
(1964) 03 OHC CK 0021
In the Orissa High Court
Case No : O.J.C. No. 56 of 1963

Ajit Kumar Roy

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 11-03-1964

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 12(4), 12(5), 2

Citation : AIR 1964 Ori 255 : (1965) 31 CLT 241

Hon'ble Judges : R.L. Narasimham, C.J;G.K. Misra, J

Bench : Division Bench

Advocate : R.C. Ram, for the Appellant; A.G. and R.N. Misra, for the Respondent

Final Decision : Allowed

Judgement

Narasimham, C. J.

1. In this writ application a "workman" of the Hindustan Steel Limited, Rourkela has challenged the validity of the order passed by the Government of Orissa in the Labour Department dated 4-10-1962 declining to refer to the, Labour Court for adjudication a dispute between him and his employer namely the Hindustan Steel Limited, Rourkela, regarding the, termination of his services.

2. The impugned order was passed in exercise of the powers conferred by Sub-section (5) of Section 2 of the Industrial Disputes Act and reads as follows:

"Government of Orissa. Labour Department. _____ Office Memorandum.

No. 11-26/52 10746 Lab. Bhubaneswar -- dated 4-10-1962.

Sub: Industrial dispute between the management of Hindusthan Steel Limited and its workman Shri A. K. Roy.

Refr (1) Letter No. 360 (2) L. O. dated 15-2-1961 from the District Labour Officer-

cum-Conciliation Officer, Rourkela.

(2) Letter No. 6059 dated 20-3-1961 from Labour Commissioner, Orissa.

On consideration of the above reports Government is satisfied that the above dispute is not a fit case for reference for adjudication of the Labour Court because the procedure followed by the management in terminating the services of Sri Roy does not appear to be illegal.

Sd/. A. N. Mohapatra. Under Secretary to Government.

3. The petitioner was appointed as a fitter in the Blast Furnace Section of the Rourkela Steel plant on 19-9-1958. On 9-12-1960 his services were terminated on payment of three months" pay in lieu of notice. The order terminating his services is as follows:

"HINDUSTHAN STEEL LIMITED, ROURKELA STEEL PROJECT ROURKELA, ORISSA.

Office Order No. 3786 -- Dated the 9th December, 1960.

The services of Sri Ajit Kumar Ray, Fitter (passed out trainee) Blast Furnace Department, Rourkela Steel Project, Rourkela, are hereby terminated forthwith. He is entitled to three months" pay in lieu of notice.

His name will be removed from the establishment rolls, of this project from the date of his release.

Sd. P. Kannongo. Assistant Personnel Officer (General)

.. .. ."

The Rourkela Steel Mazdoor Union immediately took up his cause and requested the Deputy General Manager on 15-12-1960 to intervene and withdraw the discharge notice alleging that the termination of his services was extremely arbitrary, unreasonable, unjust and above all illegal. Subsequently the General Secretary of the Union, it appears, was interviewed by the Deputy General Manager on 23-12-60 and at that meeting the latter expressed his inability to take back the petitioner into service "on grounds of adverse report from Police sources".

The Union, however, continued to press for reconsideration of the matter stating that "since the workman was not given proper opportunity to defend himself, we strongly feel that the management should not have victimised him". The Union also referred the matter to the District Conciliation Officer who after giving notice to the parties tried to effect conciliation but was unsuccessful. Then he sent a failure report to the Government of Orissa on 15-2-1961 as quoted below in full.

"Government of Orissa District Labour Office Sundargarh, Rourkela.

No. 360 (2) L O. -- Dated Rourkela the 15th Feb. 1961.

To

The Secretary to the Govt. Labour Department.

Bhubanewar Labour Commissioner, Orissa, Cuttack.

Sub: Conciliation failure report on the Industrial dispute between the Management of Hindusthan Steed Limited and its workman, Sri Ajit Kumar Roy, represented through the General Secretary, Rourkela Steel Mazdoor Union, Rourkela.

