

(2006) 04 CAL CK 0041
In the Calcutta High Court
Case No : Writ Petition No. 303 of 2006

Capital Ltd.

APPELLANT

Vs

Eighth Industrial Tribunal and Others

RESPONDENT

Date of Decision : 17-04-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 2, 25U, 2A

Citation : (2006) 3 CALLT 481 : (2006) 3 CHN 180 : (2006) 111 FLR 597

Hon'ble Judges : Jyotirmay Bhattacharya, J

Bench : Single Bench

Advocate : R.N. Chatterjee and Manisha Chatterjee, for the Appellant; Ashis Das, Soumya Mazumdar, respondent Nos. 4 and 5, for the Respondent

Judgement

Jyotirmay Bhattacharya, J.—The Court: The legality and/or validity of the reference of an industrial dispute to the 8th Industrial Tribunal made by the Government of West Bengal vide order dated 25th/27th January, 2006 is under challenge in this writ petition. The respondent No. 5 is a workman employed in the company of the petitioner which is engaged in business of hire purchase and financing vehicle having its registered officer at Calcutta. The service condition of the respondent No. 5 provides that his service is liable to be transferred to any other department of the company at the headquarters or at the factory or at regional and/or branch office and/or, vice versa, and/or any other concern connected with the company or its directors.

2. In November, 2003, disciplinary proceeding was initiated by the petitioner against the said respondent on the various charges of his misconduct. The said respondent was placed under suspension in connection with the said disciplinary proceeding.

3. A domestic inquiry was also held for inquiring into the charges levelled against the said respondent. After holding an inquiry, the Inquiry Officer submitted his report to the management holding the said respondent as guilty of the charges.

4. On consideration of the records of inquiry, the management of the petitioner company passed an order of transfer on 17th February, 2004 whereby the said respondent was transferred to its sister concern at Ahmedabad.

5. The said respondent, however, did not report for joining his duties at Ahmedabad in pursuance of the order of transfer which became effective from 20th February, 2004.

6. The respondent No. 5 neither expressed his dissatisfaction against the said order of transfer, nor raised any dispute with his employer concerning the said order of transfer. The other workmen of the petitioner company also did not take up the cause of transfer of the said respondent with the employer, viz., the petitioner herein.

7. The petitioner claims that since the relationship between the employer and the workmen in the petitioner company is very cordial, there is no union activity in the company of the petitioner. The petitioner further claims that not a single workman of the petitioner company is a member of any union. It is further alleged by the petitioner that there is no existence of any union of the workmen in the petitioner company.

8. One Pharmaceuticals and Chemicals (Small Scale and Distributing) Employees' Union, the respondent No. 4 herein, by its letter dated 19th February, 2004, raised an industrial dispute relating to the said order of transfer dated 17th February, 2004 by which the respondent No. 5 was transferred to Ahmedabad by alleging that the said order of transfer is not only a punitive one but also glaring product of unfair labour practice and a clear case of victimisation also. By the said letter the said respondent requested the Assistant Labour Commissioner, Labour Department, Government of West Bengal, to intervene into the matter. The said letter is annexed to the writ petition being Annexure"P-6" therein.

9. On receipt of the said letter, a notice was served by the said Assistant Labour Commissioner inviting the petitioner for conciliation of the dispute with the said union, viz., the respondent No. 4 herein.

10. The petitioner refused to participate in the conciliation proceeding by challenging the authority of the said union to raise such a dispute before the Conciliation Officer. The petitioner in its letter dated 30th March, 2004 categorically mentioned that the petitioner company has no concern with Calcutta Pharmaceutical (Small Scale and Distributing) Employees Union. The locus of the said union to raise such a dispute representing the workman of the petitioner company was specifically challenged by the petitioner in the said letter.

11. But the said dispute regarding the locus of the said union to represent the respondent No. 5 was not considered by the Conciliation Officer in spite of giving repeated reminders to the said Conciliation Officer.

12. The union also avoided the said adjudication by taking a plea in its letter

dated 4th May, 2004 addressed to the said Conciliation Officer being Annexure "P-6" to this writ petition that the said issue may be relegated to the competent authority for adjudication.

