

(1966) 09 BOM CK 0002

In the Bombay High Court

Case No : Miscellaneous Petition No. 509 of 1964

Bombay Labour Union and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 22-09-1966

Acts Referred:

Industrial Disputes Act, 1947 — Section 12(4), 12(5), 2

Citation : (1967) 1 LLJ 149

Hon'ble Judges : K.K. Desai, J

Bench : Single Bench

Judgement

1. There is no substance in this petition under Art. 226 of the Constitution challenging the validity of the order dated 19 November, 1964, whereby the State Government, upon considering the report submitted to it by the conciliation officer, Bombay, under sub-section (4) of S. 12 of the Industrial Disputes Act, 1947, stated :

"that it was satisfied that there was no case for reference of the disputes in connexion with the demands made against respondent 2 company on behalf of the petitioner-union for the reason that the Hindustan Lever Employees" Union, Bombay, a recognized union, had arrived at a settlement dated 12 August, 1964, with the management of the Company under S. 2(p) of the Industrial Disputes Act covering, inter alia, the demands which constitute the present dispute and the settlement has been accepted by the majority of the workmen."

2. The only facts, which need be noticed in connexion with this petition are as follows.

3. Petitioner 1 is a trade union incorporated under the Indian Trade Unions Act and claims affiliation to the communist-controlled All-India Trade Union Congress. Respondent 3 union was at all material times a representative union of the workmen of respondent 2 Company which carries on business of manufacturing diverse goods mentioned in Para. 6 of the petition and has a factory at Sewri and

an office in the Fort area at Bombay. In connexion with the terms and conditions of the workmen, respondent 3 union had made an agreement with respondent 2 company on or about 23 May, 1961. That agreement was expiring on 31 December, 1963. Petitioner 1 union appears to have organized to increase the membership of the workers in respondent 2 company in the register of petitioner 1 union. By a notice dated 17 January, 1964, copy whereof is annexed as Ex. B to the petition, the petitioner union informed the company that it terminated the first agreement dated 23 May, 1961. It also intimated that it would serve a fresh charter of demands in due course. It reminded the company that it represented the majority of the workmen and would not be bound by any agreement made by the company with respondent 3 union. The petitioner-union thereafter served the charter of demand stated 7 April, 1964, on the company. The demands related to pay-scales, adjustments, dearness allowance, bonus, working hours, provident fund, gratuity, leave/holidays, promotions, pension scheme and several other matters. On or about 19 June, 1964, the conciliation officer (respondent 4) admitted the demands for conciliation purposes. Meetings were held before the conciliation officer. At the meeting held on 9 July, 1964, one K. K. M. Rai, representing respondent 3 union, was present and made certain requests to the conciliation officer. What transpired at several other meetings held before the conciliation officer is not relevant for the purpose of deciding this petition. It is sufficient to state that respondent 3 union made an agreement dated 12 August, 1964 (copy whereof is annexed as Ex. E to the petition) with the company in connexion with most of the matters which formed part of the charter of demands made by petitioner 1 union. The agreement was made by respondent 3 union as a representative union for the majority of the workmen of the company. The agreement was produced before the conciliation officer on 20 August, 1964. Ultimately, the conciliation officer made a failure report dated 2 September, 1964, to the State Government.

4. The representatives and/or office-bearers of petitioner 1 union had interviews with the management of the company on 6 August, 1964. The petitioners' case is that the management was informed that petitioner 1 union was representing the majority of the workmen and the company should not arrive at an agreement with respondent 1 union. One Rindani, on behalf of the company, had given certain assurances to petitioner 1 union in that connexion. The office-bearers and/or representatives of petitioner 1 union inter-viewed the Minister for Labour on 25 August, 12 September, and 31 October, 1964; the Labour Commissioner on 7 September, 1964; and the Secretary of the Department on 9 October, 1964. At these interviews, petitioner 1 union made several contentions and arguments in connexion with the State Government making a reference of the demands made on behalf of petitioner 1 union under the Industrial Disputes Act. From the averments in the petition, it appears that throughout the case of petitioner 1 was that it represented the majority of the workmen of the company. In the interview with the Minister held on 25 August, 1964, according to petitioner 1 union, the Minister suggested that the workmen should prove that they were by a majority

opposed to the terms of settlement contained in the agreement dated 12 August, 1964. It was discussed that one method to ascertain the views of the majority would be that the workers should refuse on the pay-day (8 September, 1964) to accept any monetary benefit that might be offered by the company. The petitioners' case in Para. 32 of the petition is that the Minister accepted this method as proper for ascertaining the views of the majority of the workmen.

