

(2019) 01 JH CK 0028
In the Jharkhand High Court
Case No : Writ Petition (L) No. 2192 Of 2016

Bihar Colliery Kamgar Union

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 11-01-2019

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 12(4), 12(5)
Constitution Of India, 1950 — Article 226

Citation : (2019) 01 JH CK 0028

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Sumit Prakash, Diwakar Jha, Rajiv Sinha

Final Decision : Allowed

Judgement

1. This writ petition is filed for quashing the order dated 03.03.2014 and 21.01.2016 as contained under Annexure-4 and 11 respectively, whereby and whereunder on submission of the conciliation of failure report, exercise can be conferred under Article 226 of the Constitution of India Industrial Disputes Act, 1947 when the appropriate Government has refused to make a reference by referring it before Industrial Tribunal for its adjudication on the ground that union has failed to provide any documentary evidence showing employee and employer relationship between the workmen and management of Central Coal Field.

2. Learned counsel for the petitioner has submitted that the appropriate Government is not supposed to adjudicate the matter by taking the power of adjudication rather it is to be exercised by the adjudicator as per the provision of Industrial Disputes Act, 1947 that can only be done if the appropriate Government will make a reference under the provision of Section 10(1) of the Industrial Disputes Act, 1947. Further he submits that the appropriate Government has examined the documentary evidence and could not give finding that the workmen has got no case since the document does not suggest of existence of any employer-employee relationship between the workmen and

management of CCL, hence he after appreciating the aforesaid document has come to conclusive finding non-existence of relationship of master of employee therefore, he has acted as an adjudicator hence he has exceeded his jurisdiction.

3. Mr. Anup Kumar Mehta, learned counsel for the respondent-CCL on the other hand has submitted that the workmen though its union supposed to make a prima facie case but he failed to do so. The appropriate Government has come to a finding that there is no relationship of employee and employer. He further submits that the appropriate Government cannot be said to be act as a Post Office rather he at least is supposed to apply its mind therein that a prima facie dispute is warranting the appropriate Government to make a reference under the provision of Industrial Disputes Act for its adjudication.

4. Having heard learned counsel for the parties and on appreciation of their rival submissions, it is evident from the materials available on record that the union representing the workmen working under the respondent-management has raised a dispute before the Labour Department and conciliation has been done by the authority but conciliation having been failed, failure report of conciliation has been submitted before the appropriate Government for taking appropriate action on the said failure report. The appropriate Government after coming to a finding that the disputes have not been agitated by the union, is not fit to be referred for its answer before the competent adjudicator, therefore, has not made any reference by the impugned orders which has been assailed in this writ petition.

5. Before going to the legal and propriety of the order it needs to refer to the provision of section 12(4) which speaks that no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate government a full report setting forth the steps taken by him for ascertaining facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at.

6. Thereafter, the said report is to be sent before the appropriate Government for its consideration in view of provision of section 12(5) of the Act, 1947 which stipulates that if the appropriate government is satisfied that there is a case for reference to a Board, (Labour Court, Tribunal or National Tribunal), it may make such reference. Where the appropriate Government does make such a reference it shall record and communicate to the parties concerned its reason therefor.

It is in the light of this provision the argument has been advanced on behalf of the learned counsel for the CCL that there is no infirmity in the impugned orders since the appropriate Government was not satisfied with the material brought before it for making reference for adjudication of dispute.

8. Thus in this case before adjudicating the issue the dispute has been closed down which cannot be said to be a justified decision of the appropriate Government, even otherwise also Section 10(1), the authoritative

pronouncement in this regard having been mentioned, which is being reproduced herein below for ready reference:-

"10. Reference of disputes to Boards, courts or Tribunals-

(1) Where the appropriate government is of the opinion that any industrial dispute exists or is apprehended, it may at any time], by order in writing-

(a) refer the dispute to a Board for promoting a settlement thereof; or

(b) refer any matter appearing to be connected with or relevant to the dispute to a court for inquiry; or

(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or

(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication:

Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate government may, if it so thinks fit, make the reference to a Labour Court under clause (c):

(Provided that where the dispute relates to a public utility service and a notice under section 22 has been given, the appropriate government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do. Make a reference under this sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced:

(Provided also that where the dispute in relation to which the Central Government is the appropriate government, it shall be competent for that government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government]

(1A) where the Central Government is of opinion that any industrial dispute exists or is apprehended and the dispute involves any question of national importance or is of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such dispute and that the dispute should be adjudicated by a National Tribunal, the, the Central Government may, whether or not it is appropriate government in relation to that dispute, at any time, by order in writing, refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to a National Tribunal for adjudication.]"

Section 10(1) starts with the words "if any industrial dispute exists or is apprehended" then the appropriate government may refer the dispute before the

appropriate authority for its adjudication. Scope of Section 10(1) of the Industrial Dispute Act, 1947 has been discussed by the Hon'ble Supreme Court in the case of State of Madras -v- CP Sarathy, (1953) 1 LLJ 174 (SC) wherein their lordships has been pleased to lay down the following propositions.

