
(2002) 03 RAJ CK 0044

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1871 of 2001

Alcobex Metals Ltd.

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 08-03-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 12(5), 2

Citation : (2003) 2 RLW 744 : (2002) 4 WLN 475

Hon'ble Judges : B.S. Chauhan, J

Bench : Single Bench

Advocate : P.K. Lohra, for the Appellant; S.K. Malik, for the Respondent

Final Decision : Dismissed

Judgement

Chauhan, J.—Both these petitions have been filed challenging the reference made by the Appropriate Government under the provisions of the Industrial Disputes Act, 1947 (for short, "the Act") dated 6.11.99 on the ground that earlier, vide order dated 5.7.95, in respect of the same workmen, the Appropriate Government refused to make a reference and as the said workmen had been appointed for a fixed term, the termination of their services was covered by the provisions of Section 2(oo)(bb) of the Act and, therefore, there could be no industrial dispute and the Appropriate Government committed an error in making the reference, hence the same deserves to be quashed.

2. The facts are not in dispute. The workmen, in respect of whom the reference has been made, had been employed by the present petitioner and their services stood terminated. Earlier, inspite of raising the industrial dispute, the Appropriate Government refused to make a reference, however, at a later stage, the reference has been made. Hence these petitions.

3. I have considered the rival submissions made by the learned counsel for parties and perused the record.

4. Public Policy manifested in the industrial legislation is to achieve the aimed

justice and maintain industrial peace. In *Workmen of Indian Standard Institute v. Management of Indian Standard Institution*, the Hon"ble Supreme Court observed as under :-

".....it is necessary to remember that the Industrial Disputes Act, 1947 is a legislation intended to bring about peace and harmony between management and labour in an "industry" so that production does not suffer and at the same time, labour is not exploited and discontented and, therefore, the tests must be so applied as to give the widest, possible connotation to the term "industry". Whenever a question arises whether a particular concern is an "industry", the approach must be broad and liberal and not rigid or doctrinaire. We cannot forget that it is a social welfare legislation we are interpreting and we must place such an interpretation as would advance the object and purpose of the legislation and give full meaning and effect to it in the achievement of its avowed social objective."

5. It is settled legal proposition that while making a reference u/s 10(1) of the Act, the Appropriate Government performs an administrative act. The order is purely administrative in nature and certainly not of a judicial or quasi-judicial nature. (Vide *State of Madras v. C.P. Sarathy*, *State of Bombay v. K.P. Krishnan and Ors.*, and *Onkarnath Kapoor v. Union of India and Ors.*)

6. There can be no force in the contention raised by the petitioner that once the Appropriate Government refused to make a reference in 1995, there was no justification to make a reference again as such a contention has been negated by the Hon"ble Supreme Court in *Binny Ltd. v. Their Workmen and Anr.* In The said case, the Appropriate Government had refused to make a reference not only at one occasion but on two previous occasions, observing that no reference was called for. However, the Hon"ble Supreme Court observed that there was no bar to make a reference again. Such a view was taken for the reason that there may be some material at the later stage which may have persuaded the Appropriate Government to make a reference.

7. In *M/s. Western India Watch Co. Ltd. v. Western India Watch Company's Workers Union and Ors.*, the Hon"ble Supreme Court observed as under :-

"It would be difficult to hold that once the Government has refused to refer; it cannot change its mind on a re- consideration of the matter either because new facts have come to light for because it has misunderstood the existing fact or for any other relevant consideration and decided to make the reference.... The function of the Government either u/s 10(1) of the Central Act or under a similar provision in the State Act being administrative principle, such as res-judicata applicable to judicial act did not apply and such a provision cannot be imported for consideration when the Government first refused to refer and later changed its mind. In fact, when the Government refuses to make a reference, it does not exercise its power; either it refused to exercise its power and it is only when it decides to refer that it exercises its power. Ultimately the power to refer cannot

be said to have been exhausted when it has declined to make a reference at an earlier stage... In this view, the mere fact that there has been a lapse of time or that a party to dispute was, by the earlier refusal, led to believe that there would be no reference and acted upon such belief does not affect the jurisdiction of the Government to make the reference."

8. Similarly, in *M/s. Avon Services Production Agencies (P) Ltd. v. Industrial Tribunal, Haryana*, the Apex Court observed as under :-

"It follows that the Government does not lack the power to make the reference in respect of the same industrial dispute which it once declined to refer.... It is not absolutely necessary that there ought to be fresh material before the Government for reconsideration of its earlier decision."

9. The Court further observed that the adequacy or sufficiency of the material, on which the opinion was formed, is beyond the pale of judicial scrutiny.

10. Similar view has been reiterated by the Constitution Bench of the Hon'ble Supreme Court in *State of Madras v. C.P. Sarathy* (supra), wherein the Apex Court observed that while making a reference under the provisions of the Act, the Government performs purely an administrative act and the Court cannot, therefore, "convass the order of reference closely to see if there was any material before the Government to support its conclusion, as if it was a judicial or quasi-judicial determination." The Court further held that the Government cannot go into the merits of the dispute, its functions being only to refer such dispute for adjudication to the Labour Court.

