
(2006) 02 CAL CK 0036
In the Calcutta High Court
Case No : Writ Petition No. 2067 (W) of 2006

Birla Corporation Ltd.

APPELLANT

Vs

First Industrial Tribunal and Others

RESPONDENT

Date of Decision : 10-02-2006

Acts Referred:

Constitution of India, 1950 — Article 136, 226
Industrial Disputes Act, 1947 — Section 10, 10(1), 10(3), 2

Citation : (2006) 2 CALLT 424 : (2006) 2 CHN 13 : (2006) 110 FLR 136 :
(2006) 3 LLJ 84

Hon'ble Judges : Jyotirmay Bhattacharya, J

Bench : Single Bench

Advocate : Anindya Mitra, Dipak Ghosh, Partha Sarathi Sengupta, Arunava Ghosh, A.K. Dhar, R. De, D. Mondal, Soumya Majumdar, Sanjiv Trivedi and Joseph Banerjee, for the Appellant; K.K. Bandopadhyay, Dipankar Dutta and Nelay Sengupta for the respondent No. 5 and R.N. Majumdar and Nayan Rakshit for the respondent No. 3, for the Respondent

Final Decision : Allowed

Judgement

Jyotirmay Bhattacharya, J.—The jurisdiction of the appropriate Government to refer a dispute relating to proposed shifting of Soorah Jute Mill from 102, Narkeldanga Main Road, Kolkata to Birlapur, 24-Parganas (South) to the Industrial Tribunal for adjudication u/s 10 of the Industrial Disputes Act, 1947, has been challenged in this writ petition.

2. Incidentally an order passed by the Deputy Secretary to the Government of West Bengal prohibiting the continuance of suspension, i.e., lockout in the said unit of the said company, has also been challenged in this writ petition.

3. Soorah Jute Mill which is one of the oldest mills in the jute industry is in existence for more than 100 years at premises No. 102, Narkeldanga Main Road, Kolkata-700054. The petitioner has another jute mill, viz., Birla Jute Mill which was set up at Birlapur, 24-Parganas (S), West Bengal in 1919. For ensuring

economic viability of the mills, the petitioner company decided to shift the Soorah Mill from Narkeldanga to Birlapur with a view to merging the Soorah Jute Mill with Birla Jute Mill at Birlapur, The reasons for which the petitioner decided to shift Soorah Jute Mill from Narkeldanga to Birlapur, were disclosed by the company in its notice dated 16th March, 2004 being Annexure "P-10" to this writ petition at page 61. The reasons are as follows :

(a) Soorah Jute Mill (SJM) is a small mill with a capacity of around 40 MT - 42 MT /day. This, so far as jute mills go, is far from the minimum economic size. Generally, in the industry, viable jute mills are in the range of 80 MT -100 MT/day.

(b) It has a limited product range, just hessian and sacking, with hardly any value addition and, barring some scrim cloth, there are no exports.

(c) There is limitation for expansion. As it falls in the Calcutta Metropolitan Development Authority (CMDA) area, building laws do not allow any further expansion, as construction/covered area as compared to the total area is more or less optimised as per the regulations of the Calcutta Municipal Corporation Laws.

(d) The West Bengal Pollution Control Board has recently served notice to industries within the Metropolitan area, making it mandatory for them to switch over from coal fired boilers to oil fired ones for its requirement of steam. SJM has also received such notice. Accordingly, switch over from coal fired to oil fired was done at considerable cost leading to further increase of cost of production.

(e) The restriction on the movement of trucks during the day times results in higher cost of production. Hence the shifting of the mills to Birlapur will help reduce costs and provide a cleaner and better environment in the locality.

(f) Being situated on a low lying land, during monsoon, the mill operations are frequently disrupted due to flooding of the main shop floor.

(g) Due to shifting, the total capacity of Birla Jute Mill will increase and the product conversion cost, which is higher at Soorah, will come down as a result of operating with a higher capacity. As such, the company cannot stand in the present competitive market. Also, Birla Jute Mill has sufficient space and infrastructure facilities at Birlapur to take care of all of SJM's operational requirements in totality. b2 It goes without saying that as a result of shifting, the Birlapur unit becomes larger, more viable, with increased product flexibility and the transferred capacity can also be better utilised for increasing exports and improving the revenue of the Government.

