
(1991) 01 BOM CK 0006
In the Bombay High Court
Case No : Writ Petition No. 243 of 1989

Association of Engineering Workers	Vs	APPELLANT
State of Maharashtra and Others		RESPONDENT

Date of Decision : 17-01-1991

Acts Referred:

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

Citation : (1994) 3 LLJ 97

Hon'ble Judges : A.V. Savant, J

Bench : Single Bench

Advocate : S.J. Deshmukh and N.M. Ganguli, for the Appellant; C.U. Bora, for R 1 and 2 and M.H. Doshi, for R3, for the Respondent

Final Decision : Allowed

Judgement

A.V. Savant, J.—This petition by the Association of Engineering Workers of the third respondent-employer under Article 226 of the Constitution of India, seeks to challenge the letter/order dated 12th October, 1988 issued by the Deputy Commissioner of Labour, Bombay District, Bombay where under he was of the opinion that it was not a fit and proper case for making a reference u/s 12(5) of the Industrial Disputes Act, 1947. Since a question of law has been raised before me, a few facts may be stated:

2. There was some dispute about the quantum of peace cum productivity reward resulting in willful slowing down of the performance of the workmen between the period 4th March 1982 and 10th June 1982. A charge-sheet was framed on September 29, 1982. In the enquiry which followed, the workmen did not participate effectively and on 30th December, 1982 an order of dismissal was passed. The whole controversy, all along, related to six out of about 150 workmen employed by the third respondent-employer. On a dispute being raised, conciliation proceedings were held and on 22nd July, 1983 a failure report was sent u/s 12 Sub-section (4) of the said Act. The workmen had claimed reinstatement with full back wages. On 10th August, 1983 the Deputy

Commissioner of Labour held that there was no case for reference under Sub-section (5) of Section 12. Writ petition No. 2202 of 1983 filed by the six workmen was allowed by this Court on 27th September, 1984. The order passed by the Deputy Commissioner of Labour declining to make a reference under Sub-section (5) of Section 12 was set aside and he was directed to reconsider the demand of reference afresh and pass appropriate orders in a light of the observations made in the judgment within the period of four weeks thereof.

3. On 23rd November, 1984, the Deputy Commissioner of Labour held that he was satisfied that there was still no case for reference to adjudication under Sub-section (5) of Section 12 as it was not expedient to do so for the three reasons set out in the order. Writ Petition No. 1533 of 1984 was filed in this Court challenging the said order dated 23rd November, 1984. It is true that the said Writ Petition was rejected on 28th July, 1988. However, on an appeal, the Division Bench held that the generalisation made by the Deputy Commissioner of Labour in his order could not be equated with the application of mind and it was incumbent for the said officer to have given some indication of the material on the basis of which she had come to the three conclusions for turning down the request for reference. It was held that the application of mind must be manifest in the order itself and a mere reiteration of the statutory or stereo type verbiage or generalisation does not make for the reasons of the order. The Division Bench took the view that though the Deputy Commissioner was not called upon to write a detailed judgment, as do Courts of law, it was incumbent on her to have at least outlined the process of her reasoning by reference to the material before her. In the result the matter was sent back to the Deputy Commissioner of Labour with a direction to consider afresh the demand for reference. This was the second time that the matter was sent back by this Court on 28th July, 1988.

4. After this, the order impugned in the present petition came to be passed on 12th October, 1988. After setting out the rival contentions the Deputy Commissioner of Labour has come to the conclusion that it was inexpedient to make a reference in facts and circumstances of the case. He has held that he was satisfied that the enquiry was fair, proper and legal and was not vitiated on any of the grounds. He has, further held that as far as the quantum of punishment was concerned, the same was in consonance with the gravity of misconduct and did not appear to be vindictive or mala fide. He has further held that the misconduct of these workmen was such as was not conducive for industrial peace and referring such a dispute for industrial adjudication would amount to giving fillip to industrial unrest in the factory and that peace and tranquillity in the factory was likely to be affected.

