Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6404 OF 2025

1. **Sagar Yashwant More,**
   Age 42 years,
   At Post Dhatav, Killa, Near Gram Panchyat,
   Raigad, Maharashtra 402 116.
2. **Naresh Bhikaji Patil,** Age 42 years
   Room No.-28K, Near Maruti Mandir,
   At Post Shihu, Post Office Bense,
   District Raigad, Maharashtra 402 106
3. **Limbaji Govind Thite,** Age 48 years,
   At Post Devkanhe, Bahe, Taluka Roha,
   Raigad, Kolad, Maharashtra 402 304. **... petitioners**

V/s.

1. **Sudarshan Chemical Industries Limited,**
   Plot No.-46, MIDC, Dhatav,
   Roha, District Raigad, 402116.
2. **Krantikari Kamgar Union,**
   180-C, First Floor, Dharavi,
   Koliwada, J J Keni Lane,
   Mumbai 400 017. **... respondents**

Ms. Jane Cox with Mr. Vinayak Suthar i/b Mr. Ghanshyam Thombare, for the petitioners.

Ms. Satyapriya Rao i/b Mr. Vaibhav Patankar, for respondent No.1.

CORAM : AMIT BORKAR, J.

RESERVED ON : APRIL 30, 2026

PRONOUNCED ON : MAY 7, 2026

JUDGMENT:

1. By the present Petition, the petitioners call in question the legality and correctness of the judgment dated 10 December 2024 rendered by the Industrial Tribunal, Thane, in Review Application (IT) No. 1 of 2024 arising out of Reference (IT) No. 18 of 2020. It is required to be noted that by an earlier order dated 9 October 2023, the Tribunal had granted permission to thirty workmen, represented through Krantikari Kamgar Union, to be represented collectively through three authorised representatives, upon objection being raised by the respondent Company as regards the locus of the said Union. Subsequently, the respondent Company preferred a Review Application, and by the impugned judgment dated 10 December 2024, the Tribunal proceeded to review and set aside its earlier order. The petitioners have assailed the said impugned judgment on the ground that the Industrial Tribunal does not possess jurisdiction to entertain a review under the provisions of the Industrial Disputes Act, 1947.

2. The facts giving rise to the present Petition, stated in brief, disclose that in or about the year 2000, the concerned workmen, upon completion of in-plant training at the factory establishment of the respondent Company through Jagannath M. Rathi, Technical Training Institute in the trade of Chemical Process Operator for a duration of eighteen months, came to be engaged by the respondent Company. Such engagement was in the capacity of Process Operators and Process Attendants, though described as contract workmen. It further emerges that by the year 2008, approximately seven hundred workmen were engaged in the

establishment of the respondent Company under the nomenclature of contract workmen. During the period commencing from 1 August 2008 till 31 October 2008, and pursuant to agitation undertaken by the workmen demanding regularisation and direct employment, the respondent Company engaged the concerned workmen, who are subject matter of Reference (IT) No. 18 of 2020, as temporary employees for a limited duration of three months.

3. In the year 2010, this Court in Bharat Forge v. Maharashtra General Kamgar Sanghatana authoritatively held that even an unrecognised union is competent to espouse the cause of workmen at least up to the stage of reference under Section 10(1) of the Industrial Disputes Act, 1947. It is further seen that in the year 2014, the concerned workmen became members of Kamgar Utkarsha Sabha Union. In the same year, the Supreme Court in *Yamaha Motors Pvt. Ltd. v. Dharam Singh* laid down that workmen are entitled either to represent themselves or to authorise a few amongst them to espouse their cause under the Industrial Disputes Act, without the necessity of representation through a recognised union. On 15 April 2014, Kamgar Utkarsha Sabha addressed a demand notice to the respondent Company seeking that the concerned workmen be treated as direct and permanent employees and be extended wages, allowances and other service benefits at par with permanent employees. On 9 October 2016, in the absence of any amicable resolution, the dispute was referred to conciliation proceedings. During the course of conciliation, it was recorded that subject to successful completion of in-house tests and evaluation,

the concerned workmen would be considered for permanent absorption. Thereafter, on 10 April 2017, interviews and tests were conducted, pursuant to which the concerned workmen were appointed as permanent employees. However, they were designated as "Production Associate – Team Member (Technical)" and placed in a non-bargainable and non-workman category, notwithstanding that they continued to discharge duties substantially similar to those of workmen.

