

(2004) 03 AP CK 0080

In the Andhra Pradesh High Court

Case No : Writ Petition No. 10178 of 1994

Asst. General Manager (Admn.), Hyderabad Engineering Industries

APPELLANT

Vs

Chairman, The Hon''ble Addl. Industrial Tribunal-cum-Addl. Labour Court and Others

RESPONDENT

Date of Decision : 04-03-2004

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 2A(2)

Citation : (2004) 2 ALD 720 : (2004) 3 ALT 467 : (2004) 2 LLJ 793

Hon'ble Judges : C.V. Ramulu, J

Bench : Single Bench

Advocate : P. Nageswar Sree, for the Appellant; Government Pleader for Respondent Nos. 1 and 3 and A.K. Jayaprakash Rao, for the Respondent

Final Decision : Dismissed

Judgement

C.V. Ramulu, J.—This writ petition is filed by the management questioning the finding of the Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad in I.D. No. 224 of 1991, dated 22-4-1994, as to invalidating the domestic enquiry conducted by the management on the preliminary issue.

2. This Court while admitting the writ petition, granted interim stay of all further proceedings in I.D. No. 224 of 1991 by an Order dated 1-6-1994 in W.P.M.P. No. 12357 of 1994 and the same was made absolute on 22-8-1994.

3. The 2nd respondent-workman raised a dispute u/s 2-A(2) of the Industrial Disputes Act, 1947 against the termination of his services by the management on 1-10-1991. The Labour Court, as a preliminary issue, examined as to the validity of the domestic enquiry conducted by the management. After hearing both sides, the Labour Court held that domestic enquiry conducted by the management was invalid, but permission was accorded to the management to adduce evidence to prove the misconduct of the workman. Assailing the said order, the present writ petition is filed.

4. Before the Labour Court, the learned Counsel for the workman contended that the workman had been asking for holding the domestic enquiry at a place, which is outside the premises of the factory; but on the suggestion of the management, the Enquiry Officer refused his request and held the domestic enquiry in the premises of the factory itself. The workman was seeking for supply of a list of witnesses to be examined during the enquiry in advance so that he may himself prepare for cross-examination of the said witnesses, but the same was not furnished. An ex parte enquiry was conducted in the absence of the workman and the enquiry could not have been proceeded, since criminal case, against the same set of facts, was pending. Learned Counsel for the management argued that the Labour Court has to see whether substantial prejudice was caused to the defence of the delinquent in the domestic enquiry and mere irregularities do not vitiate the enquiry. Merely, the enquiry was conducted within the factory premises against the wishes of the workman does not vitiate the enquiry. Further, the Standing Orders do not contemplate supply of list of witnesses. The workman himself dragged on the proceedings for about 1 1/2 year to appear before the Enquiry Officer and the Enquiry Officer having been vexed with the attitude of the workman, conducted an ex parte enquiry. Therefore, the question of violating the principles of natural justice by the management does not arise. The standard of proof required in a criminal case is quite different from that of the domestic enquiry. Therefore, there was no necessity of staying departmental proceedings during the pendency of the criminal case.

5. After considering the rival contentions, the Labour Court felt that the domestic enquiry was vitiated, as the management as well as the Enquiry Officer did not concede the request of the workman for holding the enquiry outside the premises of the factory and also as both of them did not supply the list of witnesses during the enquiry sufficiently in advance.

6. May be, the workman was not justified in asking for conducting domestic enquiry outside the factory. However, since the workman has expressed apprehension and threat from the management, the management ought to have considered the request of the workman for conducting the enquiry outside the factory premises. That could not have in any way prejudiced the interests of the management. Further, the workman was not supplied with the list of witnesses and as it is seen, as many as 23 witnesses were examined before the Enquiry Officer. No doubt, mere non-supply of list of witnesses in advance to a delinquent officer does not vitiate the enquiry in its totality. But, in this case, since the workman had expressed some threat from the management by using criminal force, it could have been fair on the part of the management to hold enquiry outside the factory premises. The Enquiry Officer was swayed away by the representation made on behalf of the management and did not take into consideration the request made by the workman. In the circumstances, I am of the opinion that the Order of the Labour Court in I.D. No. 224 of 1991, dated 22-4-1994 invalidating the domestic enquiry conducted by the management, cannot be said to be unreasonable or arbitrary and does not call for interference

by this Court.