4. All the three Workers' Union representing the workers of the Soorah Jute Mill opposed the proposed shifting of Soorah Jute Mill from Narkeldanga to Birlapur. As a result, a stalemate in the production activity in Soorah Jute Mill was created. Under such circumstances, the Management of the petitioner company declared lockout at their unit at 102, Narkeldanga Main Road, Kolkata-700054 with effect from 29th March, 2004.

5. In exercise of the power conferred by Section 10(3) of the Industrial Disputes Act, 1947, the Governor was pleased to prohibit the continuance of suspension of work, i.e., lockout in the said unit of the petitioner company. The said decision was communicated by the Deputy Secretary to the Government of West Bengal to the petitioner vide the communication dated 21st December, 2005 being Annexure P-18" to this writ petition at page 95.

6. Mr. Anindya Mitra, learned Senior Counsel, appearing for the petitioner, submitted that the order of reference being Annexure "P-17" to this writ petition at page 90 is absolutely illegal, as the dispute which was referred by the State Government to the Tribunal for adjudication, is not an industrial dispute within the meaning of the Industrial Disputes Act. Mr. Mitra, in fact, challenged the authority and/or jurisdiction of the State Government to refer such a dispute for adjudication to the Tribunal.

7. According to Mr. Mitra, u/s 10 of the said Act, the State Government can refer a dispute for adjudication to various forums as prescribed under the statute only when the State Government forms an opinion that an industrial dispute exists or is apprehended. Industrial dispute has been defined in Section 2(k) of the said Act. As per the said definition, industrial dispute means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person.

8. Mr. Mitra contended that since the dispute relating to the proposed shifting of the jute mill from Narkeldanga to Birlapur is not connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person, such a dispute cannot constitute an industrial dispute as defined u/s 2(k) of the said Act.

9. By referring to the notice dated 16th March, 2004 issued by the petitioner company being Annexure "P-10" to this writ petition, Mr. Mitra pointed out that since the company had made it clear that shifting of the mill would not cause break in service and the workmen will continue to enjoy all the facilities of the present employment, the terms of employment of the workers of the said mill will remain unaffected. As such, the dispute which was referred by the State Government cannot constitute an industrial dispute within the meaning of the said Act. Consequentially the reference of such a dispute which is not an industrial dispute u/s 10 of the said Act, is absolutely illegal as the authority which referred such a dispute to the Industrial Tribunal, is lacking jurisdiction to refer such a dispute under the said Act.

10. Mr. Mitra submitted that various forums have been constituted under the said Act for adjudication of different types of industrial disputes as specified under the Second and Third Schedules. The dispute or any matter appearing to be connected with or relevant to the dispute as specified in the Second or the Third

Schedule, can be referred to the Tribunal for adjudication as per the provision as contained in Section 10(1)(d) of the said Act. The dispute or any matter appearing to be connected with, or relevant to, the dispute as specified in the Second Schedule can be referred to the Labour Court for adjudication under Section 10(1)(c) of the said Act.

11. Mr. Mitra pointed out from the order of reference being Annexure "P-17" to this writ petition that the State Government had formed an opinion that the dispute, in the instant case relates to an issue as specified in the Third Schedule to the Industrial Disputes Act. Accordingly, the State Government framed the following issues and referred the same to Tribunal for adjudication:

Issues

1. Whether the proposed shifting of the Jute Mill located at 102, Narkeldanga Main Road, Kolkata-54 to Birlapur, 24-Parganas (South) by the Management is justified ?

2. To what relief, if any, are the workmen entitled ?

12. By referring to the Third Schedule, Mr. Mitra pointed out that the aforesaid issues do not come under any of the 11 heads as specified in the said Schedule. Mr. Mitra, thus, contended that if the above issues cannot come under any of the 11 heads as specified in the Third Schedule, the reference which is impugned in this writ petition cannot be sustained.