4. In the year 2018, as the grievances of the concerned workmen remained unredressed, they joined Krantikari Kamgar Union, a union registered under the Trade Unions Act, 1926. On 28 August 2018, the said Union submitted a Charter of Demands on behalf of the concerned workmen to the respondent Company. Upon failure of conciliation, the Government of Maharashtra, through the Deputy Labour Commissioner, Konkan Division, by order dated 18 December 2020, made a reference under the Industrial Disputes Act, 1947 to the Industrial Tribunal, Thane, which came to be registered as Reference (IT) No. 18 of 2020. The respondent Company thereafter filed its Written Statement on 23 February 2022 opposing the claims raised.

5. On 1 May 2022, in view of objections raised by the respondent Company regarding the locus of the Union, the concerned workmen collectively resolved that they would prosecute the proceedings through three authorised representatives instead of through the Union. An application to that effect came to be filed before the Industrial Tribunal on 21 July 2022 and was marked as Exhibit U-6. The respondent

Company filed its reply opposing the said application on 19 June 2023. By order dated 9 October 2023, the Industrial Tribunal allowed the said application and permitted the petitioners to represent the workmen collectively. However, thereafter, on 15 February 2024, the respondent Company preferred Review Application (IT) No. 1 of 2024 seeking review of the said order. The petitioners filed their reply to the Review Application on 17 August 2024 opposing the same. By the impugned judgment dated 10 December 2024, the Industrial Tribunal allowed the Review Application and recalled its earlier order dated 9 October 2023, observing that the earlier order suffered from an inadvertent error or mistake of fact. Being aggrieved by the said judgment dated 10 December 2024 passed in Review Application (IT) No. 1 of 2024 in Reference (IT) No. 18 of 2020, the petitioners have invoked the writ jurisdiction of this Court by filing the present Petition.

6. Ms. Jane Cox, learned Advocate appearing for the petitioners, submits that the law laid down by the Supreme Court, in a consistent line of authorities, makes it clear that the power of review vested in an Industrial Tribunal or Labour Court under the Industrial Disputes Act, 1947 is of a restricted character. According to her, such power is confined only to the correction of procedural irregularities or manifest errors apparent on the face of the record, which are attributable to the Tribunal itself. It is her submission that such jurisdiction may be invoked in situations where an order or award is rendered without issuance of notice to the opposite party due to a mistaken assumption of service, or where the matter is heard and decided on a date other than the date fixed for

hearing, or in other similar circumstances involving procedural lapses affecting the principles of natural justice. It is further urged that the Tribunal does not possess any substantive power to undertake a review on merits or to rehear the matter under the guise of correcting procedural defects.

7. Without prejudice to the aforesaid contentions, the learned Advocate further submits that even on an independent consideration of merits, the impugned judgment cannot be sustained in law. It is contended that the reasoning adopted by the Tribunal is contrary to settled principles and suffers from legal infirmity. On this basis, the petitioners pray that the present Petition be allowed and appropriate reliefs, as sought, be granted in the interest of justice.

8. Per contra, Ms. Rao, learned Advocate appearing for the respondents, has invited attention to the judgment of the Supreme Court in *Grindlays Bank Ltd. v. Central Govt. Industrial Tribunal,* 1980 (Supp) SCC 420 to contend that a distinction has been clearly drawn between procedural review and substantive review. It is submitted that a procedural review inheres in or is implied in a court or tribunal to correct a palpably erroneous order passed under a misapprehension, whereas a review on merits arises when the error sought to be corrected pertains to a question of law or is apparent on the face of the record. It is, therefore, urged that a review on merits is impermissible unless the statute expressly provides for such power. Inviting attention to the order dated 9 October 2023 passed by the Industrial Court, which formed the subject matter of review, learned Advocate for the respondents