- (i) the government should satisfy itself, on the facts and circumstances brought to its notice, in its subjective opinion that an 'industrial dispute' exists or is apprehended;
- (ii) the factual existence of a dispute or its apprehension and the expediency of making reference are matters entirely for the government to decide;
- (iii) the order making a reference is an administrative act and it is not a judicial or a quasi-judicial act; and
- (iv) the order of reference passed by the government cannot be examined by the High Court in its jurisdiction under Article 226 of the Constitution to seek if the government had material before it to support the conclusion that the dispute existed or was apprehended.

In another judgment rendered by the Hon'ble Apex Court in the case of Western India Match Co. -v- WIMCO Workers' Union, AIR 1970 SC 1205, wherein it was so held presumably because the government cannot go into the merits of the dispute, its function being only to refer such a dispute for adjudication so that the industrial relations between the employer and his employees may not continue to remain disturbed and the dispute may be resolved through a judicial process as speedily as possible.

In another judgment rendered by the Hon'ble Apex Court in the case of Sambhu Nath Goyal -v- Bank of Baroda, AIR 1978 SC 1088, while discussing the scope of Section 10(1) of the Industrial Disputes Act, 1947, the court pointed out that the power conferred on the government by this provision to refer the dispute can be exercised only when there is an existing or apprehended industrial dispute.

In Telco Conveys Drivers Mazdoor Sangh -vs- State of Bihar, reported in (1989) 3 SCC 271, it has been held at Para- 13 by Hon'ble Apex Court which reads here under as:

"Attractive though the contention is, we regret, we are unable to accept the same. It is now well settled that, while exercising power under Section 10(1) of the Act, the function of the appropriate government is an administrative function and not a judicial or quasi-judicial function, and that in performing this administrative function the government cannot delve into the merits of the dispute and take upon itself the determination of the lis, which would certainly be excess of the power conferred it by Section 10 of the Act."

In another judgment rendered by the Hon'ble Apex Court in the case of National Engineering Industries Ltd. -vs- State of Rajasthan and Others, reported in AIR 2000 SC 469 wherein at Para- 26 it has been held which is being quoted.

"After having heard the learned advocates for the parties and after having gone through the pleadings of the parties made before the Assistant Labour Commissioner and after having carefully considered the contentions raised in the present petition as well as the authorities cited before the Court, the Court is of the view that the impugned order passed by the Assistant labour Commissioner, Ahmedabad does not call for any interference of this Court while exercising its extraordinary writ jurisdiction under Article 226 and 227 of the Constitution of India. While making the reference, the Assistant Labour Commissioner has observed that the industrial dispute pertaining to the matters regarding 16 lady workers is required to be referred to the Labour Court while exercising his powers vested in him under Section 10(1)© of the Industrial Disputes Act and the dispute was as to whether these 16 ladies should be reinstated in service in their original posts with full back wages for the intervening period. During the course of conciliation proceedings, the petitioner has filed its reply and counter reply was filed on behalf of the union. The plain reading of the reply as well as counter reply makes it clear that the petitioner has raised the dispute as to whether these 16 ladies are the employees of the petitioner or whether the petitioner is an 'industry'. The Union has filed its counter reply, wherein it is stated that these 16 ladies were the employees for the petitioner. The Assistant Labour Commissioner is not competent to decide as to whether these 16 ladies are the employees of the petitioner. It requires adjudication and proper forum for adjudication is either the industrial Tribunal or Labour Court. The Assistant Labour Commissioner has to merely discharge his function as an administrative officer. He has to record prima facie subjective satisfaction and after having come to this subjective satisfaction, he has to refer the dispute to the Labour Court or to the Industrial Tribunal. Whether particular person is an employee of the institute or not, requires leading evidence oral as well as documentary. This could be done only at the level of either the Labour Court or Industrial Tribunal where both the parties do get the opportunity of leading their evidence. It is held by the Courts on number of occasions, that the proceedings should not be terminated prematurely. If the reference is rejected, the Conciliation Officer has to record the reasons for that under Section 12(5) of the Act. However, while making the reference, it is not necessary to record any reason. Merely because the reasons are not recorded while making the reference, it cannot be said that the order is without application of mind. It is also important to note here that before the Assistant Labour Commissioner, the award passed by the Industrial Tribunal in the case of NID was pointed out wherein on similar situation, the Industrial Tribunal has come to the conclusion that those 31 ladies were the employees of National Institute of Design. It was also pointed out that the petition was pending before this Court being Special Civil Application No. 8549 of 1988. The Court has also considered the relevant observations made by the Hon'ble Supreme Court in the decision of State of Madras Vs. C. P. Sarathy (supra) wherein, in no uncertain terms, the Supreme Court has observed that if the dispute was an industrial dispute as defined in the Act, its factual existence and expediency of making a reference in the circumstances of a particular case are the matters entirely for

