
(1988) 07 BOM CK 0005
In the Bombay High Court
Case No : Appeal No. 171 of 1987

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

Date of Decision : 28-07-1988

Acts Referred:

Citation : (1989) 91 BOMLR 32 : (1995) 3 LLJ 805 : (1988) MhLj 714

Hon'ble Judges : B. Lentin, J; A.C. Agarwal, J

Bench : Division Bench

Advocate : S.J. Deshmukh and M.M. Ganguli, for the Appellant; S.M. Dikshit, for R-1 to R-3 and B.N. Srikrishna, for R-4, for the Respondent

Final Decision : Allowed

Judgement

Lentin, J.—An order rejecting a reference for adjudication under the Industrial Disputes Act, 1947 must reflect, albeit briefly, the material on which the finding is based. It must be a speaking Order. Such is the ratio of this judgment.

2. The facts:-

(A) On 29th September 1982, six of the 4th respondent's workmen belonging to the appellant-Union were charge-sheeted regarding certain incidents that took place between 4th March 1982 and 10th June 1982 in the 4th respondent's factory. A departmental enquiry was held. It is said that six workmen did not take part in the enquiry. It proceeded ex parte. On 30th December 1982 an order of dismissal was passed against the six workmen.

(B) On 8th February 1983, they approached the Deputy Commissioner of Labour for conciliation and reference for adjudication. It was refused on 10th August 1983, on the ground that the employer's action in terminating the services of the six workmen after holding a departmental enquiry and following the principles of natural justice, did not appear mala fide or vindictive.

(C) The appellants thereupon filed Writ Petition No. 2202 of 1983 in this Court.

On 27th September 1984 this Court passed an order remanding the matter to the Deputy Commissioner of Labour for reconsideration.

(D) On 23rd November 1984, the Deputy Commissioner of Labour passed an order rejecting the workers' demand for reference on 3 grounds recited a little later in this judgment. The workers' representation to the Commissioner of Labour was rejected on 2nd July 1985.

(E) The appellant-Union thereupon filed Writ Petition No. 1533 of 1985 in this Court challenging the orders dated 23rd November 1984, and 2nd July 1985 passed by the Deputy Commissioner and the Commissioner of Labour respectively. That writ petition was dismissed by the learned single Judge on 10th March 1986.

Hence this appeal

3. This appeal can be disposed of on one point alone, namely that the order passed by me Deputy Commissioner of Labour on 23rd November 1984, does not reflect the material on which her finding is based. It is not a speaking order.

4. The reasons given by the Deputy Commissioner for rejecting the demand for reference are as under:

"(1) The impact of the reference to adjudication in the case of this workman on the Industrial Relations between the employer and the employees of the Factory is likely to be adverse;

(2) the peace and tranquility prevailing in the Factory "for the last two years is also likely to be adversely affected and a spirit of discontent is likely to be created on the part of a substantial number of workers thereof; and

(3) reference to adjudication would, therefore, not to be in the interest of Industrial peace and harmony in the factory"

5. With respect to the Deputy Commissioner, the order passed by her is unsatisfactory and contrary to well-established principles of law. Merely to say, as she does in her order that she has reconsidered the Conciliation Officer's report and the submissions made by the parties to the dispute and "is satisfied that there is still no case for reference to adjudication..." For the 3 reasons set out above, means nothing and is begging the issue. Generalisations such as these as resorted to by the Deputy Commissioner, cannot be equated to application of mind. It was incumbent on her to have given some indication of the material on the basis of which she came to give her three "reasons" for turning down the request for reference.

6. Application of mind must be manifest in the order itself. There should have been in the order, some material to show the basis for the "reasons" given, by her in turning down the demand for reference to, adjudication. Mind must not only be applied, but must also be seen to be applied. And that can be seen if the order reflects the basis for the "reasons" given by her. To equate an ipse dixit

with "reasons" as done by the Deputy Commissioner, is a mistake. Similarly, a mere reiteration of statutory or stereotype verbiage or generalisations as done by the Deputy Commissioner, does not make for "reasons". Nor for that matter do catch words with which the Deputy Commissioner's order is replete, to wit, "likely to be adverse", "likely to be adversely affected", "a spirit of discontent is likely to be created", "reference... would, therefore, not to be in the interest of Industrial peace and harmony"

7. We do not suggest that the Deputy Commissioner was called upon to write a detailed judgment as do courts of law. It was, however, incumbent on her to have at least outlined her process of reasoning by reference to the material before her, and what material she considered, instead of presenting a fait accompli in the garb of "reasons". Such an exercise would have lent assurance and given satisfaction that justice was not only done but was also seen to be done. Even the correctness of an unreasoned order cannot dispel a lurking doubt of its sanctity which an order giving brief and salient reasons can reinforce in its support.

8. Giving reasons, albeit trite, is one of the fundamental principles of good administration, safeguards as it must, against arbitrariness, or a predilection to look at things or decide in view of policy or expediency. Compulsion of disclosure guarantees consideration and minimises chances of irrelevant, extraneous, motivated or prejudiced consideration seeping into the decisional process.

9. Such is the rule of law; such is the rule of prudence, it is here that the Deputy Commissioner's order is vulnerable.

10. To say that the Deputy Commissioner came to her conclusions as there was material on record annexed to the petition, is, to our minds, with deep respect to the learned single Judge, entering into the realm of conjecture and speculative reasoning. The Deputy Commissioner herself does not say anything of the kind in her order.

11 In the circumstances, the Deputy Commissioner's order dated 23rd November 1984 is liable to be set aside. The Commissioner's order dated 2nd July 1985 which flows from the Deputy Commissioner's order is also liable to be set aside.

12. The appeal is allowed and the judgment and order of the learned single Judge are set aside. The matter is remanded to the Deputy Commissioner of Labour who, in the light of what is stated above, is directed to consider afresh the demand for reference, and thereafter pass an order within six weeks from today in accordance with the law. There will be no order as to the costs of the appeal.

13. Finally, our attention was invited to certain judgments by the appellants' learned counsel Mr. Deshmukh, namely V. Veerarajan and others Vs. Government of Tamil Nadu and others, . It is unnecessary to advert to any of them in the light

of the view we have taken. Perhaps, in the event of another adverse order going against the workmen, the appellants' learned counsel will be in a position to put those authorities to better account than it has been necessary for him to do before us.