13. Since the conciliation failed, the Government of West Bengal by an order dated 25th/27th January, 2006 referred the said dispute u/s 10 of the Industrial Disputes Act, 1947 to the 8th Industrial Tribunal for adjudication of the following issues:

i) Whether the transfer of Ratan Bijoy from Kolkata to Ahmedabad by the management is justified?

ii) What relief, if any, is he entitled to?

14. It is recorded in the said order of reference that on being satisfied with regard to the existence of a dispute between the petitioner company and their workman represented by Calcutta Pharmaceuticals and Chemical (Small Scale and Distributing) Union relating to an issue specified in the 3rd Schedule to the Industrial Disputes Act, 1947, the Government of West Bengal made the said reference to the 8th Industrial Tribunal for adjudication of the aforesaid issues.

15. The propriety of the said order of reference is under challenge in this writ petition.

16. Mr. Chatterjee, learned Advocate for the petitioner, submitted that Section 10 of the Industrial Disputes Act, 1947, authorises the appropriate Government to refer an industrial dispute to any of the forums as indicated in the said provision for its resolution. Mr. Chatterjee contended that industrial dispute has been defined in Section 2(k) of the said Act which says that 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 condition of labour, of any person.

17. By referring to Section 2(k) of the said Act, Mr. Chatterjee contended that any individual dispute or difference between the employer and a particular workman cannot constitute an industrial dispute within the meaning of Section 2(k) of the said Act, even though such dispute or difference is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any workman.

18. Mr. Chatterjee, however, submitted that there is only one exception to the above rule which is provided u/s 2A of the said Act. u/s 2A of the said Act, in case of discharge, dismissal, retrenchment or termination of service of an individual or otherwise, the affected workman individually can raise a dispute concerning his discharge, dismissal, retrenchment or termination of his service otherwise, notwithstanding that no other workman or any union of workmen is a party to the dispute.

19. Mr. Chatterjee very seriously challenged the locus and/or authority of the union viz., the respondent No. 4 to raise such a dispute even before this Court, Mr. Chatterjee contended that the State Government exceeded its jurisdiction by referring the said dispute to the Industrial Tribunal at the instance of the union without considering the locus of the said union.

20. Mr. Chatterjee further contended that since nothing could be produced by the union to show that the concerned workman, viz., the respondent No. 5 was a member of the respondent No. 4 union and further to show that the said union had been duly authorised either by a resolution of its members or otherwise to represent the workman whose cause it is espousing, the Government of West Bengal ought not to have made the said reference to the Industrial Tribunal for adjudication of the aforesaid issue. Mr. Chatterjee submitted with all force that since the reference was made by the Government mechanically without recording satisfaction about the locus of the union, the said reference should be quashed instantly. In support of such submission Mr. Chatterjee relied upon a Division Bench decision of this Court in the case of Deepak Industries Ltd. and Anr. v. State of W.B. and Ors. reported in 1975 L. I.C 1153.

21. Mr. Chatterjee further contended that though the issue which was referred to the Industrial Tribunal for adjudication does not fall under any one of the 11 heads referred to in the Third Schedule to the said Act, still then the State Government sent the said dispute to the Industrial Tribunal by forming an opinion that such a dispute amounts to an industrial dispute under the 3rd Schedule to the said Act. Mr. Chatterjee, thus, submitted that formation of such opinion suffers from total non-application of mind.

22. Mr. Chatterjee further contended that transfer of a workman from one place to another, under the guise of following management policy is opposed to unfair labour practice within the meaning of Section 2(r) of the said Act. But in any event for commission of any act of any unfair labour practice, penalty can be imposed upon the person who commits such unfair labour practice in violation of Section 25U of the said Act, but in any case no reference can be made u/s 10 of the said Act for adjudication of any dispute relating to an offence for committing any act of unfair labour practice inasmuch as a dispute relating to unfair labour practice is not included either in the Second Schedule, or in the Third Schedule to the said Act.

23. Mr. Chatterjee further contended that there is no material-on-record to show that any dispute was ever raised by the concerned workman with the employer. According to Mr. Chatterjee raising of such a dispute by the workman with the employer is a condition precedent for making a reference u/s 10 of the said Act. In support of such submission, Mr. Chatterjee relied upon a decision of the Hon'ble Supreme Court in the case of The Sindhu Resettlement Corporation Ltd. Vs. The Industrial Tribunal of Gujarat and Others, .

