
(1999) 07 OHC CK 0032
In the Orissa High Court
Case No : O.J.C. No. 7995 of 1995

Alekh Bihari Rout

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 02-07-1999

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 12(5)

Citation : (2000) 1 LLJ 512

Hon'ble Judges : A. Pasayat, Acting C.J.; P.K. Misra, J

Bench : Division Bench

Advocate : B.P. Tripathy, S.N. Mishra, P.K. Chand and D. Satpathy, for the Appellant; A.S. Naidu, P.K. Mohapatra and P.K. Patnaik, for the Respondent

Final Decision : Allowed

Judgement

A. Pasayat, Actg.C.J.

1. Sole point that arises for consideration in this writ application is whether refusal to refer a dispute for adjudication by the Industrial Tribunal is proper. The grounds for refusal were that petitioner had not completed more than 240 days of continuous service in any calendar year, and on the basis of written test and interview conducted on February 24, 1991 and March 27, 1991 respectively. Central Bank of India (hereinafter referred to as "employer"), had prepared a panel list of 27 candidates on the basis of merit and petitioner was not included in the panel list. Additionally it was noted that 5 candidates have come to this Court in OJC No. 695 of 1994, and therefore, matter was subjudice and there was likelihood of decision of the said writ application affecting all empanelled candidates. Impugned order was passed in purported exercise of power u/s 12(5) of Industrial Disputes Act, 1947 (in short, the "Act").

2. Petitioner's case is that he has been illegally kept out of employment and a grievance was lodged before the Assistant Labour Commissioner, Bhubaneswar who submitted a failure conciliation report. On consideration of the same,

Government of India in the Ministry of Labour by the impugned order dated September 25, 1995 (Annexure-5) refused to refer the matter for adjudication as noted above.

3. Learned counsel for petitioner submitted that approach of the authority is erroneous. It has failed to exercise its jurisdiction conferred in law by prejudging several issues. Further, conclusions were not factually correct, and OJC No. 695 of 1994 has no nexus with the present dispute. Learned counsel for employer submitted that concerned Government is not bound to make a reference and can weed out frivolous claims and disputes giving colour of industrial dispute and on being satisfied that dispute raised is not an industrial dispute, refusal to make a reference can be made.

4. It is open to the State Government to take broad features into consideration while exercising jurisdiction u/s 10(1) of the Act. 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, and Section 10(1) confers discretion on the appropriate Government either to refer the dispute, or not to refer it, for industrial adjudication according as it is of the opinion that it is expedient to do so or not. In other words, in dealing with an industrial dispute in respect of which a failure report has been submitted u/s 12(4), the appropriate Government ultimately exercises its power u/s 10(1), subject to this that Section 12(5) imposes an obligation on it to record reason for not making the reference when the dispute has gone through conciliation and failure report has been made u/s 12(4). When the appropriate Government considers the question as to whether any industrial dispute should be referred for adjudication or not, it may consider prima facie the merits of the dispute, and to take into account other relevant considerations which would help it to decide whether making a reference would be expedient or not. If dispute in question raises a question of law, appropriate Government should not purport to reach a final conclusion on the said question of law because that would normally lie within the jurisdiction of the Tribunal. Similarly on disputed questions of fact, appropriate Government cannot purport to reach final conclusions, for that again would be the province of the Tribunal. It cannot be laid down as a rule of general application that appropriate Government is precluded from considering even prima facie merits of 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), or not. If the claim made is patently frivolous, or is clearly belated, the appropriate Government may refuse to make a reference. Likewise, if the impact of the claim on the general relations between the employer and the employees in the region is likely to be adverse, the appropriate Government may take that into account in deciding whether a reference should be made or not. It must, therefore, be held that a prima facie examination of the merits cannot be said to be foreign to the enquiry which the appropriate Government is entitled to make in dealing with a dispute u/s 10(1). A very limited jurisdiction to the State Government to examine patent, frivolous demand has to be conceded, but it has to be understood as a rule of adjudication

of demands made by workman should be left to the Tribunal to decide. Section 10 permits the appropriate Government to determine whether dispute exists or is apprehended, and then refer the matter for adjudication. Demarcated functions are (1) reference and (2) adjudication. There may be exceptional cases in which State Government may on proper examination of demand come to a conclusion that demands are either perverse or frivolous and do not merit a reference. Government should be very slow to attempt an examination of demand with a view to decline reference. Courts will always be vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of valid disputes. This position has been elaborately dealt with by Apex Court in *Bombay Union of Journalists and Others Vs. The State of Bombay and Another*, and *M.P. Irrigation Karamchari Sangh Vs. State of M.P. and Another*, . These aspects were also highlighted by one of us (PASAYAT, J.) in *Bholanath Majhi Vs. Government of Orissa and Another*, The appropriate Government cannot purport to reach final conclusion for that again would be the province of the Industrial Tribunal. If the Government perform an administrative act while either making or refusing to make a reference u/s 10(1), it cannot delve into the merits of the dispute and take upon itself the determination of lis. That would certainly be in excess of the power conferred by Section 10. Section 10 requires the appropriate Government to be satisfied that an industrial dispute exists or is apprehended. This may permit the appropriate Government to determine prima facie whether an industrial dispute exists or the claim is frivolous or put forth for extraneous and irrelevant reasons not for justice or industrial peace and harmony. Every administrative determination must be based on grounds relevant and germane to the exercise of power. If the administrative determination is based on grounds irrelevant, extraneous or not germane to the exercise of power it is liable to be questioned in exercise of the power of judicial review. These aspects were highlighted by the Apex Court in *Ram Avtar Sharma and Others Vs. State of Haryana and Another*, Though it is open to the appropriate Government to take the broad features into consideration while exercising jurisdiction u/s 10(1) of the Act, the Government should not purport to reach a final conclusion either in respect of a question of law or in respect of disputed questions of fact. (See *V. Veerarajan and others Vs. Government of Tamil Nadu and others*, Primary object of the Act is to bring industrial peace. The Tribunals and Labour Courts under the Act are the instruments for achieving the same objective. The appropriate Government is required to keep this view while deciding whether a reference is to be made or not.

5. Judged in the background of legal position as elaborated above, the impugned order cannot be maintained as the concerned Government has examined merits of disputed factual aspects. Accordingly, we set aside refusal order vide Annexure-5 and direct consideration of the matter afresh keeping in view all relevant aspects.

The writ application is allowed to the extent indicated above. But in the circumstances, there shall be no order as to costs.

P. K. Misra, J.

6. I agree.