5. It must be mentioned that the employer had filed a complaint under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 in which a finding was recorded that these employees had engaged in Unfair Labour Practice under Item No. 5 of Schedule III of the said 1971 Act. Item No. 5 of Schedule III of the said Act reads as under:-

"To stage, encourage or instigate such forms of coercive actions as willful go slow squatting on the work premises after working hours or "gherao" of any of the members of the managerial or other staff".

There were also proceedings u/s 33(C)(2) of the Industrial Disputes Act, viz., Application No. 41 of 1984 for recovery of the amount of bonus in which there was a prima facie finding recorded that the termination was for violent behaviour in the Company. The Deputy Commissioner of Labour has placed reliance on these two orders, namely (i) dated 19th November 1982 passed by the Industrial Court in Complaint No. 355 of 1982 and (ii) order dated 31st December 1986 passed by the Labour Court Bombay in application (IDA) No. 41 of 1984.

6. I have heard Shri Deshmukh and Shri Ganguli for the petitioner, Shri C.U. Bora for respondent nos. 1 and 2 and Smt. M.H. Doshi appearing for respondent No. 3.

7. The petitioner's main contention is that the refusal to make a reference u/s 12(5) has been based on the grounds which are either irrelevant or extraneous to the exercise of power. The further contention is that the Government while acting u/s 12(5) exercised only administrative power and no quasi-judicial power. The demarcated functions are (i) reference and (ii) adjudication. The grievance therefore, is that what the State Government has done in this case is not a prima facie examination of the merits of the questions involved but an adjudication which the Government was not competent to do.

8. In support of these contentions strong reliance has been placed by Shri Deshmukh on the judgments of the Supreme Court in the following three cases:

(i) 1964 I Lab LJ 351 Bombay Union of Journalists and Ors. v. The State of Bombay and Anr.

(ii) Ram Avtar Sharma and Others Vs. State of Haryana and Another, .

(iii) V. Veerarajan and others Vs. Government of Tamil Nadu and others, .

9. Citing the case of Bombay Union of Journalists, reliance has been placed on the observations appearing in Para 6 of the judgment at Page 1621 of the report. The said observations are as under:

"This argument must be rejected, because 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 reasons for not making the reference when the dispute has gone through conciliation and a failure report has been made u/s 12(4). This question has been considered by this Court in the case of the State of

Bombay Vs. K.P. Krishnan and Others, . The decision in that case clearly shows that when the appropriate Government considers the question so to whether any industrial dispute should be referred for adjudication or not, it may consider, prima facie the merits of the dispute and take into account other relevant considerations which would help it to decide whether making a reference would be expedient or not. It is true that if the dispute in question raises questions of law, the appropriate Government should not purport to reach a final decision on the said questions of law, because that would normally lie within the jurisdiction of the Industrial Tribunal. Similarly, on dispute questions of fact, the appropriate Government cannot purport to reach final conclusions, for that again would be the province of the Industrial Tribunal. But it would not be possible to accept the plea that the appropriate Government is precluded from considering even prima facie merits of the dispute when it decides the question as to whether its power to make a reference would 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 Govt. 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 Govt. is entitled to make in dealing with a dispute u/s 10(1), and so, the argument that the appropriate Govt. exceeded its jurisdiction in expressing its prima facie view on the nature of the termination of services of appellants 2 and 3 cannot be accepted".

10. As far as the case of Ram Avtar Sharma is concerned, Shri Deshmukh has placed reliance on the observations in Para 6 of the judgment appearing at pages 918 and 919 of the report as under:

"Accordingly, it is necessary to examine the reasons given by the Government to ascertain whether the determination of the Govt. was based on relevant considerations or irrelevant, extraneous considerations not germane to the determination."