7. Be that as it may, the management's attitude to question the order invalidating the domestic enquiry on the preliminary issue, though permission was accorded to it to adduce evidence to prove the misconduct itself, shows that the management was not ready for open enquiry. Here, threat of the management with long list of witnesses, seems to be not imaginary, but real. Nothing prevented the management from adducing evidence in a fair and proper manner before the Labour Court. In fact, the petitioner-management could have questioned the validity of the domestic enquiry, even at the time of questioning the final award to be passed by the Labour Court, in this regard, if necessary. Now, it is more than 10 years that this writ petition was admitted and interim stay was granted. Even if the writ petition is allowed, it amounts to upholding the one sided enquiry conducted by the management and the workman would have nothing before the Labour Court to argue.

8. In this regard, learned Counsel for the petitioner relied upon a judgment of a single Judge of this Court in *Management of Glaxo India Ltd. Vs. Presiding Officer, Labour Court, Guntur and Another*, and drawn the attention of this Court to paragraph-15, which reads as under:

"15. From the principles laid down in the aforecited decisions, it is clear that the stress is more on the question of delay resulting in much hardship to the workmen and the bar against interference is not absolute in nature. This is more so, in a case where justification calls for interference, may be at the sufferance on account of the delay. No doubt, there is a severe caution against interference in the orders passed on preliminary issues, like validity of the domestic inquiry, by the Labour Court, but that cannot be understood as an ouster of jurisdiction or an absolute bar, irrespective of the justification that warrants interference. Accordingly, as held by the Division Bench of this Court and by the Karnataka High Court, this Court while exercising jurisdiction under Article 226 of the Constitution can interfere with the findings of the Labour Court on preliminary issues, subject invariably to justification that calls for interference....."

and tried to impress upon the Court that though, normally, the orders passed on preliminary issues, like validity of the domestic enquiry, by the Labour Court should not be interfered, it should not be understood as a ouster of jurisdiction of this Court or absolute bar to interfere with the finding on the preliminary issue, whether a domestic enquiry was valid or not. This Court while exercising the jurisdiction under Article 226 of the Constitution of India can interfere with the findings of the Labour Court on preliminary issues.

9. There is no dispute as to the proposition laid down in the said decision. In a given case, depending upon the circumstances, the Court may interfere with the findings on preliminary issue, on being challenged. But, in the case on hand, as the domestic enquiry was conducted by violating the principles of natural justice, it is vitiated.

10. The learned Counsel for the respondent-workman strenuously argued that the managements should not be allowed to agitate as to the findings of invalidating the domestic enquiry as a preliminary issue. This may result in great hardship to the workman and the very concept of summary proceedings under a beneficial legislation would be defeated. In support of his contentions, he relied upon the decisions of the Apex Court in *The Cooper Engineering Limited Vs. Shri P.P. Mundhe, , D.P. Maheshwari v. Delhi Administration* AIR 1984 SC 153, and *National Council for Cement and Building Materials Vs. State of Haryana and Others, .*

In *P.P.Mundhe's* case (*supra*), it was held as under:

"(21) Propositions (4), (6) and (7) set out above are well-recognised. Is it, however, fair and in accordance with the principles of natural justice for the Labour Court to withhold its decision on a jurisdictional point at the appropriate stage and visit a party with evil consequences of a default on its part in not asking the Court to give an opportunity to adduce additional evidence at the commencement of the proceedings or, at any rate in advance of the pronouncement of the order in that behalf ? In our considered opinion it will be most unnatural and unpractical to expect a party to take a definite stand when a decision of a jurisdictional fact has first to be reached by the Labour Court prior to embarking upon an enquiry to decide the dispute on its merits. The reference involves determination of the larger issue of discharge or dismissal and not merely whether a correct procedure had been followed by the management before passing the order of dismissal. Besides, even if the order of dismissal is set aside on the ground of defect of enquiry a second enquiry after reinstatement is not ruled out nor in all probability a second reference. Where will this lead to? This is neither going to achieve the paramount object of the Act, namely, industrial peace, since the award in that case will not lead to a settlement of the dispute. The dispute, being eclipsed, pro-tempore, as a result of such an award, will be revived and industrial peace will again be ruptured. Again another object of expeditious disposal of an industrial dispute (see Section 15) will be clearly defeated resulting in duplication of proceedings. This position has to be avoided in the interest of labour as well as of the employer and in furtherance of the ultimate aim of the Act to foster industrial peace.

(22) We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the Labour Court should first decide as a preliminary issue whether the domestic enquiry has violated, the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the Labour Court. If it chooses not to adduce any evidence. It will not be thereafter permissible in any proceeding to raise line issue. We should also make it clear

that there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication."

