
(2015) 02 JH CK 0147

In the Jharkhand High Court

Case No : Writ Petition (L) No. 6533 of 2013

Bihar Colliery Kamgar Union

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 05-02-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10(1), 2(k), 22

Citation : (2015) 145 FLR 159 : (2015) 2 LLJ 578 : (2015) LLR 872

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Ajay Kumar Singh, for the Appellant; Prabash Kumar, Advocates for the Respondent

Judgement

S. Chandrashekhar, J.—Seeking quashing of order dated 11.6.2013 whereby the decision of the Ministry of Labour refusing to refer the dispute for adjudication has been communicated, the present writ petition has been filed. The brief facts of the case are that, the petitioner is the registered trade union under the Trade Unions Act, 1926. About 211 workmen who are members of the petitioner-Kamgar Union, are working permanently as contract labour for more than 8 years in Jitpur Colliery of M/s. IISCO (SAIL). Even though the contractor changed under the management of Jitpur Colliery after a specified period and new contractor was allotted the work order, 211 workmen continued to perform work of permanent nature in the management of Jitpur Colliery of M/s. IISCO-SAIL. These workmen are performing different nature of work on the post of Coal Dresser, Supporter (TCR), Timber Mistry, Machinist-Operator, General Mazdoor etc. in the underground mines for last more than 8 years. The posts on which the members of the petitioner-Kamgar Union are working, are all sanctioned posts and these workmen are performing their duties under the direct control and supervision of the management of Jitpur Colliery. The workmen have been given vocational training by the management Jitpur Colliery for performing their duties as Skilled Labour. They are provided the benefits under Coal Mines Provident Fund Act and also pension. The concerned workmen have been allotted C.M.P.F.

account in which employer's contribution is regularly deposited by the management. It is stated that the management of Jitpur Colliery of M/S IISCO-SAIL agreed to pay minimum wages, holidays, bonus, welfare allowance, underground allowance etc. to the contractor's workers of Jitpur Colliery and memorandum of settlement has been signed in this regard. Since the management of Jitpur Colliery was paying wages to the contractor's workers below the rate fixed by National Coal Wage Board, representations were made for regularization of services with arrears of wages and consequential benefits however, the management denied the claim and therefore, an industrial dispute was raised vide letter dated 22.1.2012 before the Assistant Labour Commissioner (Central)-I, Dhanbad. A conciliation proceeding was initiated in which the management filed its written statement denying the employer-employee relationship and finally, the conciliation proceeding ended in failure. A report dated 19.3.2013 was sent to the Ministry of Labour and Employment for referring the dispute for adjudication to the appropriate forum however, the appropriate Government has refused to refer the dispute for adjudication and the said decision has been communicated vide letter dated 11.6.2013. Aggrieved, the petitioner has approached this Court.

2. Heard the learned Counsel for the parties.

3. The learned Counsel appearing for the parties agreed that the issue involved in the present writ petition is a pure question of law and therefore, counter-affidavit is not required in the matter.

4. The learned Counsel appearing for the petitioner submits that, the function of the appropriate Government under section 10 of the Industrial Disputes Act, 1947 is merely administrative and it is not required to adjudicate the merit of the rival claims however, the reference has been rejected on the ground that industrial dispute lacks merit for adjudication. It is further submitted that, before the Assistant Labour Commissioner, various documents were submitted on behalf of the workmen and a report was sent to the Ministry of Labour and Employment and therefore, it is incorrect that the claim raised on behalf of the workmen was not supported by valid document.

5. As against the above, Mr. Prabash Kumar, the learned Counsel appearing for the respondent-Union of India relying on a decision in *The Secretary Indian Tea Association Vs. Ajit Kumar Barat and Others*, AIR 2000 SC 915 : (2000) 84 FLR 984 : (2000) 2 JT 70 : (2000) 1 LLJ 809 : (2000) 1 SCALE 515 : (2000) 3 SCC 93 : (2000) SCC(L&S) 321 : (2000) 1 SCR 787 : (2000) 3 SLJ 31 : (2000) AIRSCW 507 : (2000) 1 Supreme 454 submits that, the appropriate Government would not be justified in making a reference under section 10 of the Industrial Disputes Act without satisfying itself on the facts and circumstances brought to its notice that an industrial dispute exists or is apprehended.

6. I have carefully considered the submissions of the learned Counsel for the parties and perused the documents on record.

7. Section 10(1) of the Industrial Disputes Act, 1947 is extracted below:

"10. Reference of disputes to Boards, Courts or Tribunals.--(1) Where the appropriate Government is of 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, if 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 further 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 the relation to which the Central Government is the appropriate Government, it shall be competent for the Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government."