Re: Writ Petition Nos. 16226-29/84:

The reasons assigned by the Government for refusing to make a reference are to be called out from the letter Annexure "A" dated September 1, 1984, sent by the Joint Secretary, Haryana Government, Labour Department to the petitioners. It is stated in the letter that: "The Government does not consider your case to be fit for reference for adjudication, to the Tribunal as it has been learnt that your services were terminated only after charges against you were proved in a domestic enquiry". The assumption underlying the reasons assignees by the Government is that the enquiry was consistent with the rules and the standing orders, that it was fair and just and that there was unbiased determination and the punishment was commensurate with the gravity of the misconduct. The last aspect has assumed considerable importance after the introduction of Section

11A in the Industrial Disputes Act by Industrial Disputes (Amendment) Act, 1971 with effect from December 19, 1971. It confers power on the Tribunal not only to examine the order of discharge or dismissal on merits as also to determine whether the punishment was commensurate with the gravity of the misconduct charged. In other words, Section 11A confers power on the Tribunal/Labour Court to examine the case of the workman whose service has been terminated either by discharge or dismissal qualitatively in the matter of nature of enquiry and quantitatively in the matter of adequacy or otherwise of punishment. The workmen questioned the legality and validity of the enquiry which aspect the Tribunal in a quasi-judicial determination was required to examine. A bare statement that a domestic enquiry was held in which charges were held to be proved, if it is considered sufficient for not exercising power of making a reference u/s 10(1), almost all cases of termination of services cannot go before the Tribunal. And it would render Section 2A of the Act denuded of all its content and meaning. The reasons given by the Government would show that the Government examined the relevant papers of enquiry and the Government was satisfied that it was legally valid and that there was sufficient and adequate evidence to hold the charges proved. It would further appear that the Government was satisfied that the enquiry was not biased against the workman and the punishment was commensurate with the gravity of the misconduct charged. All these relevant and vital aspects have to be examined by the Industrial Tribunal while adjudicating upon the reference made to it. In other words, the reasons given by the Government would tantamount to adjudication which is impermissible. That is the function of the Tribunal and the Government cannot arrogate to itself that function. Therefore, if the grounds on which or the reasons for which the Government declined to make a reference u/s 10 are irrelevant, extraneous or not germane to the determination it is well settled that the party aggrieved thereby would be entitled to move the Court for a writ of mandamus. See *Bombay Union of Journalists and Others Vs. The State of Bombay and Another*, . It is equally well-settled that where the Government purports to give reasons which tantamount to adjudication and refuses to make a reference, the appropriate Government could be said to have acted on extraneous, irrelevant grounds or grounds not germane to the determination and a writ of mandamus would lie calling upon the Government to reconsider its decision. In this case a clear case for grant of writ of mandamus is made out".

11. Lastly, in the case of *V. Veerarajan and Ors.*, the Supreme Court dealt with each of the 7 grounds which were set out for refusing to make a reference. The said grounds are as under:-

- (i) Lucas-T.V.S. Limited are suppliers of some items to the defence.
- (ii) There was industrial unrest followed by violence and stoppage of work in this establishment in 1977 due to inter-union rivalry.

Again there was industrial unrest due to inter union rivalry in this establishment in 1978 employing 2400 workmen. To avoid recurrence of such incidence and

stoppage of work again in 1978 the Management took disciplinary action against 154 workmen. The Management took back 134 workmen out of 154. The seven workmen are among those who were dismissed considering the gravity of the offence.

(iii) The Management charge-sheeted these seven workmen under the specific provisions of the standing orders for misconduct such as willful disobedience of lawful orders of the superiors, acts or subversive of good and proper behaviour within the establishment, being within the establishment after authorised hours of work without permission shouting slogans within the establishment etc.

(iv) All the workmen admitted the charges framed against them during the enquiries and hence the Management dismissed them from service based on these enquiries and taking into account their past services.

(v) Since the workmen themselves have admitted the charges against them, the Government considers that the charges have been proved.