13. Mr. Mitra further submitted that when the futility of reference can be demonstrated from bare reading of the terms of the reference and the admitted facts, such reference can be quashed by this Court in its Constitutional writ jurisdiction. In support of such statement, Mr. Mitra relied upon a decision of the Hon'ble Supreme Court in the case of ANZ Grindlays Bank Ltd (now known as Standard Chartered Grindlays Bank Ltd.) Vs. Union of India (UOI) and Others, .

14. Relying upon another decision of the Bombay High Court in the case of Hindustan Lever Employees' Union v. State of Maharashtra and Ors. reported in 1989 (59) FLR 632, Mr. Mitra submitted that the shifting of a manufacturing unit from one place to another in exigencies of the trade is exclusively within the domain of the management of the company who has right to reorganise its work in the manner it pleases. According to Mr. Mitra, such exclusive right of the Management of the company cannot be interfered with, by the employees. Thus, Mr. Mitra contended that if the employees have no say in the decision making process of the management of the company, the birth of an industrial dispute in this regard cannot be contemplated.

15. With regard to the other impugned order by which the continuance of suspension of work, i.e., lockout in the said unit was prohibited by the Government u/s 10(3) of the said Act vide Annexure "P-18" to this writ petition, Mr. Mitra submitted that the said order is equally illegal as, such an order was passed in a case where no valid reference of an industrial dispute was made for

adjudication before the Tribunal.

16. Under such circumstances, Mr. Mitra prayed for quashing of both the impugned notices being Annexures "P-17" and "P-18" to this writ petition.

17. Mr. Kalyan Bandopadhyay, learned Senior Advocate, appearing for the respondent No. 5, refuted the said submission of Mr. Mitra by submitting that u/s 10 of the said Act reference can be made to various forums specified under the said Act for adjudication of industrial dispute as mentioned in the Second Schedule or the Third Schedule to the said Act or any matter appearing to be connected with or relevant to such dispute.

18. Mr. Bandopadhyay contended that Section 10 of the said Act makes it clear that not only the disputes as specified in the Second or the Third Schedule of the Act but also any matter appearing to be connected with or relevant to such dispute can be referred to the specified forums for adjudication.

19. Mr. Bandopadhyay further submitted that since the industrial disputes specified in the Second and Third Schedules of the said Act are not comprehensive, a residuary item was included in item No. 6 under the Second Schedule of the said Act which provides that all matters other than those specified in the Third Schedule will be referred to the Labour Court for adjudication. Thus, according to Mr. Bandopadhyay, even if the dispute which has been referred to the Tribunal does not fall under any of the categories under the Third Schedule, still then by virtue of the residuary provision as mentioned in item No. 6 of the Second Schedule, such dispute cannot lose the character of an industrial dispute. Reliance was made by Mr. Bandopadhyay in this regard on a decision of the Madras High Court in the case of General Secretary, National Grindlays Bank Employees Union, Madras v. Kannan and Ors. reported in 1978 LIC 648.

20. Mr. Bandopadhyay submitted strenuously that the dispute relating to shifting of the mill from one place to another amounts to "rationalization" which is a matter referred to in item No. 9 of the Third Schedule of the said Act. Mr. Bandopadhyay pointed out that the dictionary meaning of rationalization is reorganisation (a process or system) in such a way as to make it more logical and consistent. According to Mr. Bandopadhyay, shifting is a process of reorganisation amounting to rationalization and thereby shifting constitutes an industrial dispute within the meaning of the said Act.

21. Mr. Bandopadhyay further submitted that the justification for making a reference u/s 10 of the said Act cannot be adjudged by this Court in its Constitutional writ jurisdiction as in the absence of the other materials including the evidences which might be adduced by the respective parties in connection with the said reference, this Court cannot assess as to whether the dispute referred to the Tribunal amounts to an industrial dispute or not. According to Mr. Bandopadhyay, such an adjudication can be made conveniently and effectively by the Tribunal after the necessary materials are placed before the Tribunal.

