

(1995) 05 AHC CK 0111
In the Allahabad High Court
Case No : C.M.W.P. No. 2003 of 1988

Ajanta Glass Works and Another	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 04-05-1995

Acts Referred:

Constitution of India, 1950 — Article 136, 226

Citation : (1995) 71 FLR 356 : (1996) 3 LLJ 797

Hon'ble Judges : P.K. Mukherjee, J

Bench : Single Bench

Advocate : B.B. Paul, for the Appellant; S.C and Suman Srivastava, for the Respondent

Final Decision : Disposed Of

Judgement

P.K. Mukherjee, J.—Having heard Sri B.B. Paul, learned Counsel for the petitioner and Ms. Suman Srivastava, learned Counsel for the workmen. I am of the view that since this petition is of 1988 origin, it should be finally disposed of at the admission stage, in accordance with Rules of the Court. Learned counsel for the parties are agreed for final disposal of the case.

2. Government of Uttar Pradesh referred a dispute, u/s 4-K of the U.P. Industrial Disputes Act. 1947, to the Industrial Tribunal (4).. Agra to decide as to whether action of the employers in retrenching their workmen with effect from November 10, 1965 is valid, if not to what relief the workmen are entitled to with particulars thereof.

3. Learned Counsel for the workmen contended that all pleas taken by the employer before Industrial Tribunal. Agra were considered, and rejected. The impugned award given by the Tribunal is well reasoned and needs no interference.

4. On the other hand, Sri B.B. Paul, learned Counsel for the employers submitted that the employers had raised two preliminary issues before the Tribunal; viz.,

Workmen Union is not competent to raise the dispute and since the industry is sick, no industrial dispute can be raised against such unit.

5. However, the aforesaid preliminary issues have not been accepted by the Tribunal by means of the impugned order, and the Tribunal intends to proceed with the hearing of the case.

6. The point in issue in the present case, is covered by a decision of Apex Court in D.P. Maheshwari Vs. Delhi Administration and Others, wherein, a Bench consisting of Hon"ble Mr. D.A. Desai. J.O. Chinnappa Reddy. J and A. Varadarajan, J. has observed as follows at PP 426-427

"Chinnappa Reddy. J..... There was a time when it was thought prudent and wise policy to decide preliminary issues first. But the time appears to have arrived for a reversal of that policy. We think it is better that Tribunals, Particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. Nor should High Courts in the exercise of their jurisdiction under Article 226 of the Constitution stop proceedings before a Tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of this High Court under Article 226 of the Constitution nor the jurisdiction of this Court under Article 136 may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill afford to wait by dragging the later from Court to Court for adjudication of peripheral issues, avoiding decision on issues more vital to them. Article 226 and Article 136 are not meant to be used to break the resistance of workmen in this fashion. Tribunals and Courts who are requested to decide preliminary questions must therefore, ask themselves whether such threshold part-adjudication is really necessary and whether it will not lead to other woeful consequences..."

7. In my view, the aforesaid ratio laid down by Apex Court is fully applicable to the facts and circumstances of the present case. The Tribunal was absolutely right in deciding the main reference, and this Court, in its extra-ordinary jurisdiction under Article 226 of the Constitution, cannot allow the matter to remain pending for decision of preliminary issue. The Tribunal is duty bound to decide preliminary issue when the main reference will be decided by it. and the parties, including the Management, are always at liberty to lead evidence on the said point.

8. This Court is of considered view that the writ jurisdiction should not be extended in favour of employers in consuming seven years to decide preliminary issue. It is unfortunate that the employer, namely, M/s. Ajanta Glass Works succeeded in obtaining an ex-parte interim order on February 12, 1988 from Hon"ble J.N. Dubey, J. of this court, as a result of which further proceedings in Adjudication Case No. 64 of 1987 is pending before Industrial Tribunal, (4), U.P. Agra for all these seven years.

9. The writ petition is disposed of with the direction to the Industrial Tribunal (4) U.P. Agra to decide Adjudication Case No. 64 of 1987, as quickly as possible, preferably within 6 months from the date of production of certified copy of this judgment and order, in accordance with law, after affording due opportunity to the parties to lead evidence Interim order dated February 12, 1988 is hereby vacated.