Sir,

I am sending herewith my conciliation failure report as stated above for favour of your information and necessary action.

Yours faithfully Sd. 15-12-61 District Labour & Conciliation Officer, Sundargarh.

Conciliation failure report in the industrial dispute between the management of Hindusthan Steel Limited and its workman Shri Ajit Kumar Ray, represented through the General Secretary, Rourkela Steel Mazdoor Union, Rourkela.

Parties Present:

Representing management : Representing workman :

Sri C. M. Mohapatra Labour Welfare Officer, Hindustan Steel Ltd. Rourkela. Sri Nityananda Panda General Secretary, Rourkela Steel Mazdoor Union.

1. Short notes on dispute: The Union raised the dispute on the following ground:

Shri Ajit Kumar Ray was working as Blast Furnace Fitter in Hindusthan Steel Limited and he was suddenly discharged from service from 14-12-1960. To this effect a dispute was raised by the Union and conciliation was taken up. The management, after taking three adjournments attended the conciliation on 14-1-1961. In the conciliation nothing could be discussed because the management representative submitted that Shri Ray had been discharged on the basis of some confidential report of the State Police Department and they wanted that this information should be kept confidential. They did not agree to take back Shri Ray and the conciliation failed.

2. Comprehensive Report: In this context I investigated into the matter and personally contacted the Deputy General Manager (P) Hindusthan Steel. He said that he had got some adverse police report from the State Police Department against Shri Ajit Kumar Ray and accordingly then discharged him. He did not show me the report in this respect. However such discharge on the, ground of some alleged misconduct on adverse police report could have been done by giving the delinquent charge-sheet, calling of explanation and domestic enquiry, etc. In the absence of all these principles the discharge in the instant, case

becomes arbitrary and against the principles of natural justice as the workman has not been given a reasonable opportunity to defend himself of the charges levelled against him. But the management wanted to keep the said police report confidential and simply discharged the said worker. The said worker is an executive, member of the said Union.

3. From the point of law it is a grievous miscarriage of natural justice that the workman had not been given a reasonable opportunity to defend himself. Hence this case warrants a reference. But as policy matters and police reports are involved in it, I am unable to say whether this is a fit case for reference to adjudication or not.

4. Only one worker is involved in the said dispute.

5. The Union sponsoring the dispute is affiliated to U.T.U.C.

6. The Union agreed for arbitration and adjudication, but the management representative did not agree to it.

7. The management contravened the code of discipline by not agreeing to voluntary arbitration and adjudication.

8. No strike or lock-out exists in the concern in respect of this dispute.

9. The Rourkela Mazdoor Sabha is interested in this dispute.

Sd. District Labour Officer and Conciliation Officer, Sundargarh, Rourkela.

....."

He also sent a copy of this report to the Labour Commissioner, Orissa, it appears from Government of Orissa, Labour Department notification No. 12384-11-147/60 Lab. dated 17th December, 1960 (published in the Orissa Gazette of the 23rd Decr. 1960) that the Labour Commissioner Orissa was appointed as ex officio Conciliation Officer for the entire State and in that capacity he is the superior of the District Conciliation Officer. The Labour Commissioner, on receipt of the District Conciliation Officer's aforesaid failure report, re-examined the entire question and submitted his own report to Government on the 20th March, 1961, I give below relevant extracts from his report:

