

(1999) 03 PAT CK 0031
In the Patna High Court
Case No : C.W.J.C. No. 2233 of 1997 (R)

B.O.C. India Ltd.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 23-03-1999

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 12, 12(5), 18

Citation : (1999) 47 BLJR 961 : (2001) 3 LLJ 1002 : (1999) 3 PLJR 149

Hon'ble Judges : Nagendra Rai, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Nagendra Rai, J.—The present writ application has been filed by the petitioner-employer for quashing the notification dated March 27, 1997 issued under the signature of the Under Secretary to the Government of Bihar by which the respondents State of Bihar has referred the dispute between the petitioner and the workman represented by the President Indian Oxygen Workers" Union (hereinafter referred to as the Workers" Union) in exercise of power u/s 10(1)(d) of the Industrial Disputes Act (hereinafter referred to as the Act), a copy of which has been annexed as Annexure 1 to the writ application.

2. The case of the petitioner is that it is a registered Company under the Indian Companies Act having its registered office at Calcutta and Industrial Establishment at Mona Road, Burmamines, Jamshedpur. It is engaged in production and distribution of Industrial gases which is essential material required in the production process of TISCO, TELCO and other Industries of Bihar. It is also engaged in distribution of medical oxygen and other health service products. There are two recognised unions in the Jamshedpur factory, namely, Workers Union and Jharkhand Kamgar Union. Majority of the workers are members of the Jharkhand Kamgar Union and only a few workers are members of the Workers" Union. The dispute arose between the employer and the employees and a long-term settlement was arrived at with, the Union

representing the majority of the workers with regard to their demands. However, on August 21, 1993 the Workers" Union made certain allegations against the management through a letter, a copy of which has been annexed as Annexure-4 to the writ application, wherein no specific demand was raised and certain allegations and imputations were made. A copy of the said letter was also sent to the Deputy Labour Commissioner and later on the Deputy Labour Commissioner initiated a conciliation proceeding and asked the management to appear and thereafter, the management sent a letter to the Deputy Labour Commissioner wherein a request was made to give an opportunity of separate meeting and not joint meeting with the Workers" Union. It was also stated by the management that the letter contains false allegations against the management a copy of the said letter has been annexed as Annexure-6 to the writ application. Thereafter, the Deputy Labour Commissioner-cum-Conciliation Officer without giving him an opportunity sent a failure report and after that the Government issued the aforesaid notification referring the dispute mentioned in the said notification for adjudication.

3. A counter-affidavit has been filed on behalf of the respondent-State and its officers respondent Nos. 1 to 3. No separate counter-affidavit has been filed by the Workers" Union.

4. The stand of the respondent State, in brief, is that BOC India Ltd. Burmah Mines, Jamshedpur is a factory registered under the Factories Act. It has two registered Unions, namely, Workers" Union and Jharkhand Kamgar Union. There was dispute between the said unions and the Registrar of the Trade Unions has considered the matter and has found that the Workers" Union is also a recognised Union. The Workers" Union raised a dispute with the management-petitioner. The Deputy Labour Commissioner-cum- Conciliation Officer initiated a conciliation proceeding on June 12, 1996 and fixed for conciliation on June 17, 1996 but no representative of the management appeared in the conciliation proceeding. The Conciliation Officer submitted a failure report u/s 12(4) of the Act. Thereafter, the State Government being satisfied that the industrial dispute exists between the employer and the employees referred the matter u/s 10(1)(d) of the Act.

5. A rejoinder to the counter-affidavit, has been filed on behalf of the petitioner reiterating the same facts which have been stated in the writ application and some supporting documents have also been filed with it.

6. Learned counsel for the petitioner submitted two points, firstly, the reference is invalid for the reason that no demand was made to the employer and as such the dispute raised 2 by the workers is not the industrial dispute as defined under the Act and secondly, it was submitted that there was a valid long term settlement with the Union representing the majority of the workmen and term of the said 2 settlement is binding on Workers Union and as such the reference is invalid in law.

7. Learned counsel for the respondents controverted the aforesaid points and submitted that a demand was made by the Union before the management and when the management did not do anything, a conciliation proceeding was initiated and on failure of the conciliation proceeding, a report was submitted before the State Government and the State Government after being satisfied that the industrial dispute exists between the petitioner and the workmen referred the dispute. It was further submitted that as the dispute was referred u/s 10(1)(d) of the Act after failure of the conciliation proceeding even in case of no demand by the employees to the employer the reference is not invalid if the Government is satisfied that the dispute exists between them. It was also submitted that even if there was any settlement between the petitioner and the other Union, it was not a settlement during the conciliation proceeding and in that view of the matter, it is binding only on the workers of the concerned Union and not on the workers represented by the respondent, Workers Union.

8. u/s 10 of the Act, the concerned authority has to form an opinion as to whether an industrial dispute exists or is apprehended and thereafter, it has to pass an appropriate order either referring or refusing to make reference. The order of reference is an order and not quasi-judicial order. It is not necessary in law that the employer has to be heard. The reference has to be made on the satisfaction of the concerned authority on the basis of the materials on record. It has not to act arbitrarily or capriciously or on extraneous consideration. The authority has to form an honest opinion as to the existence of the industrial dispute or apprehension of industrial dispute.