(vi) The Government also considered the nature of proven charges and the quantum of punishment imposed on them with a view to decide the question whether the reference should be made or not.

(vii) Considering the proven charges and the need to preserve industrial peace in the establishment the Government considered that this is not a fit case for adjudication both on expediency and on merits.

In Para 5 of the judgment, there is a reference to the argument of the Counsel for the appellant wherein each of the seven grounds has been criticised as being irrelevant or extraneous. Ground No. (ii) refers to the industrial unrest followed by violence and stoppage of work. This was criticised by the Counsel as not germane and not relevant. Ground Nos. (iv) and (v) recorded the admission of the charge of the misconduct by the parties pursuant to which punishment was imposed. This was also criticised as irrelevant. Ground No. (vii) relating to the pre-service of the industrial peace in the establishment was criticised by the Counsel as not at all material and not justifying the refusal to refer the dispute. Reliance was also placed on the observations of Gajendragadkar J. (as he then was) in *Bombay Union of Journalists'* case as quoted above. That judgment would require the claim to be patently frivolous or clearly belated justifying the refusal to make reference. Likewise if the impact of the claim on the general relations between the employer and employees in the region was likely to be adverse, the appropriate Government may take that factor into account in deciding whether a reference should be made or not. In the case of *Bombay Union of Journalists* (supra), the Supreme Court observed that if the claim made was patently frivolous or was clearly belated appropriate Government may refuse to make a reference. However, if the impact of the claim on the general relations between the employer and employee in the region was likely to be adverse the appropriate Government may take that fact into account while deciding whether a reference should be made or not. This shows that the likelihood of the impact

of the claim on the general relations between the employer and employees in the region being adverse was only a relevant factor to be taken into account. Reliance was also placed on the Supreme Court judgment in *M.P. Irrigation Karamchari Sangh Vs. State of M.P. and Another*, and distinction was made between making of a reference and the adjudication thereof. Finally in 10 of the judgment in *V. Veerarajan's* case the Supreme Court observed as under:

"The criticism advanced by Mr. Ramamurthi in regard to the reasons given by the State Government seem to be well founded and we are of the opinion that the respondent State Government should have a direction to refer the dispute for adjudication by the Labour Court. The State Government's order should be made within one month from today and the Labour Court to which the dispute may be referred shall have a direction to dispose of the reference within four months hence from the date of receipt of the reference".

12. Shri Deshmukh for the petitioner has placed strong reliance on the reasoning of the Supreme Court in *Veerarajan's* case, he particularly placed reliance on the fact that in *V. Veerarajan's* case none of the seven grounds was found to be either relevant or germane to the exercise of the administrative power by the Government. The fact that there was industrial unrest followed by violence, the fact that workmen had admitted the charges framed against them or even the fact that there was need to preserve industrial peace in the establishment was not found to be a ground relevant or germane for refusing to make a reference u/s 12(5) of the Act. Shri Deshmukh's criticism, therefore, is that in the absence of the finding that the demand was patently frivolous or perverse or clearly belated or likely to make an adverse impact on the general relations between the employer and employees in the region, the refusal to make a reference was not justified in law.

13. On the other hand Smt. Doshi appearing for the third respondent-employer had placed strong reliance on a Division Bench judgment of this Court in Appeal No. 662 of 1984 decided on 23rd July 1987 in the case of *Shri Krishna M. Bidye and Ors. v. K. Khare and Ors.* reported in 1988(56) *Factory Law Reporter* (62). Bidye's case was a case where the appellants before the High Court were issued charge-sheet and on enquiry being held, their services were terminated. On a dispute being raised by the appellants, there was a failure report. The Deputy Commissioner of Labour, however, declined to make a reference. There were four reasons given in the order which have been reproduced in the order of the Division Bench. Shri Sebastian who appeared before the Division Bench had placed reliance on the Supreme Court judgment in *V. Veerarajan's* case. The Division Bench referred to the judgment of the Supreme Court in *V. Veerarajan's* case and considered the fact that in Bidye's case there was a refusal to make a reference in view of the proved charges and the need to preserve the industrial peace. In these facts the Division Bench observed as under:

"If the impact of the claim on the general relations between the employer and

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."