11. In D.P. Maheswari's case (supra), the Apex Court held as under:

"It was just the other day that we were bemoaning the unbecoming devices adopted by certain employers to avoid decision of industrial disputes on merits. We noticed how they would raise various preliminary objections, invite decision on those objections in the first instance, carry the matter to the High Court under Article 226 of the Constitution and to this Court under Article 136 of the Constitution and delay a decision of the real dispute for years, sometimes for over a decade. Industrial peace, one presumes, hangs in the balance in the meanwhile. We have now before us a case where a dispute originating in 1969 and referred for adjudication by the Government to the Labour Court in 1970 is still at the stage of decision on a preliminary objection. There was a time when it was thought prudent and wise policy to decide preliminary issues first. But the time appears to have arrived for a reversal of that policy. We think it is better that Tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise, industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. Nor should High Courts in the exercise of the jurisdiction under Article 226 of the Constitution stop proceedings before Tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under Article 226 of the Constitution nor the jurisdiction of this Court under Article 136 may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill afford to wait by dragging the latter from Court to Court for adjudication of peripheral issues, avoiding decision on issues more vital to them. Article 226 and Article 136 are not meant to be used to break the resistance of workmen in this fashion. Tribunals and Courts who are requested to decide preliminary questions must therefore ask themselves whether such threshold part-adjudication is really necessary and whether it will not lead to other woeful consequences. After all Tribunals like Industrial Tribunals are constituted to decide expeditiously special kinds of disputes and their jurisdiction to so decide is not to be stifled by all manner of preliminary objections and journeyings up and down. It is also worthwhile remembering that the nature of the jurisdiction under Article 226 is supervisory and not appellate while that under Article 136 is primarily supervisory but the Court may exercise all necessary appellate powers to do substantial justice. In the exercise of such jurisdiction neither the High Court nor this Court is required to be too astute to interfere with the exercise of jurisdiction, by special Tribunals at interlocutory stages and on preliminary issues."

12. In National Council for Cement and Building Materials case (supra), it was held as under:

"16. The facts in the instant case indicate that the appellant adopted the old tactics of raising a preliminary dispute so as to prolong the adjudication of industrial dispute on merits. It raised the question whether its activities constituted an "Industry" within the meaning of the Industrial Disputes Act and succeeded in getting a preliminary issue framed on that question. The Tribunal was wiser. It first passed an order that it would be heard as a preliminary issue, but subsequently, by change of mind, and we think rightly, it decided to hear the issue along with other issues on merits at a later stage of the proceedings. It was at this stage that the High Court was approached by the appellant with the grievance that the Industrial Tribunal, having once decided to hear the matter as a preliminary issue, could not change its mind and decide to hear that issue along with other issues on merits. The High Court rightly refused to intervene in the proceedings pending before the Industrial Tribunal at an interlocutory stage and dismissed the petition filed under Article 226 of the Constitution. The decision of the High Court is folly in consonance with the law laid down by this Court in its various decisions referred to above and we do not see any occasion to interfere with the order passed by the High Court. The appeal is dismissed, but without any order as to costs."

13. From the above decisions, it is clear that the managements should not adopt old tactics of challenging the preliminary enquiry order vitiating the domestic enquiry without waiting for the final orders to be passed and without leading any evidence as permitted by the Labour Court. In the instant case, the preliminary issue was decided on 22-4-1994 and the writ petition was filed on 30-5-1994. As stated above, the management obtained interim stay of all further proceedings in I.D.No.224 of 1991, which was made absolute. The matter is pending before this Court for the last ten years. This itself shows that if the managements are allowed to question the findings on preliminary issues, the very object of the Industrial Disputes Act, 1947 which is meant for the industrial peace and harmony would be defeated and the case on hand is a glaring example. Further, it is noticed, though the matter was adjourned several times on the request of the workman, he was never warned saying that if he does not appear for domestic enquiry conducted on a particular date, the matter will be proceeded against him ex parte.

14. Even on merits, what was expected of the management was to show its bona fides that there was no threat to the workman and it was ready for open enquiry before the duly constituted adjudicatory machinery. The management instead of doing so, has adopted the tactic of questioning the finding on preliminary issue on many a ground stating that absolutely there was no evidence to come to the conclusion that the domestic enquiry was not valid. May be, the order of the Labour Court was not happily worded while validating the domestic enquiry conducted by the management. That itself does not mean that the finding of the

Labour Court as to invalidating the domestic enquiry is bad and requires to be questioned before this Court to frustrate the cause of the workman and defeat the objects of the Industrial Disputes Act, 1947.

15. For all the above reasons, the writ petition is dismissed and the Order passed by the Labour Court in I.D. No. 224 of 1991, dated 22-4-1994 is upheld. The Labour Court is directed to proceed further in the matter by giving opportunity to the management as well as the workman to lead evidence and decide the same within a period of six months from the date of receipt of a copy of this order. No order as to costs.