
(2013) 07 GAU CK 0006
In the Gauhati High Court
Case No : WP (C) No. 5429 of 2010

Assam Power Distribution Company Ltd.	APPELLANT
Vs	
State of Assam and Others	RESPONDENT

Date of Decision : 20-07-2013

Acts Referred:

Citation : (2014) LabIC 35

Hon'ble Judges : Ujjal Bhuyan, J

Bench : Single Bench

Advocate : P. Bhowmik, for the Appellant; J. Handique, G.A. and Ms. R.T. Das, for the Respondent

Final Decision : Dismissed

Judgement

Ujjal Bhuyan, J.—Heard Mr. P. Bhowmik, learned counsel for the petitioner and Mr. J. Handique, learned Government Advocate, Assam appearing for Respondent No. 1. Also heard Ms. R.T. Das, learned counsel appearing for Respondent No. 3. Petitioner, Assam Power Distribution Company Limited, a successor company of Assam State Electricity Board and a Government company, has filed the present writ petition seeking quashing of Reference Case No 5/2010 pending in the Labour Court, Assam at Gauhati.

2. It appears that an industrial dispute was raised by the All Assam Casual Power Workers Union, a registered body, on behalf of the outsourced Bill Clerks of Nalbari Electrical Division of the petitioner company with the grievance that their wages have been reduced from Rs. 5 to Rs. 3. A conciliation proceeding was initiated before the Labour Officer, Nalbari. However, the conciliation proceeding failed and after receipt of report from the Labour Officer, Nalbari, Government of Assam in the Labour and Employment Department referred the industrial dispute for adjudication to the Labour Court, Assam vide notification dated 06.07.2010 u/s 10(1) of the Industrial Disputes Act, 1947. Based on the aforesaid, Labour Court had registered Reference Case No. 5/2010 and issued notices to both the management and the workmen to file written statement.

3. At that stage, petitioner company had approached this Court by filing the present writ petition.

4. Contention of the petitioner company as canvassed in the writ petition is that there is no employer and employee relationship between the petitioner company and the members of the Respondent No. 3 Union and, therefore, the reference is not maintainable.

5. This Court by order dated 04.10.2010 while issuing notice, had passed an interim order staying further proceeding of Reference Case No. 5/2010.

6. Reiterating the contention advanced in the writ petition, Mr. Bhowmik, learned counsel for the petitioner company submits that in the absence of employer-employee relationship, the State Government had no jurisdiction to make the reference and the Labour Court has also no jurisdiction to entertain the reference. Since the reference proceeding is without jurisdiction, this Court should intervene in the matter and quash the proceeding. In support of his submission, learned counsel has placed reliance on the following decisions of the Apex Court:--

1. Workmen of Nilgiri Coop. Mkt. Society Ltd. Vs. State of Tamil Nadu and Others,
2. State of Haryana and Others Vs. Charanjit Singh and Others, etc. etc.,
3. State of West Bengal and Another Vs. West Bengal Regn. Copy Writers Assn. and Another,

7. Learned State counsel on the other hand has referred to the affidavit filed by the Respondent No. 1 and contends that the reference is maintainable. Similar stand is also taken by the learned counsel appearing for Respondent No. 3.

8. Submissions made have been considered.

9. At the outset, notification dated 06-07-2010 issued by the Labour and Employment Department, Government of Assam in exercise of powers conferred u/s 10(1)(c) of the Industrial Disputes Act, 1947 may be referred to. The said notification dated 06.07.2010 reads as under:--

GOVERNMENT OF ASSAM LABOUR & EMPLOYMENT DEPARTMENT ORDERS BY THE GOVERNOR NOTIFICATION

Dated Dispur, the 6th July, 2010

No. GLR. 152/2010/16

Whereas an industrial dispute has arisen in the matter specified in the Schedule below between:- The Management of Nalbari Electrical Division, Nalbari and their workmen represented by All Assam Casual Power Worker's Union, Nalbari, Assam.

And whereas it is considered expedient by the Government of Assam to refer the

dispute for adjudication to P.O., Labour Court, Gauhati constituted u/s 7 of the Industrial Disputes Act, 1947 (Act XIV of 1947):

Now, therefore, in exercise of the powers conferred by Clause (c) sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Act-XIV of 1947) as amended the Governor of Assam is pleased to refer the said dispute to the Presiding Officer, Labour Court, Gauhati appointed under the provisions of the said Act.