11. As the order of refusal to make a reference is purely an administrative and Sub-section (5) of Section 12 of the Act does not enjoin upon the Appropriate Government to record reasons for making reference u/s 10(1), there may be no obligation on the part of the Appropriate Government to hear the employer before making the reference on second representation. (*Vide Sultan Singh v. State of Haryana*).

12. While making a reference, undoubtedly, the Government has to weigh the facts keeping in mind the objective of the Act and may take into consideration all the facts as in certain cases, the facts may clearly reveal that there is no industrial dispute, e.g. a reference may be sought by a job-seeker and not by a person who was already in employment. In such a case, the Government may be justified in refusing the reference as the case does not fall within the ambit of the Act (*Vide Bongaigaon Refinery & Petro-Chemicals Ltd. v. Samijuddin Ahmed*, or the settlement had reached between the employer and the union which was binding on the workman. Thus, there may be no real existing or apprehended industrial dispute. (*Vide Workmen v. I.I.T.I. Cycles of India Ltd. & Ors.* and *National Engineering Industry Ltd. v. State of Rajasthan and Ors.*).

13. Undoubtedly, the Government should be very slow to attempt an examination of the demand of a workman with a view to decline reference,

though in exceptional cases on a proper examination of the demand, it may come to the conclusion that the demands, being very stale, opposed to the provisions of the Act, inconsistent with any agreement, perverse or patently frivolous and not meriting a reference. It is not obligatory on the part of the Appropriate Government to make a reference in each and every case as it has to weigh the facts keeping in view the objective of industrial peace and smooth industrial relations between the parties.

14. In *Bombay Union of Journalists v. State of Bombay and Anr.*, the Hon^{ble} Supreme Court held that when the Appropriate Government considers the question as to whether a reference should be made u/s 12(5), it has to act u/s 10(1) of the Act, which confers discretion on the Government either to refer the dispute or not to refer it. Section 12(5) imposes an obligation on the Appropriate Government to record reasons for not making the reference. However, when the question involves raising a question of law, the Appropriate Government should not purport to reach a final decision on the same as it is a subject matter to be decided by the Industrial Tribunal. Similarly, on disputed question of fact, the Government cannot take the final conclusions as the same would also fall in the domain of the Tribunal, but it cannot be said that the Appropriate Government is precluded from considering even prima facie the merit of the dispute when it decides the question as to whether its power to make a reference should be exercised u/s 10(1) read with Section 12(5) of the Act. The (sic) observed as under :-

"If the claim made is patently frivolous or is clearly belated, the Appropriate Government may refuse to make reference."

15. The Constitution Bench of the Hon^{ble} Supreme Court, in *K.P. Krishan (supra)* has held that "there is an obligation on the Appropriate Government under the Act, to refer the dispute unless, of course, it is satisfied that the notice is frivolous or vexacious or that consideration of expediency requires that a reference should not be made. However, while making an order of refusing to make a reference, the Government should not be influenced by reasons which are wholly extraneous or irrelevant or which are not germane, and while considering the expediency, the Appropriate Government is not excluded to consider whether or not, it should exercise its powers to make a reference. Even in dealing with the question as to whether it would be expedient or not to make a reference, the Government must not act in punitive spirit but must consider the question fairly and reasonably and take into account only the relevant facts and circumstances."

16. The Apex Court in *Madhya Pradesh Irrigation Karamchari Sangh v. State of M.P. and Anr.*, and *V. Veerarajan and Ors. v. Government of Tamil Nadu*, first considered the judgment in *Bombay Union of Journalists (supra)* and made observation that in certain circumstances, the Appropriate Government may refuse to make reference but took note of the observations made in the said case itself to the following effect :-

"Similarly, on disputed question of fact, the Appropriate Government cannot purport to reach final conclusions, for that occasion would be the province of the Industrial Tribunal.....There may be exceptional cases in which the State Govt. may, on a proper examination of the demand, come to the conclusion that the demands are either perverse or frivolous and do not merit a reference. Government should be very slow to attempt an examination of the demand with a view to decline reference and courts will always be vigilant whenever the Government attempts to usurp the powers of Tribunal for adjudication of the valid dispute. To allow the Government to do so would be to render Sections 10 and 12 of the Industrial Disputes Act nugatory."

17. In view of the above, the Hon"ble Supreme Court issued direction to the Government to make a reference.

18. In TELCO Convoy Drivers Mazdodor Sangh v. State of Bihar and Ors., the Hon"ble Supreme Court held that while considering the notice for making a reference, the Appropriate Government has no competence to go into the question whether master and servant relationship existed, or enter into the merit of the dispute and if the Appropriate Government has entered into the merit of the case, the Writ Court is bound to interfere. Same view has been reiterated in Dhanbad Colliery Karamchari Sangh v. Union of India and Ors.

19. In Abad Dairy Dudh Vitran Kendra Sanchalak Mandal v. Abad Dairy, the Hon"ble Supreme Court observed as under :-

"Having regard to the facts and voluminous evidence sought to be adduced by both the parties, the question whether the appellants are workmen, requires detailed investigation of facts. The issue requires detailed examination and can be satisfactorily adjudicated upon only by a Tribunal."

