
(2009) 08 AHC CK 0202

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 19592 of 1991

Bharat Electronics Limited

APPELLANT

Vs

Labour Court, Agra and Others

RESPONDENT

Date of Decision : 03-08-2009

Acts Referred:

Constitution of India, 1950 — Article 77(3)
Industrial Disputes Act, 1947 — Section 4K

Citation : (2009) 08 AHC CK 0202

Hon'ble Judges : Tarun Agarwala, J

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—The petitioner has challenged the validity and legality of the award passed by the Labour Court directing reinstatement with back wages. The facts leading to the filing of the present writ petition is, that the workman was working in a permanent capacity as a clerk and was charge sheeted for forging the signatures of the Head of the Department which enabled the workman to go outside the factory premises and was also charge sheeted for forging the signatures of the Head of the Department in the attendance register. The workman was also chargesheeted for raising a bill for overtime payment by again forging the signatures of the Head of the Department. A domestic inquiry was conducted in which the workman was found guilty and, on the basis of the inquiry report, the disciplinary authority terminated the services of the workman. The workman being aggrieved by the termination of the service raised an Industrial Dispute which was referred to the Labour Court for adjudication.

2. The Labour Court, after considering the material evidence on the record, held that the domestic inquiry was not fair and proper and that, the inquiry was held in violation of the principles of natural justice. The Labour Court, however, allowed the employers to lead fresh evidence. On the basis of fresh evidence led by the parties, the Labour Court held that the State Government had the power to refer the industrial dispute and that the Central Government was not the appropriate Government to refer the dispute. The Labour Court also found that

the charges levelled against the workman was not proved and that the disputed signatures should have been examined by an expert. The Labour Court found that the workman could not be said to have forged the signatures of the Head of the Department and that there was no evidence to indicate that the disputed signatures was in the handwriting of the workman. The Labour Court also concluded that the plea of loss of evidence raised by the employer was only an afterthought and that since the workman was not gainfully employed and no evidence was led by the employers to rebut this allegation, the Labour Court accordingly directed reinstatement with continuity of service and with full back wages. The petitioner, being aggrieved by the said award, has filed the present writ petition.

3. At the time when the writ petition was entertained, an interim order was passed directing the petitioner to reinstate the workman and had stayed the payment of back wages. Pursuant to the interim order, the workman was reinstated and continued in service and, during the pendency of the writ petition, the workman retired and has also died and his heirs have now been substituted. Consequently, the only question which remains to be considered in the present writ petition is with regard to payment of back wages. This Court had directed the parties to conciliate in the matter but each party refused to budge from their stand. The petitioner offered a sum of Rs.50,000/ in full and final settlement which was refused by the learned counsel for the workman. Consequently, the matter is being heard on merits.

4. Heard Sri S.D.Singh, the learned counsel for the petitioner assisted by Sri Diptiman Singh, Advocate and Sri K.P.Agarwal, the learned Senior Counsel duly assisted by Ms. Sumati Rani Gupta for the workman respondents.

5. One of the questions raised before the Labour Court as well as before this Court is, whether the State Government was the appropriate Government to refer the dispute or not ?

6. Sri S.D.Singh, the learned counsel for the petitioner submitted that the State Government had no power to refer the dispute and that it was the Central Government which had the sole authority and jurisdiction to refer the dispute since the petitioner was a Company which carried out its activities under the authority of the Central Government. The learned counsel for the petitioner has also attacked the award on merits holding that the findings of the Labour Court absolving the workman from the charges was patently erroneous and that the grant of full back wages was also arbitrary.

7. On the other hand, Sri K.P.Agarwal, the learned counsel for the respondentworkman submitted that quite apart from the fact that the petitioner's unit was located in the State of U.P., the appropriate Government to refer the dispute was the State Government and that the petitioner's unit was neither controlled nor its activities was carried out under the authority of the Central Government. The learned counsel further submitted that the findings

given by the Labour Court was based on findings of fact which could not be interfered within a writ jurisdiction.

8. Both the counsels have heavily relied upon the judgment of the Supreme Court in the case of Heavy Engineering Mazdoor Union v. State of Bihar and others, AIR 1970 SC 82 and a Constitution Bench decision of the Supreme Court in the case of Steel Authority of India Ltd. and others v. National Union Water Front Workers and others, 2001(7) SCC 1. In addition to the aforesaid, the learned counsel for the petitioner has placed reliance upon a judgment of this Court in Hindustan Aeronautics Ltd., Kanpur vs. State of U.P. and others, decided on 29.9.1997 in Writ Petition No.13936 of 1005 as well as a decision of the Supreme Court in Hindustan Aeronautics Ltd., and another vs. Hindustan AeroCanteen K. Sangh and others, 2002(95)FLR 1178 and another decision of the Supreme Court in Hindustan Aeronautics Ltd. vs. Hindustan Aeronautics Employees Union and another, decided on 4.12.2006, in Civil Appeal NO.5655 of 2006, as well as the decision of this Court in the case of the petitioner in M/s Bharat Electronics Ltd. vs. State of U.P. and others, decided on 31.1.2005, in Writ Petition No.5992 of 2006.

