

(2008) 07 OHC CK 0030
In the Orissa High Court

Birla Tyres Workers Union

APPELLANT

Vs

Industrial Tribunal and Others

RESPONDENT

Date of Decision : 22-07-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 10

Citation : (2008) 119 FLR 321 : (2008) 2 OLR 379

Hon'ble Judges : S.C. Parija, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.C. Parija, J.—This writ application has been filed by the Workers Union challenging the order dated 21.2.2002 passed by the. Presiding Officer/Industrial Tribunal, Orissa, Bhubaneswar in I.D. Case No. 31 of 2000 (State), under which the application of the petitioner praying to implead the Principal Employer, opposite party No. 3, as a necessary party to the proceeding/reference has been rejected.

2. The petitioner-Union raised an industrial dispute alleging illegal retrenchment of 75 workmen by the management of M/s. Baba Enterprises, which was taken up for conciliation and the same having ended In failure, the State Government in the Labour & Employment Department, referred the dispute to the Industrial Tribunal, Bhubaneswar, for adjudication. The terms of the reference was as follows:

Whether the action of the management of M/s. Baba Enterprises, a contractor of M/s. Birla Tyres in effecting retrenchment of 75 numbers of workmen with effect from the date mentioned against each in Annexure-0 is legal and/or justified ? If not to what relief they are entitled to?

3. The petitioner-Union filed their claim statement before the Industrial Tribunal and the management, opposite party No. 2, filed their written statement, opposing the claim application of the Union. Subsequently, the petitioner-Union

filed an application before the Industrial Tribunal praying to implead the principal employer, M/s. Birla Tyres, Balasore, opposite party No. 3, as a necessary party to the reference, which was objected to by the said principal employer on the ground that they are neither necessary nor proper party to the proceeding and are not connected in any manner with the terms of the reference made by the State Government to the Industrial Tribunal for adjudication.

4. Learned Tribunal on considering the contention of the parties came to hold as under:

xx xx xx I am of the view that M/s. Birla Tyres, which is admittedly the principal employer in the instant case is not a necessary party to be added to the already existing parties in the reference. My aforesaid view is also based upon the principle that if by addition of any party the scope of the reference is likely to be widened, then the said party cannot be treated as a necessary party. In the instant case, admittedly the second party-members were the workmen under contractor-employer till their retrenchment. In such view of the matter, the petition dtd. 9.11.2001 has no merit and accordingly the same is rejected.

5. Sri D. Mohanta, learned Counsel appearing for the petitioner-Union refers to Section 10(4) of the Industrial Disputes Act (I.D. Act for short) in support of his contention that the Industrial Tribunal has the authority and jurisdiction to adjudicate on all those points and matters incidentally to the reference. Section 10(4) of the I.D. Act is extracted below:

(4) Where in an order referring an industrial dispute to (a Labour Court, Tribunal or National Tribunal) under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication/the Labour Court or the Tribunal or the National Tribunal, as the case may be), shall confine its adjudication to those points and matters incidental thereto.

6. Sri Mohanta, learned Counsel for the petitioner has filed certain documents by way of further affidavit and contends that the retrenched workmen were in fact working under the principal employer, opposite party No. 3, and therefore they are entitled to be regularized in employment under the principal employer. In this regard, reference is made to the objection filed by the management of M/s. Baba Enterprises, opposite party No. 1, before the Industrial Tribunal, wherein it has been stated that the 75 workmen have been retrenched from service by the principal employer, who issued the retrenchment notice on the part of M/s. Baba Enterprises and therefore the decision to retrench the workmen was solely taken by the principal employer.

7. Learned Counsel for the petitioner in this regard has relied on the decisions of the Supreme Court in the cases of The Works Manager, Central Railway Workshop, Jhansi Vs. Vishwanath and Others, , Royal Talkies, Hyderabad and Others Vs. Employees State Insurance Corporation, , and State of Tamil Nadu Vs. Binny Ltd., Madras, , in support of his contention that the Industrial Tribunal can go into the question of whether the workmen were in fact working directly under

the principal employer and the order of retrenchment had in fact been passed by the said principal employer, in order to adjudicate whether the action of the principal employer in effecting such retrenchment is legal and justified, in exercise of its power u/s 10(4) of the I.D. Act.

8. Sri B. Ratho, learned Counsel appearing for the Principal Employer, opposite party No. 3, submits that in view of the specific terms of the reference made by the State Government to the Industrial Tribunal for adjudication, the scope and ambit of the same cannot be expanded to introduce a new case, as has been pleaded by the petitioner-Union, that the retrenched workman were in fact working under the principal employer and therefore their retrenchment by the principal employer is illegal and unjustified. Accordingly it is submitted that the principal employer, opposite party No. 3, is neither a necessary nor a proper party to the reference and the scope of the reference cannot be expanded to rope in the principal employer, who is admittedly not a party to the reference. In this regard, Sri Ratho has relied on a Constitutional Bench decision of the Supreme Court in the case of Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., , which has been relied upon by the learned Tribunal in the impugned award, wherein it has been clearly held that by virtue of engagement of casual labourers by contractor in connection with the work of establishment, relationship of master and servant is not created between the principal employer and the casual labourers.

9. Sri Ratho has also relied on a decision of Supreme Court in the case of Bhogpur Corporation Sugar Mills Ltd. v. Harmesh Kumar reported in AIR 2007 SC 288, in support of his contention that the Industrial Tribunal derives its authorities and jurisdiction from the terms of the reference made to it and it has to exercise its jurisdiction within the four corners of such reference. Accordingly it is submitted that the reference made by the State Government to the Industrial Tribunal for adjudication being specific and confined to the question whether the action of the management of M/s. Baba Enterprises, opposite party No. 2 in effecting retrenchment of 75 workmen is legal and justified, the same cannot be expanded so as to bring within its scope, the allegation now being made by the workmen that they were in fact working under the principal employer, who has passed orders of retrenchment.

10. A perusal of Section 10(4) of the I.D. Act clearly goes to show that the Labour Court or the Industrial Tribunal is required to confine its adjudication to the specific points of dispute, which has been referred to it by the appropriate Government for adjudication and matter incidental thereto. In the instant case, the reference being specific and confine to the adjudication of the question as to whether the action of the management of M/s. Baba Enterprises, opposite party No. 2, in effecting retrenchment of 75 workmen is legal and/or justified, the same cannot be expanded to include the issue as to whether the concerned workmen were in fact working under the principal employer and whether they have been retrenched by such principal employer. Such a plea of the workmen is

alien to the original reference, as quoted above and allowing the same would amount to introducing a new case beyond the scope of such reference. The aforementioned decisions referred to by Sri Mohanta, for the petitioner, has no application to the facts of the present case.

11. Considering the findings of the learned Tribunal as given in the impugned order and applying the principles of law as discussed above, with regard to ambit and scope of the reference, no impropriety or illegality can be said to have been committed by the learned Tribunal, so as to warrant any interference by this Court.

12. The writ petition is accordingly dismissed.