20. Similar view has been reiterated in Prem Kakkar v. State of Haryana.

21. Thus, in view of the above, the settled legal proposition, which emerges, is that the Appropriate Government, before making a reference, may prima facie examine that the representation made by the workman or union is not for a stale/frivolous/vexatious adjudication or the case may primarily not even fall within the ambit of the Act, but it certainly does not have the power to adjudicate upon the issue involved and refuse the reference after examining the merit of the case. Moreso, as the refusal to make a reference is purely an administrative order and not of a judicial or quasi-judicial nature, second reference even without issuing notice to the employer, is not prohibited.

22. Once the reference has been made, there is no bar for judicial review by the Writ Court, but the said jurisdiction is very limited and it may be only to examine the issues of jurisdiction of Industrial Tribunal or there was no industrial dispute at all, or the reference had been made entirely on a consideration irrelevant or foreign material or the dispute referred to did not fall within the ambit of the Act. (Vide Nedungadi Bank Ltd. v. K.P. Madhavankutty and Ors., and Secretary, Indian

Tea Association v. Ajit Kumar Barat and Ors.

23. It may be pertinent to mention here that in the above- referred cases regarding the scope of judicial review of a reference, the decision was given by two Hon"ble Judges without taking note of a judgment of Three Hon"ble Judges in S.K, Verma v. Mahesh Chandra, wherein the Apex Court held that maintainability of a reference by the Appropriate Government should not be questioned on mere technical ground, as such there is no industry, or industrial dispute or the employee concern is not a workman, for the reason that "an attempt to avoid adjudication or to indulge in luxurious litigation and drag the workman from Court to Court merely to vindicate not justice but some rigid technical stand taken by them and in such circumstances, the workman may not be able to fight with the mighty employer."

24. Similarly, in Workmen Employed by Hindustan Lever Ltd. v. Hindustan Lever Ltd., the Apex Court observed as under :-

"It is most unfortunate that all those "unhealthy and injudicious practices resorted to for unduly delaying the culmination of civil proceedings have stealthily crept in, for reasons not unknown, in the adjudication of industrial dispute for the resolution of which an informal forum and simple procedure were devised with the avowed object of keeping them free from delatory practices of civil courts."

25. The Court further disapproved and deprecated the practice of raising frivolous objections at the instance of the employer to delay and defeat by exhausting the workman the out-come of the dispute. Similar view has been reiterated by the Hon"ble Supreme Court in D.P. Maheshwari v. Delhi Administration and Ors., deprecating the practice of raising objection at an intermediary stage which the Court found that by adopting this methodology, the employer keeps the industrial peace hanging in the balance in the meanwhile.

26. Moreso, the issue referred for adjudication to the Labour Court mainly involves the question of fact, which cannot be decided by the Government. Therefore, it is desirable not to interfere at such a stage and even if the Government refused to make a reference, the Courts may issue the direction in appropriate case to refer the dispute for adjudication. (Vide Nirmal Singh v. State of Punjab and Ors.

27. In Sambhunath Goyal v. Bank of Baroda, the Supreme Court held that once a reference is made, the Court, in its limited power of judicial review in such cases, cannot determine whether there were sufficient reasons before the Appropriate Government for making the reference as the scope of interference is limited only in exceptional cases and that is limited only to whether the Government has taken the relevant factors into consideration and reference is not based on irrelevant consideration or on unlawful behaviour of the Government, the Courts have to be very slow in interfering with the reference made by the Government. (Vide Hochtief Gammon v. State of Orissa and Ors.

28. If the instant case is examined in view of the aforesaid settled legal propositions, the contention raised by Mr. Lohra, learned counsel for petitioner, cannot be accepted that as the appointment was made for a particular period, their employment was covered by the provisions of Section 2(oo)(bb) of the Act, as it is still open to the workmen to contend that the appointment for a particular period itself was an unfair labour practice depriving them of the benefit of the Act as the work, on which they were employed, had been of a perenial nature and by offering appointment for a particular period, the employer may deprive the workmen from the benefit of the Act. It may not be out of place to mention here that this Court, vide order dated 23.5.2001, specifically asked the petitioner to file additional affidavit explaining that as what was the nature of the work assigned to them and whether it came to an end on expiry of the tenure of their appointment. The reply had been filed in a very vague terms stating that the work was not of perenial nature and the workmen has been given the tenure appointment to meet the exigency without disclosing as what was the nature of their duty, what was the exigency which came to an end so soon and a bald assertion that as they had been appointed on the tenure posts to meet a particular exigency, does not meet the requirement of the aforesaid order passed by this Court. As the cases involve disputed questions of facts and can be resolved only by adjudication before the Labour Court by leading evidence, no interference is warranted at this stage.

29. The petitions are devoid of any merit and accordingly dismissed. However, it is clarified that no observation has been made herein on merit of the dispute as the same is to be adjudicated upon by the Labour Court and observation, if any, has been made only to decide the present controversy. There shall be no order as to costs.