9. The moot question is, whether the State Government was the appropriate Government to refer the dispute or not? In order to decide the controversy the essential facts as culled out from the record is:

"that the petitioner is one of the 9 production units of Messrs. Bharat Electronics Limited (hereinafter referred to as the "company" for short). The company is incorporated under the provisions of the Companies Act, 1956 and is wholly owned by the Government of India and is under the administrative control of the Ministry of Defence, Government of India. The petitioner's unit is situated at Sahibabad (Ghaziabad). The Registered Office of the Company is situated at 116/2, Race Course Road, Bangalore (Karnataka). The Company is engaged in the manufacture, inter alia, of sophisticated professional grade electronics equipment and components for the consumption of the Armed Forces of the Union of India and other customers like Defence, Civil Services, Paramilitary services, Department of Space, All India Radio and Door Darshan, Civil Aviation Department of Telecommunication and Oil Industry, etc. The petitioner's unit at Ghaziabad is engaged in the manufacture of Radars, communication equipment, Antennas for Radars and communication systems, Turnkey projects for communication Net works etc. which are meant exclusively for the consumption of the Armed Forces of the Union of India."

10. In the written statement, the petitioner has averred

"that the reference made by the State Government of U.P. under the provisions of the U.P. Industrial Dispute Act is without jurisdiction as the Management of M/s Bharat Electronics Limited is a Government of India Undertaking engaged in production and manufacture of Defence Equipments at its Ghaziabad plant. For the said establishment, therefore, no "Industrial Dispute" under the provisions of

the U.P. Industrial Disputes Act can arise and be referred. The Appropriate Government in this case can only be the Central Government and as such the reference made is without jurisdiction."

11. In addition to the aforesaid, the petitioners have filed a IIIrd Supplementary Affidavit, in which the petitioner has averred

"4. That the petitioner had also placed a List of Documents before the Labour court, namely, The Article of Association of the Company and the Memorandum of Association of M/s Bharat Electronics Limited, which were placed as Exhibits in Adjudication Case No.41 of 1987 and are also being filed and marked as Annexures SA1 and SA2 to this affidavit. The Standing Orders of M/s Bharat Electronics Limited, Ghaziabad are already appended as AnnexureK to the writ petition.

5. That the petitioner above named "M/s Bharat Electronics Limited" is a Company incorporated under the Indian Companies Act, having its registered office at "Trade Centre, 116/2, Race Course Road, Bangalore 560 001". The petitioner is engaged in the manufacture of sophisticated "Radars" and other electronic communication equipments and supplies mainly to the "Defence Forces of India". The petitioner has several units all over the country. This petition relates to its Unit at Ghaziabad, which is engaged in the manufacture of "Radars" and communication equipments. The Unit at Ghaziabad is in the nature of a "Defence Establishment".

6. That the petitioner "M/s Bharat Electronics Limited" is a Government of India Enterprises, which works under the Ministry of Defence. 76% shares of the Company are held in the name of President of India. It is, thus, an "industry" carried on by and under the authority of the "Central Government".

7. That the petitioner states that 76% of the share capital of the petitioner Company is owned by the Government of India and stands in the name of President of India. The entire activities of the petitioner Company are controlled and managed by the Government of India. The decisions are guided solely by the Government of India through "Ministry of Defence". A copy of the new/present Memorandum and Articles of Association of the Company is hereby marked and appended as Annexure SA3 and Annexure SA4 to this Supplementary Affidavit.

8. That the Directors of the Company are appointed by order of the President of India as the industry is controlled entirely by the Central Government under the Ministry of Defence. In order to demonstrate that the petitioner is controlled by the Ministry of Defence, the petitioner is placing some letters, instructions and orders collectively to show how it is controlled by the Ministry of Defence as Annexure SA5 to this affidavit.

9. That the petitioner is also placing on record a copy of the shareholding of the Company from which it is abundantly clear that, in fact, the petitioner is a Company, which is controlled by the "Central Government". A copy of the

shareholding of the Company is hereby marked and appended as Annexure SA6 to this affidavit.

