
(2002) 05 DEL CK 0076

In the Delhi High Court

Case No : Civil Writ Petition No. 3544/99

Apparel Export Promotion Council

APPELLANT

Vs

The P.O., Indul. Tribunal No. 1 and Others

RESPONDENT

Date of Decision : 16-05-2002

Acts Referred:

Constitution of India, 1950 — Article 239
General Clauses Act, 1897 — Section 3(60), 3(8)

Citation : (2002) 98 DLT 339 : (2002) 95 FLR 27 : (2002) 3 LLJ 511

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : S.K. Taneja, A.P. Dhamija and G.N. Pandey, for the Appellant;
Maridul and D. Nagger, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul,J.

1. Petitioner is aggrieved by an order of the Industrial Tribunal dated 15.3.1999 rejecting application of the petitioner for framing of additional issue and for treating the same as a preliminary issue in respect of the jurisdiction of the reference itself to the Industrial Tribunal. It is the contention of the petitioner that it is the Central Govt. and not the State Govt. which is the appropriate authority to make the reference.

2. In terms of the impugned order the Tribunal has not decided this controversy on merits but has come to the conclusion that the filing of the application was an attempt on part of the petitioner to un-necessary delay the proceedings.

3. It is observed in the impugned order that the petitioner continued to participate in the proceedings and only an adverse order was passed against them on 11.9.97 that they came up with request vide application dated 10.10.97 that they be allowed to held a fresh enquiry into the charges against respondent no.3-workman which was turned down on 19.8.1998 and the case was fixed for

evidence. Thus it has been found that the application has been filed only to delay the proceedings.

4. The aforesaid findings are based on the record of the case and I see no reason to differ with the same.

5. However since the issue in question relates to one of the jurisdiction itself, I consider appropriate to also consider the said issue on merits. The reason for the same is also that the same issue has been considered in CW No.2785/2000, Municipal Corporation of Delhi Vs. Mahavir and another decided on 7.3.2002. It has been held in the said judgment that in view of rule 2(f) of the Industrial Disputes (Central) Rules 1957, State Govt. would be competent authority to make the reference. The said rule 2(f) is as under:

"2. Interpretation.- (f) in relation to an industrial dispute in a Union territory, for which the appropriate Government is the Central Government, reference to the Central Government or the Government of India shall be construed as a reference to the Administrator of the territory, and reference to the Chief Labour Commissioner(Central), Regional Labour Commissioner (Central) and the Assistant Labour Commissioner(Central) shall be construed as reference to the appropriate authority, appointed in that behalf by the Administrator of the territory."

6. In Municipal Corporation of Delhi Vs. Mahavir and another (supra) judgment of the learned Single Judge of this Court in NBCC Ltd. Vs. M.K. Jain & Ors. 1981 LAB. I.C.62 was also taken note of where in paras 6 and 8 of the judgment learned single Judge observed as under:

"The Award was sought to be voided, inter alia, on the ground that by virtue of the constitution and composition of the Corporation, Central Government was the only authority competent to make a reference of the dispute to the industrial court and that the reference by the Lieutenant Governor of Delhi was, Therefore, in excess of powers.

"Even otherwise no exception could be taken to the order of reference, even if it be assumed that Central Government was the appropriate Government, inasmuch as the distinction between the Central and the State Governments in relation to the Union Territory in our constitutional framework is rendered illusory. Union Territory is administered by the President of India under Art.239 of the Constitution of India, acting to such extent as he thinks fit, through the Administrator, to be appointed by him. In the case of a Union Territory, there is an amalgamation of the constitutional classification of legislative and executive powers between the Centre and the States. According to Section 3(8) of the General Clauses Act, "Central Government" in relation to the administration of a Union Territory means the Administrator acting within the scope of authority given to him under Article 239 of the Constitution of India and in terms of Section 3(60) of the General Clauses Act, "State Government", as respects anything done or to be done in a Union Territory, means the Central Government.

In the case of a Union Territory, Therefore, the Central and State Governments merge and it is immaterial whether an order of reference is made by one or the other. This contention must, Therefore, fail."

7. In view of the aforesaid observations it was found that there can be no exception to an order of reference even if it is assumed that Central Govt. was the appropriate Govt.

8. The affect of the judgment of the Supreme Court in Goa Sampling Employees' Association Vs. General Superintendence Co. of India Pvt. Ltd. and Others, was also taken note of but it was found that the same was concerned with a distinction between the powers of the Administrator in the Union Territory of Delhi to that of a Governor in a State and the same would thus be applicable only in respect of the said issue since the effect of Rule 2(f) of the Rules was not in issue.

9. I am thus of the view that the ratio of MCD Vs. Mahavir and another's case (supra) would squarely apply to the facts of this case and thus no infirmity can be found in the reference made under the Industrial Disputes Act.

10. The writ petition is thus dismissed with the aforesaid findings. Parties are directed to appear before the Industrial Tribunal No. I in ID case No.740/89 on 15.7.2002. CM 7202/1999 Dismissed. Interim orders stand vacated.