
(2016) 06 MP CK 0016

In the Madhya Pradesh High Court

Case No : W.A. No. 230 of 2016 and W.P. No. 4804 of 2015

Birla Corporation Ltd.

APPELLANT

Vs

Deputy Labour Commissioner and another

RESPONDENT

Date of Decision : 15-06-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10(1)(d)

Citation : (2016) 166 AIC 360 : (2016) 151 FLR 353 : (2016) 4 LLN 453 :
(2016) 3 MPLJ 117 : (2016) 6 SLR 189

Hon'ble Judges : Rajendra Menon, Actg., C.J. and Anurag Shrivastava, J.

Bench : Division Bench

Advocate : R.N. Shukla, Senior Advocate with R.B. Tiwari, Advocate, for the Appellant; Swapnil Ganguly, G.A, for the Respondent

Final Decision : Disposed Off

Judgement

1. This judgment shall also finally dispose of the pending Writ Petition No. 4804/2015.

2. In this appeal under section 2(1) of the MP Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005, exception is sought to an interlocutory order dated 8-3-2016 passed by the writ Court in W.P. No. 4804/2015, whereby a stay granted by the learned writ Court on 29-4-2015 was vacated.

3. Facts in nutshell, go to show that with regard to certain industrial dispute raised pertaining to petitioner/appellant's establishment, the appropriate Government exercised its jurisdiction and made a reference of the dispute to the Labour Court, Satna vide order dated 9-3-2012, and thereafter amended the same on 19-11-2012. The dispute referred for adjudication initially was as to whether termination of service of Shri Govind Pathak and 36 other employees, in all 37 employees as per list enclosed, is legal or not?

4. Subsequently the reference order was amended and the number of

employees, whose cases were referred for adjudication, was increased from 37 to 345. Accordingly, as per appellant's contention, as the dispute pertains to action taken against 345 employees, therefore, in accordance to the provisions of section 10(D) (sic) of the Industrial Disputes Act, when the number of employees involved is more than 300, the reference should have been made to the Industrial Tribunal or the Industrial Court and not the Labour Court. It was also stated that the legal questions involved in the matter was already decided and the reference was not maintainable.

5. Challenging the reference itself made on various grounds, the writ petition was filed. Initially stay of the proceedings before the Labour Court was granted on 29-4-2015 and subsequently by the impugned order dated 8-3-2016 as the stay is vacated, this writ appeal has been filed.

6. Shri R.N. Shukla, learned Senior Advocate, took us through the provisions of section 10(D) (sic) of the Act; the requirement of the IIIrd Schedule to the Industrial Disputes Act; and, tried to emphasise that once the number of employees involved in the Industrial Dispute is more than 100 and the dispute in question falls under the IIIrd Schedule, the reference should have been made to the Industrial Tribunal or Industrial Court, and reference to the Labour Court was not maintainable. The Labour Court had no jurisdiction to deal with the matter and the reference itself to the Labour Court is unsustainable.

7. On the contrary, Shri Swapnil Ganguly argued that the question of jurisdiction of the Labour Court can very well be raised before the Labour Court, and the said Court is competent to decide the question as to whether the reference was maintainable and if not maintainable can refuse to answer the reference. Shri Swapnil Ganguly, learned Government Advocate, argues that at this preliminary stage when the appellant/petitioner has a right to raise all these questions as are canvassed in the writ petition before the Labour Court itself, a writ petition under Article 226/227 of the Constitution of India, was not maintainable.

8. We find much force in the objection raised by Shri Swapnil Ganguly. It is a well settled principle of law that when a reference is made to the Labour Court or the Industrial Court, the question as to whether the reference itself was maintainable can also be considered and decided by the Court to which reference is made. The Labour Court or the Industrial Court under law is entitled to reject the reference and refuse answering of the same, on account of want of jurisdiction. That being so, the petition at this stage without raising all these grounds before the Labour Court itself was not maintainable.

9. In this regard, we may take note of the provisions of section 10(4) of the Industrial Disputes Act, 1947, which contemplates that when an industrial dispute is referred for adjudication to a Labour Court, Tribunal or a National Tribunal, on a point specified by the appropriate Government for adjudication, the Labour Court or the Tribunal or the National Tribunal as the case made be, shall confine its adjudication to the matters referred and the matters incidental

thereto. The words 'incidental thereto' appearing in section 10(4), according to the well settled principle of law, relate to matters which arise for consideration 'incidentally' while deciding the dispute, referred for adjudication. For example - when an industrial dispute is raised, the Tribunal or the Labour Court while adjudicating the dispute is required to determine whether the matter placed before it is in fact an 'Industrial Dispute', as defined in section 2(k) of the Industrial Disputes Act; whether the person whose cases are referred for adjudication are 'workman' as defined under section 2(s) of the Act; and, whether the undertaking where the dispute has arisen is an 'Industry' within the meaning of section 2(j); and, such questions which go to the root of the matter and which have to be decided as a collateral issue pertaining to the jurisdiction of the Tribunal.