SCHEDULE

(a) Whether the management of Nalbari Electrical Division is justified in reducing the rate of wages of the outsourcing Bill Clerks from Rs. 5/- to Rs. 3/-?

(b) If not what relief the workmen are entitled?

Sd/- D. Dey, ACS Under Secy. to the Govt. of Assam, Labour & Employment Department

10. Section 10 of the Industrial Disputes Act, 1947 deals with reference of dispute to Boards, Courts or Tribunals. As per clause (c) of sub-section (1), where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time by order in writing, refer the dispute or any matter appearing to be connected with or relevant to the dispute, if it relates to any matter specified in the second schedule, to a Labour Court for adjudication. The crucial words appearing in the aforesaid provision is "industrial dispute". If in the opinion of the appropriate Government, there is existence of any industrial dispute or such dispute is apprehended or in case of any matter which appears to be connected with or relevant to such "industrial dispute", the same may be referred to a Labour Court provided it relates to any matter specified in the second schedule. In the second schedule, which lists the matters within the jurisdiction of Labour Courts, apart from the enumerated matters, there is a residuary entry 6 which provides that all matters other than those specified in the third schedule shall be within the jurisdiction of Labour Courts.

11. "Industrial dispute" is defined in Section 2(k), which means any dispute or difference between-

(a) employers and employers,

(b) employers and workmen, or

(c) workmen and workmen,

which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.

12. Industrial Disputes Act, 1947 is a progressive piece of legislation and has been enacted with the object of ensuring social justice and for ensuring peace and harmony in the industrial sector. Narrow and restricted meanings should not be given to the expressions in the said Act and a pragmatic, not pedantic, approach should be adopted.

13. A conjoint reading of Section 2(k) and Section 10(1)(c) of the said Act will indicate that an expanded meaning has been given to the expression "industrial dispute" which is to be adjudicated by the Labour Court or by the tribunal as the case may be. It is a settled proposition that when a dispute is referred to the Labour Court or to the tribunal for adjudication, the presumption is that it is an industrial dispute. Even a dispute regarding contract labour has been held as amounting to industrial dispute. Thus, keeping in mind the objective of the Act, widest possible amplitude has to be given while interpreting the aforesaid provisions.

14. Having noticed the relevant legal provisions, the schedule to the notification dated 06.07.2010 may once again be referred to. The industrial dispute referred for adjudication to the Labour Court as appearing in the schedule is the justification or otherwise in the reduction of rate of wages of the outsourced Bill Clerks by the management of the Nalbari Electrical Division from Rs. 5 to Rs. 3.

15. The above is a dispute for the Labour Court to adjudicate and it would neither be fair nor proper for the writ Court to pre-empt adjudication of such dispute.

16. The decisions relied upon by Mr. Bhowmik, learned counsel for the petitioner in State of Haryana and Others Vs. Charanjit Singh and Others, etc. etc., and State of West Bengal and Another Vs. West Bengal Regn. Copy Writers Assn. and Another, are not at all applicable to the facts and circumstances of the present case as in the case of Charanjit Singh (supra), the issue before the Court was applicability of the principle of equal pay for equal work whereas in the West Bengal Registration Copywriters Association (supra) case, the issue before the Court was absorption of copy writers in the cadre of regular Government service.

17. In the case of Workmen of Nilgiri Coop. Mkt. Society Ltd. Vs. State of Tamil Nadu and Others, the Hon"ble Supreme Court held that the question as to whether a contract is a contract of service or contract for service and whether the employees concerned are employees of the contractor are vexed questions and no hard and fast rule can be laid down for determination of such question. Each case will have to be determined on the basis of the facts of that case.

18. Therefore, having regard to the discussions made above, I am of the view that the contention of the petitioner that the reference is not maintainable cannot be accepted.

19. I find no merit in the writ petition, which is accordingly dismissed.

20. Interim order passed earlier stands vacated. Parties shall appear before the Labour Court, Assam, Gauhati on 20.08.2013.