8. Section 2(k) of the Industrial Disputes Act, 1947 defines "industrial dispute" to mean a dispute or difference between employer and employees or between employer and employers. In "Secretary, Indian Tea Association v. Ajit Kumar Barat and Others"(supra), taking note of decision in Sultan Singh Vs. State of Haryana and another, AIR 1996 SC 1007 : AIR 1995 SC 1007 : (1996) 1 CTC 169 : (1996) 73 FLR 955 : (1995) 9 JT 556 : (1996) LabIC 915 : (1996) 1 LLJ 879 : (1996) 1 SCALE 9 : (1996) 2 SCC 66 : (1995) 6 SCR 629 Supp , the Hon"ble Supreme Court has summarised the law thus,

"1. The appropriate Government would not be justified in making a reference under section 10 of the Act without satisfying itself on the facts and circumstances brought to its notice that an industrial dispute exists or is apprehended and if such a reference is made it is desirable wherever possible, for the Government to indicate the nature of dispute in the order of reference.

2. The order of the appropriate Government making a reference under section 10 of the Act is an administrative order and not a judicial or quasi-judicial one and the Court, therefore, cannot canvass the order of the reference closely to see if there was any materials before the Government to support its conclusion, as if it was a judicial or quasi judicial order.

3. An order made by the appropriate Government under section 10 of the Act being an administrative order no lis is involved, as such an order is made on the subjective satisfaction of the Government.

4. It is appears from the reasons given that the appropriate Government took into account any consideration irrelevant or foreign material, the Court may in a given case consider the case for a writ of mandamus.

5. It would, however, be open to a party to show that what was referred by the Government was not an industrial dispute within the meaning of the Act."

9. In *Telco Convoy Drivers Mazdoor Sangh and Another Vs. State of Bihar and Others*, AIR 1989 SC 1565 : (1989) 59 FLR 734 : (1989) JT 155 Supp : (1989) 2 LLJ 558 : (1989) 1 SCALE 1544 : (1989) 3 SCC 271 : (1989) 2 SCR 802 : (1989) 2 UJ 159 , it has been held that though the appropriate Government can form an opinion whether industrial dispute exists or is apprehended but it is not entitled to adjudicate the dispute itself on merits. Where the dispute is whether the persons raising the dispute are workmen or not, the same cannot be decided by the Government in exercise of its administrative function under section 10(1) of the Industrial Disputes Act, 1947. The Hon"ble Supreme Court has held thus,

"13. 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 in excess of the power conferred on it by section 10 of the Act."

10. In the present case, the petitioner has claimed that the concerned 211 workmen have been working continuously for more than 8 years in the Jitpur Colliery of M/S IISCO-SAIL. They have been issued Authorisation Letter, C.M.P.F. account, Vocational Training Certificate, Identity Card etc. The petitioner has brought on record Minutes of Meetings of the Settlement. The letter dated 19.3.2013 of the Assistant Labour Commissioner, (Central), Dhanbad-1 whereby the failure report has been sent to the Ministry of Labour and Employment discloses that a copy of letter dated 22.1.2012 whereby the dispute was raised by the Kamgar Union, a copy of written statement dated 12.4.2012/25.5.2012 of the management and rejoinder dated 27.4.2012/20.6.2012 of the petitioner-Kamgar Union as well as a copy of Minutes of conciliation proceeding dated 5.12.2012 were enclosed therein. The Ministry of Labour has refused to refer the dispute for the following reasons:

"The claim of the Union for regularization of services of S/Sri Sita Ram Paswan and others of Jitpur Colliery of IISCO-SAIL was not supported by valid documents which substantiate their claim that there is any employer-employee relationship between management and the workmen at any stage. Hence, the I.D. Lacks merit for adjudication."

11. A perusal of the above reason for not referring the dispute discloses that the appropriate Government has entered into the merits of the matter in so far as, existence of employer-employee relationship between the workmen and management is concerned. Whether there is an employer-employee relationship between the workmen and management is a question which can be adjudicated by the Labour Court and the appropriate Government in exercise of administrative function under section 10(1) of the Industrial Disputes Act, 1947 cannot adjudicate this issue. Though, the satisfaction of the appropriate Government is subjective however, it must be based on an objective assessment of the materials on record. Letter dated 19.3.2013 of the Assistant Labour Commissioner (Central), Dhanbad-I clearly discloses that a dispute has arisen between the parties as to employer-employee relationship and the issue is whether the concerned workmen are entitled for regularization or not. I am of the view that impugned order dated 11.6.2013 suffers from serious infirmity in law. The Government could not have declined to refer the dispute for adjudication on the ground that the claim for regularization is not supported by valid documents. Accordingly, impugned order dated 11.6.2013 is quashed and the respondent No. 1 is directed to pass appropriate order for referring the matter for adjudication by the Labour Court.