22. Mr. Bandopadhyay further contended that even the formal defect in citation of reference order does not oust the jurisdiction of the Tribunal to consider the industrial dispute. As such, even if there is any defect in the order of reference, as pointed out by Mr. Mitra, such defect in the reference does not oust the jurisdiction of the Tribunal to adjudicate the industrial dispute relating to such shifting, particularly when affectation of the right and/or enjoyment of benefit of the workmen due to such shifting is admitted by the petitioner in their letter dated 22nd May, 2002 being Annexure "P-4" to this writ petition.

23. Mr. Bandopadhyay pointed out that the workmen are getting productivity linked wages for their services. Productivity linked wages means wages based on productivity. Mr. Bandopadhyay contended that as sufficient work is not available at Birlapur for the workmen at Narkeldanga, the workmen in Narkeldanga will suffer, if the mill is shifted to Birlapur.

24. In this backdrop, Mr. Bandopadhyay contended that Writ Court should not interfere with the reference at this stage. Rather such a dispute should be left open to be decided by the Tribunal. In support of such submission Mr. Bandopadhyay referred to a Division Bench decision of this Court in the case of *Steel Authority of India Ltd. v. Hindustan Steel Employees' Union and Ors.* reported in 1998 (78) FLR 293, where remittance of such a dispute by the Writ Court to the Tribunal for decision was upheld by the Division Bench of this Court in appeal, notwithstanding some formal defects were found to be in existence in the citation of the reference.

25. By relying upon another decision of the Hon'ble Supreme Court in the case of *D.P. Maheshwari v. Delhi Administration and Ors.* reported in AIR 1984 SC 853, Mr. Bandopadhyay submitted that the High Court, in exercise of its jurisdiction under Article 226 of the Constitution of India should not stop proceeding before the Tribunal, as it was decided by the Hon'ble Supreme Court in the said decision that neither the jurisdiction of the High Court under Article 226 of the Constitution of India nor the jurisdiction of the Hon'ble Supreme Court under Article 136 of the Constitution of India 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 decisions on issues more vital to them.

26. Under such circumstances, Mr. Bandopadhyay invited this Court not to interfere with the impugned order of reference at this stage.

27. With regard to the other impugned order being Annexure "P-18" to this writ petition, Mr. Bandopadhyay submitted that the State Government enjoys unfettered discretion u/s 10(3) of the said Act for passing an order for prohibiting continuance of suspension work, i.e., lockout in any company during the pendency of the reference before the Tribunal. Mr. Bandopadhyay submitted that the order u/s 10(3) of the said Act is an administrative order and as such the parties need not be given any hearing before passing such an order. If that be

the position in law, then according to Mr. Bandopadhyay, the said impugned order cannot be interfered with for violation of the principles of natural justice. In support of such submission, Mr. Bandopadhyay relied upon a decision of the Bombay High Court in the case of Harish Bijoy Kumar Khaitan and Anr. v. State of Maharashtra and Ors. reported in 1987 LIC 836.

28. Mr. Majumdar, learned Advocate, appearing for the respondent No. 3, supported Mr. Bandopadhyay. Mr. Majumdar further submitted that shifting of the mill from one place to another amounts to permanent closing down of a place of employment or part thereof meaning thereby closer of the unit within the meaning of Section 2(cc) of the said Act.

29. Mr. Majumdar further contended that since the dispute relating to a closer of an establishment is a dispute as mentioned in item No. 10 in the Third Schedule, the State Government did not commit any illegality in referring such a dispute to the Tribunal for adjudication.

30. Thus, Mr. Majumdar supported the orders impugned.

31. Heard the learned Advocates of the respective parties. Considered the materials on record. The State has not come forward to support the orders impugned herein.

Re: Challenge with regard to the Order of Reference contained in Annexure "P-17" to this writ petition.

32. It is no doubt true that the source of power to make the reference of an industrial dispute for adjudication lies in Section 10 of the said Act. But plain reading of Section 10 of the said Act makes it clear that the State Government can invoke its jurisdiction to refer a dispute to various forums specified under the said Act for adjudication only if the State Government forms an opinion that there exists any industrial dispute or any industrial dispute is apprehended. Thus, invocation of jurisdiction for making a reference depends upon the formation of an opinion regarding the existence of any industrial dispute or apprehension thereof.