submits that while passing the said order, the Industrial Court had considered the objection raised by the employer regarding maintainability of the application. While dealing with such objection, the Industrial Court recorded a finding that Kamgar Utkarsha Sabha is a recognised union functioning in the establishment of the first party and that a certificate of registration had been granted by the Industrial Court on 13 April 2005. In that backdrop, while permitting the workmen to prosecute the reference, it was observed that it is not mandatory that an industrial dispute must necessarily be espoused by a recognised or majority union. It is submitted that by the impugned order passed in purported exercise of review jurisdiction, which is not statutorily conferred, the Industrial Court has in substance re-examined the matter on merits, which is contrary to the principles laid down in the judgment in *Grindlays Bank*.

9. Learned Advocate appearing for respondent No.1-Union, placing reliance upon the judgment of a Coordinate Bench of this Court in *Hanuman Maruti Mandir Deostan v. State of Maharashtra* Writ Petition No.5567 of 2017 decided on 25 November 2024, submits that in the said case this Court was concerned with a situation involving non-consideration of a document which went to the root of the matter. It is submitted that in such circumstances, the Coordinate Bench held that the case would fall within the ambit of procedural irregularity going to the root of the proceedings and thereby vitiating the same. In the alternative, it is submitted that in the event this Court comes to the conclusion that the review application itself was not maintainable, liberty may be

granted to challenge the original order dated 09 October 2023 by initiating appropriate proceedings in accordance with law.

REASONS AND ANALYSIS:

10. I have heard the learned Advocate for the petitioners, the learned Advocate for respondent Company and the learned Advocate for respondent No.1 Union. I have also gone through the order dated 9 October 2023, the review order dated 10 December 2024 and the material placed before me.

11. The facts are not in dispute. The concerned workmen had long association with the establishment of the respondent Company. There is reference of their training, their working as contract workers, later temporary engagement, and then their eventual appointment as permanent employees with a different designation. Their grievance continued, and the dispute travelled through conciliation and then to reference before the Industrial Tribunal in Reference (IT) No. 18 of 2020. Thereafter, the workmen, due to objection raised by the Company about the locus of the Union, decided that they will be represented through three authorised petitioners. That application was allowed on 09 October 2023. Later the respondent Company moved review. The Tribunal accepted that review and recalled its earlier order on the ground of inadvertent error.

12. The position of law in this regard has been laid down by the Supreme Court in *Kapra Mazdoor Ekta Union v. Birla Cotton Spg. and Wvg. Mills Ltd.,* (2005) 13 SCC 777. The Supreme Court has explained that an Industrial Tribunal does not lose its authority

over the dispute immediately after passing an award. It continues to retain control over the proceedings till such time the award becomes enforceable. At the same time, the Supreme Court has placed a limitation on the nature of power which can be exercised during this period. It has been made clear that a limited kind of review is permissible, and that too in cases where there is some procedural defect. The Court has clarified that there is a distinction between what is called procedural review and what is called review on merits. This distinction goes to the root of the jurisdiction. A procedural review is concerned with the manner in which the decision was arrived at. It addresses defects in the process, such as absence of notice, misunderstanding about service, or hearing being conducted improperly. In such cases, the order is not corrected because it is wrong in conclusion, but because the process itself was defective. On the other hand, a review on merits involves re-examination of the correctness of the decision. It involves reconsidering the reasoning, re-evaluating the contentions, and arriving at a different conclusion. The Supreme Court has held that such a power cannot be exercised unless the statute permits it. Therefore, while a limited procedural correction may be allowed, a re-hearing on merits is not something which the Tribunal can assume to itself.

13. When this principle is applied to the facts of the present case, the position becomes clear. The order dated 9 October 2023, which was sought to be reviewed, was not passed in absence of the respondent. The record shows that the respondent had entered appearance and had filed its reply. The issue regarding locus of the

Union and the maintainability of the application was raised and argued. The Tribunal had the benefit of hearing both sides before arriving at its conclusion. It is also not the case that the matter was taken up on a date not fixed for hearing, or that there was confusion regarding notice. Thus, none of the circumstances which justify invocation of procedural review are present in the facts of this case.