5. In fact, on 8 September, 1964, petitioner 1 union decided to stage a strike and out of 2,300 employees including the monthly rated workmen, 880 struck work and out of 2,023 hourly rated workmen, 1,042 workmen received their wages.

6. The ultimate result of all the interviews that petitioner 1 union had with the Minister for Labour was that by the impugned order dated 21 November, 1964, for the reasons mentioned in the order, reference under Sub-section (5) of S. 12 of the Act was refused.

7. In connexion with the reason mentioned in the order, viz., that a recognized union had arrived at a settlement dated 12 August, 1964, with the management covering, inter alia, the demands made by petitioner 1 union, which had been accepted by the majority of the workmen, the petitioners contend that the majority of the workmen had in fact not accepted the agreement. The further contention is that there was no evidence before the Government to come to the conclusion that the majority had accepted the settlement. The argument is further developed by stating that contrary to the assurances given by the Minister and the Secretary, on 8 September, 1964, salary including the benefits available under the agreement dated 12 August, 1964, was paid and distributed in single packets. The understanding and assurance was that the salary and the benefits available under the agreement of 12 August, 1964, were to be distributed by two separate packets. By offering salary and benefits in a single packet, the workers were left with no choice but to accept the packets meant for each of them. If the salary and benefits had been offered by two separate packets, it would have been ascertained that majority of the workmen was not willing to accept the agreement (settlement) dated 12 August, 1964.

8. In connexion with these contentions, it requires to be once again stated that it is now well-settled that it is not permissible for the Courts to question reasons given by the Government for refusing a reference under S. 12(5) of the Act, if the reasons are germane and relevant to the question of reference being made under the sub-section. If the reasons stated are not germane and/or are extraneous, the Courts have power to direct the Government to consider the matter once again without taking into account extraneous and irrelevant matters.

9. In this connexion, reference may be made to the decision of the Supreme Court in the case of State of Bombay Vs. K.P. Krishnan and Others, . The Court observed :

"The problem which the Government has to consider while acting under S. 12(5) (a) is whether there is a case for reference. This expression means that

Government must first consider whether a prima facie case for reference has been made on the merits. If Government comes to the conclusion that a prima facie case for reference has been made then it would be open to the Government also to consider whether there are any other relevant or material facts which would justify its refusal to make a reference.

The order passed by the Government under S. 12(5) of the Industrial Disputes Act, 1947, may be an administrative order and the reasons recorded by it may not be justiciable in the sense that their propriety, adequacy or satisfactory character may not be open to judicial scrutiny; nevertheless if the Court is satisfied that the reasons given by the Government for refusing to make a reference are extraneous and not germane then the Court can issue a writ of mandamus even in respect of such an administrative order.

Though considerations of expediency cannot be excluded when Government considers whether or not it should exercise its power to make a reference it would not be open to the Government to introduce and rely upon wholly irrelevant or extraneous considerations under the guise of expediency. It may for instance be open to the Government in considering the question of expediency to enquire whether the dispute raises a claim which is inconsistent with any agreement between the parties, and if the Government comes to the conclusion that the dispute suffers from infirmities of this character, it may refuse to make the reference. But even in dealing with the question as to whether it would be expedient or not to make the reference Government must not act in a punitive spirit but must consider the question fairly and reasonably and take into account only relevant facts and circumstances."

10. It is clear that it is not permissible for this Court to enter into the question of propriety, adequacy or satisfactory character of the reasons recorded by the Government in the impugned order dated 21 November, 1964. The substance of each and all the arguments advanced on behalf of petitioner 1 union in this case is that for inadequate reasons the Government has made a finding that respondent 3 union was a representative union and the majority of the workmen of the company had accepted the agreement dated 12 August, 1964. The whole of the argument relates to the reasons being inadequate and insufficient and having been arrived at without sufficient evidence being available. I am afraid that I am not entitled to go into these matters and arrive at a conclusion contrary to that arrived at by the Government.

11. Having read each and all the averments in the petition, I have come to the conclusion that evidence was available before the Government in different manners as regards the question of the majority of the workmen having accepted the agreement dated 12 August, 1964. The contention that there was no evidence before the Government in that connexion is not well-founded.

12. It requires to be recorded that the assurances alleged as having been given by the Minister for Labour and the Secretary of the Department have been

denied in the affidavit in reply of B. V. Laud made on behalf of the State Government.

13. Under the circumstances, the petition must fail. The rule is discharged with costs.