10. Even though it is a well settled principle of law that an Industrial Tribunal or a Labour Court while adjudicating a dispute has no power to vary or alter the points or issues referred for adjudication, however, on the basis of pleadings made by the parties, the Tribunal is entitled to frame certain issues which fall in the category of 'incidental issues' which are either issues of law or mixed question of law and fact. Such 'incidental', 'additional' or 'ancillary issues' are required to be determined by the Tribunal as they pertain to the jurisdictional question and are normally required to be decided as a preliminary issue. If the issue goes to the root of the matter and is an issue or an objection pertaining to the maintainability of the Industrial Dispute referred for adjudication or the jurisdiction of the Tribunal itself, the Tribunal is well within its right to go into this question as an 'incidental issue' and decide it as a preliminary issue. If the Tribunal on such examination comes to the conclusion that it has no jurisdiction, the Tribunal is free to reject the reference.

11. In fact sub-section (4) of section 10, of the Industrial Disputes Act, lays down the parameters relating to the jurisdiction for adjudication which a Tribunal or a Labour Court is required to adhere to while determining the points referred for determination and while doing so if certain 'incidental' question arises like question of jurisdiction, the Tribunal is required to go into this aspect also. In the case of Management of Express Newspapers (P) Limited, Madras v. The Workers and others, AIR 1963 SC 569, a question arose as to whether an industrial dispute referred with regard to 'closure' of an 'industry' can be adjudicated by the Tribunal, as it was the contention of one of the parties that there is no 'closure', but it is a 'lockout'. While analysing the question and while dealing with the question of jurisdiction in the aforesaid case, the Hon'ble Supreme Court held that these questions pertain to jurisdiction of the Tribunal for adjudicating the points referred for determination and can be tried as a preliminary issue, and finding of the Industrial Tribunal on this issue will decide the question of its jurisdiction to deal with the matter on merits.

12. Various judgments on this question are available and suffice it to refer to two judgments of the Gujarat High Court, in the cases of Gujarat Kamdar Panchayat

v. Maize Products, 2002 (4) LLN 985; and, Shankarbhai N. Prajapati v. Maize Products, 2002 (4) LLN 1035, where it has been held that when a preliminary objection is raised which goes to the root of the matter, touching the very jurisdiction of the Tribunal to adjudicate a dispute referred, the Tribunal must first decide the issue as a preliminary issue before embarking upon to decide the dispute on merits.

13. If the aforesaid legal principle is applied in the facts and circumstances of the present case, we are of the considered view that the question as to whether the reference should be made to the Labour Court or to the Industrial Court or whether the Labour Court to which the reference is made, has jurisdiction to deal with the matter, is a mixed question of law and fact and in our considered view when the Labour Court itself is clothed with the power to decide the question of its own jurisdiction as a preliminary issue, challenge to the order of reference on this count in a petition under Article 226/227 of the Constitution of India, is not required. An objection can be raised before the Labour Court and the Court after framing a preliminary issue can decide this question of jurisdiction, as the question of jurisdiction is nothing but an 'incidental matter' which can be answered while adjudicating the dispute by the Labour Court itself.

14. Keeping in view all these factors, we are of the considered view that not only in this writ appeal, but the writ petition itself should be disposed of with liberty to the petitioner to raise all these grounds before the Labour Court and leave it to the Labour Court to decide the maintainability of the reference as a preliminary issue.

15. However, Shri R.N. Shukla - learned Senior Advocate, invited our attention to the following observations made by the learned Single Judge:

"From perusal of section 10(1)(d), it is evident that the aforesaid provision confers discretion on the appropriate government. The appropriate Government in its discretion has referred the matter for adjudication to the Labour Court. Therefore, the aforesaid dispute can lie adjudicated by the Labour Court."

and, submitted that the aforesaid observation made comes in the way of the appellant/petitioner in raising the preliminary objection before the Labour Court and the Labour Court may be influenced by the aforesaid observation.

16. Having considered the submissions made by learned counsel for the parties, we are of the considered view that the question as to whether the reference made to the Labour Court, Satna was maintainable is a question which can be raised by the petitioner before the Labour Court and the Labour Court after evaluating various aspects of the matter can decide this question as a preliminary issue before proceeding to decide the dispute on merits.

17. Accordingly, we dispose of not only this appeal, but also the writ petition in the following manner :-

"(i). On the petitioner/appellant's appearing before the Labour Court and raising

a preliminary objection with regard to maintainability of the reference before the Labour Court, the Labour Court shall consider the preliminary objection and decide it as a preliminary issue before proceeding to determine the question referred to it on merits, in accordance with law.

(ii). The question of maintainability of the reference shall be decided as a preliminary issue by the Labour Court within a period of three months from the date of receipt of the certified copy of this order after hearing all concerned, and thereafter if the Labour Court comes to the conclusion that the dispute is maintainable, the Labour Court shall proceed in the matter in accordance with law."

18. Needless to emphasise that while dealing with the preliminary objection, the Labour Court shall not be influenced by the observations of the learned Single Judge, as reproduced here in above in its order dated 8-3-2016 in Writ Petition No. 4804/2015, and shall proceed to determine the question independent of the observations made, as indicated here in above.

19. With the aforesaid observations, both - the writ petition as well as the writ appeal, stand disposed of.