33. Therefore, this Court will have to examine as to whether the dispute which was referred to the Tribunal by the said order of reference amounts to an industrial dispute within the meaning of Section 2(k) of the said Act or not. If it is found on the face of the order of reference that the reference has no relation to an industrial dispute then this Court, sitting in its Constitutional writ jurisdiction, can certainly nip the bud at the initial stage as the reference is without jurisdiction. On the contrary, if such manifestation on the face of the order of reference cannot be traced out, then this Court certainly cannot interfere with the order of reference in exercise of its jurisdiction under Article 226 of the Constitution of India. The said conclusion is arrived at by this Court by relying upon the decision of the Hon'ble Supreme Court in the case of ANZ Grindlays Bank Ltd. v. Union of India and Ors. (supra) wherein it was held as follows :

13. ...It is true that normally a writ petition under Article 226 of the Constitution of India should not be entertained against an order of the appropriate Government making a reference u/s 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 demonstrated 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 proceedings under Article 226 of the Constitution as no evidence is required to be considered for examining the issue raised.

34. Let me now consider as to whether the futility of the reference made by the State Government, can be ascertained from a bare reading of the terms of the present reference or not,

35. The issues framed in the order of reference has already been quoted above. According to the appropriate Government, shifting of the jute mill from Narkeldanga to Birlapur amounts to an industrial dispute specified in the Third Schedule to the Industrial Disputes Act, 1947.

36. Eleven (11) items of industrial disputes are specified in the Third Schedule of the said Act. Shifting of a mill and/or factory from one place to another is not included in either of the said eleven specified items.

37. Mr. Bandopadhyay, however, contended that shifting amounts to rationalization and thereby such a dispute comes under item No. 9 of the Third Schedule of the said Act. Thus, according to Mr. Bandopadhyay, the appropriate Government did neither commit any illegality nor exceeded its jurisdiction by referring such a dispute to the Industrial Tribunal for adjudication.

38. For appreciation of the said submission of Mr. Bandopadhyay, this Court is required to find out the meaning of the expression "rationalization". The term "rationalization" has not been defined under the Act. Mr. Bandopadhyay, however, pointed out the dictionary meaning of the expression "rationalization".

39. According to the Oxford Dictionary 10th Edition (Indian Edition) "rationalize" means (i) attempt to justify (an action or attitude) with logical reasoning, (ii) reorganise (a process or system) in such a way as to make it more logical and consistent, (iii) make (a company or industry) more efficient by dispensing with superfluous personnel or equipment, (iv) mathematics convert to a rational form.

40. In my view, "rationalization" in the context of the Industrial Disputes Act carries the meaning as specialized in item No. (iii), i.e., make (a company or industry) more efficient by dispensing with superfluous personnel or equipment. The other three meanings as given in the said dictionary, in my view, will not be

appropriate in the context of the Industrial Disputes Act.

41. Thus, when steps will be taken for making the mill more efficient by dispensing with superfluous personnel or equipment, such step will amount to rationalization giving birth of an industrial dispute.

42. Here in the instant case, the petitioner in its letter dated 16th March, 2004 being Annexure "P-10" to this writ petition specifically mentioned in item No. 7 that "it is once again clarified that the shifting of the mill will not cause break in service and the workmen will continue to enjoy all the facilities of the present employment".

43. Mr. Partha Sarathi Sengupta, learned Senior Advocate, who was assisting Mr. Mitra, also invited this Court to record his client's undertaking to the effect that the condition of the service of the workmen of Soorah Jute Mill at Narkeldanga will remain unchanged and/or unaltered even after such shifting. Accordingly, such undertaking is kept on record.

44. Thus, when there is no proposal for making the mill more efficient by dispensing with superfluous personnel or equipment in the process of such shifting, such shifting cannot amount to an industrial dispute within the meaning of Section 2(k) of the said Act.

45. If shifting itself cannot amount to an industrial dispute, the order of reference cannot be maintained. Even the Division Bench of this Court in the case of Steel Authority of India Ltd. v. H.S.E. Union (supra) held that three things appear to be essential in the context of Section 10 of the Act; firstly, there should be an industrial dispute, secondly it should be expedient to make a reference, thirdly, the term of reference should normally be specified to avoid vagueness.

