is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment.

14. Similarly, in another judgment relied upon by the learned senior counsel for the appellant in the case of

Grindlays Bank Ltd. vs. **Central Government Industrial Tribunal and others** (supra), this Court has held that for the proceedings arising out of the Industrial Disputes Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom reference is made under the Industrial Disputes Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

15. There cannot be any second opinion on the ratio decided in the aforesaid cases relied on by the learned senior counsel for the appellant. But, whenever an application is filed for impleadment of a third party, who is not a party to the reference under the Industrial Disputes Act or any other proceedings pending before the Court, what is required to be considered is whether such party is either necessary or proper party to decide the lis. It all depends on the facts of each case; the allegations made and the nature of adjudication proceedings etc. In this case it is to be noted that only the scope of reference

is limited which is already discussed above. However, it is also clear from Section 10(4) of the Industrial Disputes Act, 1947 that whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matters incidental thereto only.

16. Reverting back to the facts of the case on hand it is clear that the first respondent had a subsidiary, namely, Globe Ground Deutschland GmbH, which was holding 51% shares along with 49% shares held by the Bird Group in the second respondent company. Further, it is clear that the Bird Group had floated another company, Bird Worldwide Flight Services Ltd. to provide ground handling and ancillary services which started from the month of January, 2009. It is the allegation of the appellant's union that even after the formation of a new company, such new company is utilizing same equipment and vehicles belonging to the second respondent. It is also the allegation of the appellant that after the formation of the new company, it has retained most of the employees, except the trade union activists. The appellant workers' union does not seek

employment of the alleged retrenched workers in the first respondent.

17. Having regard to facts and circumstances of present case, we are of the opinion that the case law relied on by the learned senior counsel for the appellant would not render any assistance in support of the appellant's case.

18. At the same time in the judgment in the case of **Balwant Rai Saluja and another vs. AIR India Limited and others** (supra) relied upon by Sri Chander Uday Singh, learned senior counsel for the respondents, this Court has observed that the corporate veil can be pierced and the parent company can be held liable for the conduct of its subsidiary, only if it is shown that the corporal form is misused to accomplish certain wrongful purposes. In the aforesaid case, having regard to facts, it was opined that the doctrine of piercing veil cannot be applied. In the aforesaid case it is held by this Court that the doctrine of piercing veil, has been applied sparingly by the courts.

19. The other judgment relied on by the learned senior counsel for the respondents in the case of **Kasturi vs. Iyyamperumal and others** (supra), this Court again considered

the test to be applied while considering the application filed under Order 1 Rule 10 of the Code of Civil Procedure, 1908. It is held that to consider the scope of application, the tests are:- (1) there must be a right to some relief against such party in respect of controversies involved in the proceedings; (2) no effective decree can be passed in its absence. Applying the aforesaid ratio laid down in the judgment, referred in the aforesaid cases, we are of the view that the said judgment relied on supports the case of the respondents. Further, we are of the view that even in a subsidiary company which is an independent corporate entity, if any other company is holding shares, by itself is no ground to order impleadment of parent company *per se. I*n the case at hand, it is clear that the second respondent itself is a company in which the subsidiary of the first respondent, namely, Globe Ground Deutschland GmbH, was holding 51% shares and 49% shares were held by the Bird Group. As per the case of the appellant, the Bird Group has floated another company and started handling services from the month of January, 2009 by uitlizing the same equipments and vehicles belonging to the second respondent.

Further, having regard to limited scope of adjudication, to answer the reference, which is circumscribed by Section 10(4) of the Industrial Dispute Act, 1947, we are of the view that the first respondent is neither necessary nor proper party, to answer the reference by the Industrial Court. Further, we do not find any error in the order passed by the learned Single Judge or in the order of the Division Bench passed by the High Court of Delhi in the impugned judgment, so as to interfere with such reasoned and concurrent findings recorded by the courts. Thus, these civil appeals are devoid of merits and the same are accordingly dismissed, with no order as to costs.

..... J.
[R. Banumathi]

..... J.
[R. Subhash Reddy]

New Delhi
April 23, 2019