10. That the petitioner states that the items manufactured in the industry are mainly used for defence purposes of the "Air Force, Army and Navy" and the designs of the Radars and other electronic communication equipments pertaining the same are secret documents. For maintenance of secrecy, the petitioner Company maintains the same through highly placed and integrated Scientists and Engineers.

11. That the petitioner needs from time to time to employ contract labours to its various job works, which are not of regular nature and, therefore, the petitioner obtained permission from the "appropriate government" to engage contract labour and, accordingly, obtained the certificate of registration by which the petitioner has been granted permission to engage more than 400 people as contract labour. A copy of the Certificate dated 19th February, 1998 is hereby marked and appended as ANNEXURE SA7 to this affidavit.

12. That the petitioner states that after the Hon"ble Supreme Court laid down law with regard to the "appropriate government" in the case of Air India Statutory Corporation, as reported in AIR 1997 SC 645, the petitioner was also informed by the Government of India that the "appropriate government" for the petitioner was the Central Government. A copy of the intimation received by the petitioner on 22nd November, 1997 is hereby marked and appended as Annexure SA8 to this affidavit.

13. That a notification has also been issued on 03rd July, 1998 under Section 39 of the Industrial Disputes Act, 1947 by which the State Government has been empowered to exercise all powers under the Industrial Disputes Act (Central). A copy of the Notification dated 03rd July, 1998 is hereby marked and appended as Annexure SA 9 to this affidavit.

14. That the petitioner states that, therefore, it is abundantly clear and without doubt that the "appropriate government" for the petitioner under Section 2(a) of the Industrial Disputes Act, 1947 is the Central Government."

12. These averments have not been denied by the workman. In the light of the aforesaid averments, the learned counsel for the petitioner submitted that in the case of M/s Bharat Electronics Ltd. vs. State of U.P. and others, decided on 31.1.2005 in Writ Petition No.5992 of 2002, this Court after considering all the material evidence on record, held that the Central Government was the appropriate Government to refer a dispute and that the petitioner's activities was carried out under the control of the Government of India, since it had deep and pervasive control.

13. On the other hand, Sri K.P. Agarwal, the learned senior counsel contended that the said judgment requires reconsideration, inasmuch as, the finding of the Court on deep and pervasive control has nothing to do in so far as the issue of

"appropriate Government" was concerned. The learned counsel submitted that the mere fact that the entire share capital was held by the President of India would not make any difference with regard to the control and authority under the Central Government and would not make the petitioner Company an agent of the President of India or of the Central Government. The learned counsel submitted that the petitioner was a Company incorporated under the Indian Companies Act and has a separate existence and is a juristic person which has its business regulated under its memorandum and Articles of Association and that its business was not regulated under the authority of the Central Government.

14. In order to appreciate the rival contentions of the parties, it would be appropriate to refer to the provision of Section 2(a) of the Industrial Disputes Act which defines the "appropriate Government" as :

"2.(a) "appropriate Government" means

(i) in relation to any industrial disputes concerning any industry carried on by or under the authority of the Central Government or by a railway company (or concerning any such controlled industry as may be specified in this behalf by the Central Government) or in relation to an industrial dispute concerning (a Dock Labour Board established under S.5A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), or (the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956 (1 of 1956)), or the Employees, State Insurance Corporation established under S.3 of the Employees' State Insurance Act, 1948 (34 of 1948), or the Board of trustees constituted under S.3A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948), or the Central Board of Trustees and the State Boards of Trustees constituted under S.5A and S. 5B, respectively, of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), or the Life Insurance Corporation Act, 1956 (31 of 1956) or (the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956 (1 of 1956)), or the Deposit Insurance and Credit Insurance and Credit Guarantee Corporation established under S.3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961), or the Central Warehousing Corporation established under S.3 of the Warehousing Corporation Act, 1962 (58 of 1962), or the Unit Trust of India established under S.3 of the Unit Trust of India Act, 1963 (52 of 1963), or the Food Corporation of India established under S.3, or a Board of Management established for two or more contiguous State under S.16 of the Food Corporations Act, 1964 (37 of 1964), or (the Airports Authority of India constituted under S. 3 of the Airports Authority of India Act 1994 (55 of 1994), or a Regional Rural Bank established under S.3 of the Regional Rural Banks Act, 1976 (21 of 1976), or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Corporation of India Limited) or (the National Housing bank established under S.3 of the National Housing Bank Act, 1987 (53 of 1987) or (the Banking Service Commission established under S.3 of the Banking Service Commission Act, 1975) or (an air transport service, or a banking

or an insurance company), a mine, an oil field), (a Cantonment Board) or a major port, the Central Government; and

(ii) in relation to any other industrial dispute, the State Government:"

15. An analysis of this provision shows that the Central Government would be the appropriate Government in relation to an industrial dispute concerning :

(1) any industry carried on by or under the authority of the Central Government, or by a railway company; or

(2) any such controlled industry as may be specified in this behalf by the Central Government; or

(3) the enumerated industries which form part of the definition quoted above.