14. In such situation, when the Tribunal entertained the review application and reconsidered the issue, what it did was to re-examine the correctness of its earlier reasoning. It went into the question as to whether the workmen could be represented in the manner permitted earlier. This exercise cannot be termed as correction of procedural error. It is a reappreciation of the issue itself. Once that is so, the action falls within the category of review on merits. As already noted, such power is not available to the Tribunal in absence of statutory provision. Therefore, the impugned order travels beyond the permissible limits of jurisdiction.

15. In this background, the contention raised on behalf of the petitioners that the Tribunal lacked jurisdiction is correct . An Industrial Tribunal is a creature of statute. It cannot exercise powers which are not conferred upon it either expressly or by necessary implication. The scheme of the Industrial Disputes Act does not provide for a substantive power of review enabling the Tribunal to reopen and reconsider its own decisions on merits. If such a power is assumed by describing the exercise as correction of error, it would amount to enlarging jurisdiction without authority

of law.

16. When the earlier order and the review order are read together, it becomes apparent that the Tribunal has revisited the same issue of representation of workmen and the maintainability of the application. This is not a situation where a typographical mistake or an accidental slip is being corrected. It is, in effect, a fresh adjudication of the same question from another angle. Such an exercise falls outside the scope of procedural review and enters the area of review on merits.

17. The reliance placed by the respondents on the judgment in *Hanuman Maruti Mandir Deostan*, does not advance their case in any manner. That decision was dealing with a situation where a material document, having bearing on the outcome, was not considered at all by the authority. The Coordinate Bench found that such non-consideration was not a mere irregularity, but it affected the root of the adjudication. Because of that omission, the entire proceeding stood vitiate. In that context, the Court treated the defect as procedural in character, since the process of adjudication itself was incomplete. However, it cannot be accepted that every alleged error in appreciation of facts can be brought within the fold of procedural defect. Such an approach would enlarge the concept of procedural review beyond permissible limits. The Court must examine the substance of the erro. In the present case, it is not shown that any document of such fundamental importance was ignored without giving opportunity to the parties. The record indicates that both sides were heard on the question of representation. The objections were raised and the

Tribunal applied its mind before arriving at a conclusion. Therefore, it cannot be said that the earlier order suffered from any defect in procedure which vitiated the entire proceeding.

18. What has happened here is of a different nature. The Tribunal, after considering the issue, took a particular view on the entitlement of the workmen to be represented through authorised individuals. Subsequently, in review, it reconsidered the same issue and arrived at a different conclusion. This change is not because some material was excluded from consideration, but because the Tribunal chose to reassess its earlier reasoning. Such a situation stands on a different footing altogether. The principle laid down in the case relied upon by the respondents cannot be extended to cover such a case.

19. It is true that the order may not be perfect in every aspect, and some observations therein may require scrutiny. However, that does not justify reopening of the matter by way of review. The point is that the order was passed after affording opportunity to both sides, and after considering the rival submissions. Once such an adjudication has taken place, the same cannot be disturbed unless the case falls within the category of procedural defect. In the present case no such defect is established.

20. In effect, what the Tribunal has done is to revisit the same question and substitute a different view in place of the earlier one. This amounts to a rehearing of the matter. The Act does not permit a Tribunal to assume a power of substantive review. Therefore, the impugned action cannot be sustained.

21. In view of the foregoing discussion and reasons recorded hereinabove, the following order is passed:

(i) The writ petition is allowed;

(ii) The impugned judgment and order dated 10 December 2024 passed by the Industrial Tribunal, Thane in Review Application (IT) No. 1 of 2024 in Reference (IT) No. 18 of 2020 is quashed and set aside;

(iii) The order dated 9 October 2023 passed by the Industrial Tribunal on Exhibit U-6 stands restored;

(iv) It is, however, clarified that respondent Company is at liberty to challenge the said order dated 09 October 2023 by adopting such proceedings as are permissible in law, and in accordance with law;

(v) All contentions of the parties in that regard are expressly kept open;

(vi) Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

(AMIT BORKAR, J.)