". On a perusal of the discharge order of Shri A. K. Roy (copy enclosed) it would appear that the management of Hindusthan Steel Limited have not assigned any reason for terminating the services of Sri A. K. Roy. However they have offered three months' wages in lieu of notice. During the conciliation proceedings they are reported to have said that on the basis of a police report they have terminated the services of Sri A. K. Roy. It is not understood how the services of any workman would be terminated simply on the basis of a report from Police authorities without any reason whatsoever when there are no such clear cut provisions in the contract of service. Even assuming that the

management have a right to terminate the services of a particular workman according to contract, the management in fact cannot do so according to their sweet will without any justified ground. In this connection, the decision of the Supreme Court reported in Assam Oil Company Vs. Its Workmen, , may kindly be perused. The representatives of Rourkela Steel Mazdoor Union have stated that this is purely a case of victimisation inasmuch as the services of Sri A. K. Roy have been terminated by Hindustan Steel Ltd., only because Sri A. K. Roy was elected one of the office bearers since October, 1960. When the representatives of Hindusthan Steel did not dispute this point and, in fact have not followed the principles of natural justice in terminating the services of Sri Roy and as there was no contract of employment according to which the services of Sri Roy are terminated one is led to believe that it is a case of victimisation

I feel that the action of the management of Hindusthan Steel Limited to discharging Sri A. K. Roy does not seem to be justified and therefore the following issue may kindly be considered for reference to the Labour Court for adjudication.

"Whether the termination of the services of Sri Roy is legal and or justified. If not, what relief Sri A. K. Roy is entitled to?"

The aforesaid irregularities may also be brought to the notice of the appropriate Ministry, Government of India, since such an unilateral and unjustified action would tend to induct tension in the labour management relationship at Rourkela which does not appear to be satisfactory for some time past"

4. It will be noticed that the District Conciliation Officer was of the view that

"if was a grievous miscarriage of natural justice that the workman should be removed without being given a reasonable opportunity to defend himself."

but he did not make any specific recommendation to Govern- merit but merely stated that:

"as policy matters and police reports are involved in it I am enable to say whether this is a fit case for reference to arbitration or not".

But the Labour Commissioner did not shirk his responsibility in this manner. He mentioned the fact that the Labour Union alleged that the discharge of the petitioner was not done bona fide in exercise of the management's rights under the contract as between the employee and the employer, but that the petitioner was victimised because he was elected as one of the office-bearers of the Mazdoor Union since October 1960. The Labour Commissioner further observed "One is fed to believe that it is a case of victimisation". Hence he recommended to Government to refer the dispute to the Labour Court for adjudication. Government took nearly 1 year and 7 months thereafter to pass orders and eventually on 4-10-1962 declined to refer the case to the Labour Court for adjudication merely observing that "the procedure followed by the management does not appear to be illegal."

5. There is no doubt that this is a "labour dispute" within the meaning of the Industrial Disputes Act even though it relates to discharge from service of an industrial workman because the Rourkela Steel Mazdoor Union had taken up his cause both before the employer and before the District Conciliation Officer.

6. The question for consideration is whether this court in exercise of its limited powers under Article 226 can quash the impugned order of the Government of Orissa. On this point the recent decision of the Supreme Court in *State of Bombay Vs. K.P. Krishnan and Others*, , is conclusive. There, their Lordships laid down that while passing "an order under Sub-section (5) of Section 12 of the Industrial Disputes Act, the Government must consider not only the report of the Conciliation Officer submitted under Sub-section (4) of that Section, but also other relevant factors. They further observed as follows while discussing the justifiability of the order passed by Government under Sub-section (5) of Section 12 of that Act:

"The order passed by Government u/s 12(5) may be administrative order and the reasons recorded by it may not be justiciable in the sense, that their propriety, adequacy or satisfactory character may not be open to judicial scrutiny :

in that sense it would be correct to say that the Court hearing a petition for mandamus is not sitting in appeal over the decision of Government; nevertheless, if the Court is satisfied that the reasons given by Government for refusing to make a reference, are extraneous and not germane, then the Court can issue and would be justified in issuing, a writ of mandamus even in respect of such an administrative order."

In an earlier passage they observed:

"Similarly, it is not disputed that if a party can show that the refusal to refer the dispute is not bona fide or is based on a consideration of wholly irrelevant facts and circumstances, a writ of mandamus would lie."