16. The Supreme Court in paragraph 30 of the judgment of Steel Authority of India Ltd. (supra), held

"From the above discussion, it follows that the phrase any industry carried on under the authority of the Central Government implies an industry which is carried on by virtue, of, pursuant to, conferment of, grant of, or delegation of power or permission by the Central Government to a Central Government Company or other Government Company/undertaking. To put it differently, if there is lack of conferment of power or permission by the Central Government to a Government company or undertaking it would disable such a company/undertaking to carry on the industry in question."

17. The Supreme Court in Heavy Engineering Mazdoor Union v. State of Bihar and others (supra) interpreted the word "under the authority of" as

"The words "under the authority of" mean pursuant to the authority, such as where an agent or a servant acts under or pursuant to the authority of his principal or master."

and further held

"Therefore, the mere fact that the entire share capital of the respondent company was contributed by the Central Government and the fact that all its shares are held by the President and certain officers of the Central Government does not make any difference. The company and the shareholders being, as aforesaid distinct entities the fact that the President of India and certain officers hold all its shares does not make the company an agent either of the President or the Central Government."

18. The Supreme Court again held

"The question whether a corporation is an agent of the State must depend on the facts of each case. Where a statute setting up a corporation so provides such a corporation can easily be identified as the agent of the State"

"In the absence of a statutory provision, however, a commercial corporation acting on its own behalf even though it is controlled wholly or partially by a Government department, will be ordinarily presumed not to be a servant or agent of the State."

19. The Supreme Court again held that a Company incorporated under the Companies Act could become an agent of the Government and thereby would come under the authority of the Central Government provided the Company was performing in substance governmental and not commercial functions. The Supreme Court in Heavy Engineering (supra) held:

"Such an inference that the corporation is the agent of the Government may be drawn where it is performing in substance governmental and not commercial functions"

20. The said judgment was again discussed by the Supreme Court in Steel Authority of India Ltd. case (supra). The Supreme Court in paragraph 41 of the said judgment held

"It was, however, clarified that an inference that the corporation was the agent of the Government might be drawn where it was performing in substance Governmental and not commercial functions. It must be mentioned here that in the light of the judgments of this Court, referred to above, it is difficult to agree with the distinction between a governmental activity and commercial function of Government companies set up and owned by Government, in so far as their function in the realm of public law is concerned."

21. In the light of the aforesaid, the Court has to see whether the petitioner's activity is carried out under the authority of the Central Government or by any one of its departments. The learned Single Judge in the case of the petitioner, decided on 31.1.2005, found that the Central Government had deep and pervasive control over the Company. The said judgment refers to notifications dated 12.1.2004 and 6.1.2004 which indicates that the petitioner's unit is a department of defence production and its business activities are covered under Clause (3) of Article 77 of the Constitution of India. The learned Single Judge held that the petitioner's unit was a department of the defence production and the Central Government was directly responsible for its functioning and was the appropriate government to refer a dispute under the Industrial Disputes Act.

22. From a perusal of the averments made in the writ petition and the in the Supplementary Affidavit, one finds that the petitioner is exclusively producing equipments for the Defence Department and that equipments produced by the petitioner's unit is not been sold commercially to the public. Consequently, the Court is of the opinion that the petitioner's Company is performing governmental functions and not commercial functions. The petitioner's Company comes under the exception clause as carved out by the Supreme Court in Heavy Engineering's case(supra).

23. In view of the aforesaid, this Court is of the opinion that the appropriate Government to refer the dispute was the Central Government and that the State Government had no authority to refer the dispute under Section 4K of the Industrial Disputes Act. As a consequence of the aforesaid, the reference order is quashed. The award made by the Labour Court pursuant to the said reference, being without any authority of law, is also quashed. The writ petition stands allowed.

24. The Court finds that pursuant to an interim order, the workman was reinstated and was paid his wages for the period which he had worked. Even though the award has been set aside, all the payments made and the benefits drawn by the workman pursuant to his reinstatement will not be realized by the employers.

25. Pursuant to the order of the Court the petitioner had deposited a sum of Rs.2,78,883/ before the Registrar General on 18.9.2008. Since the petition has been allowed, it is open to the petitioner to withdraw this amount. In the event the petitioner applies for the return of the amount, the same shall be refunded to the petitioner by the Registrar General.