46. The very said first condition is not satisfied here. It is no doubt true that remittance of the industrial dispute by the Writ Court to the Tribunal for adjudication was maintained by the Appeal Court, notwithstanding defect in citation in the order of reference. There, the only defect was non-joinder of necessary party in the order of reference. The Division Bench held that such defect cannot oust the jurisdiction of the Tribunal to adjudicate the industrial dispute within the terms of the reference. But here the facts are otherwise. Here the dispute is not an industrial dispute. The existence and/or apprehension of an industrial dispute is pre-condition for such reference.

47. Here the management of the petitioner company has decided to shift the mill from the existing site to a place which is about 40 km. away from the existing site where the petitioner is running another mill, for economic viability. An employer who has taken a high risk by making huge investment in the business, has unfettered right to select the place of business according to his own choice. The employees cannot stand in the way of such decision making process of the employer, so long as their conditions of service are not affected by such shifting.

48. This Court, thus, holds that shifting itself cannot constitute an industrial dispute. However, when shifting leads to a dispute relating to employment or non-employment or the terms of employment or the conditions of labour of any person, then such a dispute will constitute an industrial dispute.

49. Furthermore, retrenchment of workmen and closure of establishment are included in item No. 10 of the Third Schedule of the said Act. The appropriate authority has not formed any opinion regarding the existence of such a dispute and/or apprehension thereof. As such, this Court also cannot come to the conclusion that shifting will amount to retrenchment of workmen and/or closure of establishment. In any event, since reference was not made in relation to a dispute as specified in item No. 10 of the Third Schedule of the said Act, this Court does not feel it necessary to consider the validity of the reference in the light of the submission made by Mr. Majumdar, as aforesaid. Even the State Government has not come forward to show that the proposed shifting has any co-relation with any type of industrial dispute.

50. In the aforesaid circumstances, this Court holds that the futility in the order of reference is apparent on the face of the order of reference itself and as such the order of reference cannot be retained on record.

51. The order of reference thus stands quashed.

52. It is, however, made clear that in the event the appropriate Government forms an opinion to the effect that any dispute and/or difference arises between the employer and the workmen or between the workmen and the workmen in relation to employment or non-employment or the terms of employment or with the conditions of labour of any person due to such shifting, then the appropriate Government will be free to make a reference u/s 10 of the said Act.

Re: Challenge with regard to the impugned order contained in Annexure "P-18" to this writ petition.

53. Since the order of reference cannot be maintained for the reasons as aforesaid, the impugned order contained in Annexure "P-18" to this writ petition whereby the continuance of suspension of work, i.e., lockout in the petitioner's unit at Narkeldanga was prohibited by the State Government, cannot be maintained. Under such circumstances, I need not discuss the effect of the decision in the case of Harish Bijoy Kumar Khaitan and Anr. v. State of Maharashtra (supra) cited by Mr. Bandopadhyay in great details as, such discussion loses its significance in the present context, though I agree with the principles laid down therein. Accordingly, the impugned order contained in Annexure "P-18" to this writ petition, also stands quashed.

54. The writ petition, thus, stands allowed. There will be, however, no order as to costs.

55. Urgent xerox certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible.

Later:

56. After passing of this order, Mr. Dipankar Dutta, learned Advocate, appearing for the respondent No. 5, prayed for stay of operation of this order which was vehemently opposed by Mr. Partha Sarathi Sengupta, learned Senior Advocate for the petitioner.

57. Since the effect of grant of stay of operation of this order will amount to revival of the proceeding before the learned Industrial Tribunal, this Court refuses to pass an order of stay as prayed for by Mr. Dutta.

58. At the same time, this Court feels that some interim arrangements should be made, so that the aggrieved party is not deprived of an opportunity for challenging this order which he does not want to accept.

59. However since Mr. Sengupta, on instruction from the representative of his client present in Court today, assures this Court that his client will not take any step for shifting the said mill from Narkeldanga to Birlapur for a period of three weeks from date, this Court feels that no further interim arrangement need be made in this context.