In my opinion, in the very nature of the distinguishing facts of Bidye's case before the Division Bench, no reliance can be placed on the observations of the Division Bench in Bidye's case. In fact, the Division Bench has itself referred to the distinction between the "need to preserve industrial peace in the establishment" and "impact of the claim on the general relations between the employer and employees in the region". In my opinion, there is nothing in the judgment of the Division Bench which suggests that the need to preserve industrial peace in the establishment by itself would be a ground sufficient to refuse to make a reference. Moreover in view of the clear pronouncement of the Supreme Court in *v. Veerarajan*'s case (supra), I find it difficult to accept the contention of Smt. Doshi that a mere likelihood of fillip to the industrial unrest in the factory is a ground sufficient for refusing to make a reference. All that the Deputy Commissioner of Labour has held in the present case is that (i) he was satisfied that the enquiry was fair, proper and legal and was not vitiated on any of the grounds; (ii) he was satisfied that the quantum of punishment was not disproportionate to the gravity of the misconduct and that (iii) referring of the dispute was likely to giving fillip to the industrial unrest in the factory and that peace and tranquillity in the factory was likely to be affected. Bearing in mind the clear dictum of the Supreme Court in *V. Veerarajan*'s case where each of the seven grounds set out therein have been held to be either irrelevant or extraneous, I am unable to accept the contention of the learned Counsel Smt. Doshi that the exercise of power has been based on the grounds which are either relevant or germane. In my opinion, exercise of the power by Deputy Commissioner of Labour is based on grounds which are either extraneous or irrelevant. The Deputy Commissioner of Labour has also arrogated to himself the quasi-judicial function of adjudicating upon the merits of the matter rather than confining himself to the question of merely deciding as to whether a reference ought or ought not to have been made.

STAND OVER TO :

17.1.1991

RESUMED ON :

17.1.1991

14. In the light of the above, the impugned order will have to be set aside. The only question which remains to be considered is whether the matter should be sent back to the Deputy Commissioner of Labour, for a third time now, to consider the question of making a reference or not. Smt. Doshi for the third respondent contents that it would normally be necessary to send the matter back to the Deputy Commissioner of Labour to enable him to consider the question of making a reference u/s 12, Sub-section (5) of the Act. On the other hand Shri Deshmukh for the petitioner contends that in view of the peculiar facts and

circumstances of this case and particularly the fact that the matter had been twice remanded by this Court before, no useful purpose would be served by sending the matter back to the Deputy Commissioner of Labour. Reliance has been placed on the observations of the Supreme Court in Para 9 of the judgment in V. Veerarajan's case which are as under:

"Having heard learned counsel for the parties we are of the view that this is a fit case where a reference should be made. In the order of this Court in the present case on July 9, 1985 it has been clearly stated that a direction to make a reference would have been given but for the submission advanced by Dr. Chitale that the matter should go back and the State Government should be given an opportunity of giving other valid reasons, if any, in support of its order. In the case of Nirmal Singh Vs. State of Punjab and Others, this Court gave a direction that reference be made forthwith. Similarly, in the case of Sankari Cement Alai Thozhilalar Munnetra Sangam v. Management of India Cement Ltd. 1983 1 LLJ 460, this Court gave a direction for making of a reference".

15. In view of the above I direct respondent Nos. 1 and 2 to make a reference to the Labour Court within the period of one month from the date of receipt of the writ of this Court by the Government. The Labour Court is further directed to dispose of the reference within the period of nine months from the date of receipt of the reference.

16. Rule made absolute in terms of prayers (a) and (b). Parties to bear their own costs.