the Government to decide upon and it will not be competent for the Court to hold the reference bad and quash and set aside the proceedings for want of jurisdiction merely because there was, in its opinion, no material before the Government on which it could have come to an affirmative conclusion. The Court has also considered the binding judgment of the Supreme Court and observations made therein which are squarely applicable to the facts of the present case. The determination of the questions or issues which are raised in this petition requires examination of factual matters and for that purpose, all relevant materials including oral as well as documentary evidence will have to be led before the Labour Court and same are required to be considered. If this is the situation then in that case, the Government could not arrogate unto itself the power to adjudicate on the question and hold that 16 ladies were not workmen within the meaning of Section 2(s) of the Act and terminate the proceedings prematurely. This issue will have to be decided by the Industrial Tribunal or the Labour Court on the basis of the materials to be placed before it by the parties. Simply because the dispute is raised before this Court regarding employer-employee relationship or whether the petitioner is an 'industry' or not, the order making reference passed by the Assistant Labour Commissioner cannot be quashed and set aside."

In the case of *Anz Grindlays Bank Ltd -vs- Union of India*, reported in (2005) 12 SCC 738 wherein at paragraph-14 the Apex Court has held that:

"Mr. Bhat, learned counsel for the second respondent, has submitted that this Court should not interfere with the order of the Central Government making a reference under Section 10 of the Act, as the appellant can ventilate its grievance before the Industrial Tribunal itself and if the decision of the Tribunal goes against the appellant, the same may be challenged in accordance with law. According to learned counsel the writ petition is premature as the appellant has got a remedy before the Tribunal to show that the reference is either bad in law or is uncalled for. We are unable to accept the submission made. It is true that normally a writ petition under Article 226 of the Constitution should not be entertained against an order of appropriate Government making a reference under Section 10 of the Act, as the parties would get opportunity to lead evidence before the Labour Court or Industrial Tribunal and to show that the claim made is either unfounded or there was no occasion for making a reference. However, this is not a case where the infirmity in the reference can be shown only after evidence has been adduced. In the present case the futility of the reference made by the Central Government can be demonstrate from a bare reading of the terms of the reference and the admitted facts. In such circumstances, the validity of the reference made by the Central Government can be examined in proceeding under Article 226 of the Constitution as no evidence is required to be considered for examining the issue raised."

There is no dispute about the fact that the industrial dispute is a piece of beneficent legislation and it has been promulgated for redressal of dispute

relating to workmen and for that purpose Tribunal or Labour Court have been created in order to settle the dispute. For settlement of dispute when any dispute is being raised the first process is go for conciliation and if settlement has not been arrived at in course of conciliation proceeding, the Conciliation Officer in contemplation of power conferred under section 12(4) will submit failure report before the appropriate government and the appropriate government in exercise of power conferred under section 10(1) of the Industrial Disputes Act, 1947 is empowered to refer the dispute before the Labour Court or the Tribunal by making proper reference, meaning thereby the Reference since been based upon complex questions of facts and law and as such the dispute is to refer before the Tribunal or Labour Court for its adjudication by leading evidence in this regard by the parties.

In this regard, scope and importance of Industrial Disputes Act, 1947 which has been discussed by the Hon'ble Apex Court in the case of *Edukanti Kistamma (dead) through LRs and others -vs- S.Venkatareddy(dead) through LRs*. And other, reported in (2010)¹ SCC 756 wherein at para-26 it has been held as enumerated herein below:

"26. Interpretation of a beneficial legislation with a narrow pedantic approach is not justified. In kcase there is any doubt, the court should interpret a beneficial legislation in favour of the beneficiaries and not otherwise as it would be against the legislative intent. For the purpose of interpretation of a statute, the Act is to be read in its entirety. The purport and object of the Act must be given its full effect by applying the principles of purposive construction. The court must be strong against any construction which tends to reduce a statute's utility. The provisions of the statute must be constructed so as to make it effective and operative and to further the ends of justice and not to frustrate the same. The court has the duty to construe the dispute to promote the object of the statute and serve the purpose for which it has been enacted and should not efface its very purpose....."

Thus, from the detail discussion of the statutory provision and the authoritative pronouncement in this regard, it is evident that the Industrial Disputes Act, 1947 has been formulate by the Legislature in order to resolve the dispute of the workers.

If at the threshold the Reference would be quashed by High Court sitting under Article 226 of the constitution of India the matter would be said to be thrown out before its initiation and certainly it would be proper for the reason that if any dispute is being raised by any of the parties it has to be answered by proper adjudication.

8. In view of the authoritative pronouncement and in view of the discussion made hereinabove, this Court after going across the matter wherein the management itself has decided the reference by coming to the conclusion that there exists employer-employee relationship, it cannot be held to be proper for

the reason that the same is to be adjudicated upon by the proper adjudicator if referred before it under the provision of Section (1) of the Industrial Disputes Act, 1947.

9. The matter is remitted before the appropriate Government for taking a fresh decision within six weeks from the date of receipt of copy of this order.

10. This writ petition stands allowed with the above observations and directions.