9. The notification referring the dispute reads as follows:

Whereas the Governor of Bihar is of opinion that industrial dispute exists between the management of B.O.C. India Ltd., Mona Road, Burmah Mines, Jamshedpur and their workmen represented by President, Indian Oxygen Workers Union, Jamshedpur regarding the matter specified in Annexure-A annexed thereto;

And, whereas, the Governor considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by Clause (d) of Sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Governor of Bihar is pleased to refer the said dispute for adjudication to the Industrial Tribunal, Ranchi constituted by the State Government.

In exercise of the powers conferred by Sub-section (2-A) of Section 10 of the said Act, the Governor of Bihar is further pleased to specify a period of six months from the date of receipt of this notification within which the Industrial Tribunal, Ranchi shall submit its award to this dispute to the State Government.

ANNEXURE "A" Whether to increase the work-load on the workmen by reducing the steno work strength by the Management of B.O.C. India Ltd., Mona Road,

Verma Mines, Jamshedpur, is proper. If not to what relief those workmen are entitled.

10. The aforesaid order shows that the Governor of Bihar after being satisfied about the existence of the dispute with regard to the matter referred to in Annexure -A has referred the dispute.

11. The primal challenge to the aforesaid reference on behalf of the petitioner is that as no demand regarding the dispute was raised by the Workers' Union before the Management, the reference is incompetent. In support of this assertion, learned counsel for the petitioner has relied upon a judgment of the Supreme Court in the case of Sindhu Resettlement Corp. v. Industrial Tribunal 1988 I LLJ 834. In that case it was held that an industrial dispute as defined must be a dispute between the employer and employer, employer and workmen and workmen and workmen. A mere demand to a Government without a dispute being raised by the workmen with their employer cannot become an industrial dispute. From the facts of the said case, it appears that in that case the employee had confined their demand to the management to retrenchment compensation only and did not make any demand for reinstatement but the reference was made by the State Government u/s 10 of the Act with regard to the reinstatement of the concerned employee. Dealing with the said matter, it was held that as no dispute was raised by the workmen with the employer with regard to the matter referred by the State Government, the reference was illegal.

12. The question as to whether an industrial dispute exists or is apprehended depends upon the facts of each case. It is an admitted fact that the Workers' Union filed a petition before the management and wherein apart from other grievances or disputes raised by the Union, it was especially mentioned that so far as D.A. Plant area is concerned, the workers are being treated as a bonded labour by withdrawing 50% of the work force and increasing 100% production with 50% work force. The workmen have no breathing time and they have been threatened for disciplinary action and forced premature retirement in the name of V.R.S. As such one of the disputes raised by the workers was of increasing workload by reducing the standard work strength and the said dispute has been referred by the State Government to the Tribunal. Thus, an industrial dispute was raised before the management and it is not necessary that there should be specific refusal before the reference is to be made. Accordingly, the case relied upon by the petitioner has no application in the present case.

13. In this case before reference a conciliation proceeding u/s 12 of the Act was initiated and as the conciliation proceeding ended in failure, the Deputy Labour Commissioner-cum-Conciliation Officer submitted a report in terms of Section 12(4) of the Act and the State Government on consideration of the report and after being satisfied that case for reference is made out referred the matter u/s 12(5) of the Act. No doubt, the State Government while acting u/s 12(5) of the Act has to refer dispute u/s 10 of the Act on fulfilment of the conditions mentioned therein but that does not mean that unless there is claim with regard

to the demands or a dispute is raised by the Union, reference will be invalid in law.

14. The aforesaid question was considered by the Apex Court in the case of Village Papers Mazdoor Sangh v. State of Himachal Pradesh 1995 Suppl 1 SCC 291 : 1985 II LLJ 628. In that case, the Union served a demand notice on the employer company. During the pendency of the conciliation proceeding, some employees were suspended and a proceeding was initiated against them and later on they were terminated. Subsequently, the Conciliation Officer submitted a failure report. Further conciliation proceeding was initiated which also ended in failure. Thereafter, the conciliation officer further submitted a failure report and after that the State Government made a reference u/s 10(1) of the Act regarding justifiability of the termination of the workmen. A Full Bench of the Himachal Pradesh High Court taking view that as no demand was raised by the workmen with regard to the termination matter upon the employer either orally or in writing, no dispute as defined u/s 2(k) of the Act existed and such reference made by the State Government was incompetent. The Apex Court held that the view taken by the Full Bench of the Himachal Pradesh High Court was not correct for the reason that sine qua non for making reference u/s 12(5) of the Act is the existence of the failure report submitted by the conciliation officer. In other words, the Apex Court held that there is no requirement that a demand should be raised by the workman upon the employer before a reference is made upon failure of the conciliation proceeding in terms of Section 12(5) of the Act.

15. In this case as matter of fact a dispute was raised by the Union with the employer by sending a letter and when no action was taken on the basis of the said letter a conciliation proceeding was initiated which ended in failure and the State Government after considering the materials and on being satisfied has referred the matter and as such there is no illegality in the reference made by the State Government on the aforesaid ground raised by the petitioner. Even assuming that no dispute was raised with the employer by making a demand even then reference is not illegal as the reference has been made on failure of conciliation proceeding.

16. So far as the submission advanced on behalf of the petitioner regarding the settlement between the petitioner and the other Union is concerned, admittedly, as the settlement stated to have been arrived at between the petitioner and the other Union was not during the conciliation proceeding u/s 12 of the Act and as such the same is binding only on the parties to the aforesaid settlement in terms of Section 18 of the Act. The same is not binding on the respondent Union. Had there been settlement during the conciliation proceeding there would have been force in the submission advanced on behalf of the petitioner.

17. Thus, there is no merit in this application and the same is dismissed.