In a subsequent passage their Lordships made it clear that the Court has power to examine the reasons given by Government for declining to make a reference under Sub-section (5) of Section 12 with a view to see whether those reasons are germane or relevant "to the issues between the parties".

7. We have therefore to consider; firstly what was the dispute or issue between the discharged workman (petitioner) and the management (Hindusthan Steel) that was before the Govt. and secondly whether the reasons given by Govt. for refusing to make a reference are "germane or relevant to the said issue". The Government order under challenge itself says clearly that they perused not only the failure report of the Conciliation Officer but also the report of the Labour Commissioner dated 20-3-1961. Therefore it may be reasonably held that they were fully aware that two disputes or issues were raised in connection with the discharge of the petitioner from service, namely (i) whether the order of discharge was arbitrary inasmuch as the principles of natural justice were not

complied with as reported by the Conciliation Officer: and (ii) whether apart from offending the principles of natural justice the order was mala fide having been resorted to mainly because the petitioner became an office-bearer of the Union in October 1960? The Labour Commissioner was inclined to think that this was a case of victimisation. With these two issues before them Government should, before refusing to make a reference for adjudication have given reasons which were germane or relevant to those issues. Their mere statement that the procedure followed by the management does not appear to be illegal may possibly be relevant so far as the issue relating to, violation of principles of natural justice is concerned. But as regards the other issue namely whether the discharge was made mala fide by way of victimisation merely because the petitioner became the office bearer of the Union in October 1960, the Govt. order is entirely silent though they have stated that they read the letter of the Labour Commissioner dated 20-3-61. They have given no reasons as to why they disagreed with the view that this was a case of victimisation. Thus so far as this issue is concerned the impugned order suffers from the infirmity of being based on no reason whatsoever.

8. Their Lordships of the Supreme Court in the case of *The Management of U.B. Dutt and Co. Vs. Workmen of U.B. Dutt and Co.*, have pointed out that

"it is too late in the day for any employer to raise a claim to terminate the services of an employee at any time by, just giving notice or by paying wages in lieu thereof".

They further pointed out that even when the employer purports to exercise his contractual right of terminating the services of a workman the Labour Court has jurisdiction to examine whether such termination was bona fide or else whether it was a colourable exercise of power or the result of victimisation. It is true that in the counter affidavit filed by the Hindusthan Steel Ltd. they emphatically denied the suggestion that the petitioner was victimised merely because he became an office-bearer of the Union in October 1960, but in this connection the fact that his services were terminated practically within two months of his becoming an officer bearer of the Union is also relevant. These matters will eventually have to be decided by the labour Court. When the Labour Commissioner specifically invited the attention of Government to the fact that apart from failure to comply with the rules of natural justice there were specific allegations of victimisation of the petitioner on the ground that he became an office bearer of the Mazdoor Union, and when he further stated that he was led to believe that this was a case of victimisation, Government should have given their reasons as to why they disagreed with the view of the Labour Commissioner on this vital issue.

9. I should further observe that in this case there has been a shocking delay on the part of Government in passing orders u/s 12(5) of the Industrial Disputes Act. The report of the Labour Commissioner is dated 20-3-1961. The Government passed the impugned order on 4-10-1962 nearly one year and

seven months thereafter. In this case where the urgency was obvious there was no justification for the Government to make so much time to make up their mind not to refer this dispute for adjudication. In a dispute between a low-paid employee and his powerful employer, such delays tilt the scales very much in favour of the latter.

For these reasons, we allow this application, quash the order of Government in the Labour Department dated 4-10-1962 (quoted above), and issue a mandamus on them to reconsider the question of making a reference u/s 12(5) of the Industrial Disputes Act and then dispose of the matter according to law. The petitioner is entitled to costs of this application. Hearing fee is fixed at Rs. 100/- (one hundred only) to be apportioned equally between the State of Orissa (Opposite Party 1) and the General Manager, Hindusthan Steel Limited, Rourkela (opposite party No. 2).

Misra, J.

10. I agree.