24. Mr. Chatterjee, thus, submitted that the said reference which was made

without raising any dispute with the employer, is an illegal reference and as such the said reference should be nipped in the bud.

25. Mr. Mazumdar, learned Advocate appearing for the respondent Nos. 4 and 5, refuted the said submission of Mr. Chatterjee by submitting that a dispute relating to transfer of a workman, mala fide, from Kolkata to Ahmedabad under the guise of following management policy is a dispute which falls under item No. 6 of the Second Schedule to the Industrial Disputes Act.

26. Mr. Mazumdar pointed out by referring to Section 10 of the said Act that the State Government is authorised under the said provision to refer any dispute or matter appearing to be connected with, or relevant to the dispute, whether it relates to any matter specified in Second Schedule or Third Schedule, to a Tribunal for adjudication.

27. Mr. Mazumdar, thus, contended that the State Government did not commit any illegality by referring such a dispute to the Tribunal for adjudication.

28. In support of such submission Mr. Mazumdar relied upon the following decisions of different High Courts:

i) General Secretary, National and Grindlays Bank Employees' Union, Madras v. I. Kannan and Ors. reported in 1978 LIC 648.

ii) Kerala Rubbers Reclaims Ltd. and Ors. v. P.A. Sunny, reported in 1989 LIC. 964.

iii) V. Mookan Vs. Branch Manager, Southern Roadways Ltd. and Others, .

29. Mr. Mazumdar further submitted that though it is true that an individual dispute between the workman and his employer relating to transfer of the workman does not constitute an industrial dispute within the meaning of Section 2(k) of the said Act, but still then when such a dispute of an individual workman is espoused by workmen in group or by the union, such a dispute constitutes an industrial dispute within the meaning of Section 2(k) of the said Act.

30. Mr. Mazumdar, however, contended that the locus of the union is no doubt a relevant consideration, but the stage for consideration of the said dispute has not yet matured. According to Mr. Mazumdar such a dispute can be resolved by the Tribunal only after production of material evidences by the respective parties before the Tribunal.

31. Mr. Mazumdar, thus, submitted that if such a dispute is raised by the petitioner before the Tribunal, the Tribunal will resolve the said dispute first before entering into the merit of the said reference. In support of such submission, Mr. Mazumdar also relied upon the decisions of the Division Bench of this Court in the case of Deepak Industries Ltd. and Anr. v. State of West Bengal and Ors. (supra), which was also relied upon by Mr. Chatterjee as aforesaid.

32. Mr. Mazumdar, thus, contended that the reference need not be interfered

with at this stage.

33. Heard the learned Advocates of the parties. Considered the materials-on-record.

34. It is, no doubt, true that an individual dispute between a workman and his employer relating to transfer of a workman does not constitute an industrial dispute within the meaning of Section 2(k) of the said Act. But when such a dispute is raised by a group of workmen or by the union to which the workman belongs, then such a dispute definitely constitutes an industrial dispute within the meaning of Section 2(k) of the said Act.

35. Here in the instant case the dispute was not raised either by the concerned workman or by a group of workmen of the petitioner company. Here the dispute was raised at the instance of the union, the respondent No. 4 herein. Reference was also made on the basis of the dispute raised by union representing the workman.

36. Thus, apparently it appears to this Court that since such a dispute was raised by the union, the said dispute can be referred to the Industrial Tribunal for adjudication and if it is ultimately found by the Tribunal that the workman, viz. the respondent No. 5 does not belong to the said union or that the said union is not duly authorised either by the resolution of its members or otherwise to represent the workman whose cause it is espousing, then the Industrial Tribunal may refuse to adjudicate the said reference. This is, of course, one way of looking at the problem in view of the decision of the Division Bench of this Court in the case of Deepak Industries Ltd. and Anr. v. State of West Bengal and Ors. (supra).

37. Let me now consider this problem for another angle.

38. Here, in the instant case, this Court also does not find anything on record wherefrom this Court can be satisfied that any dispute relating to his transfer was ever raised by the workman with his employer, viz., the petitioner herein. Raising of a dispute by the workman with the employer is a condition precedent for referring the said dispute by the Government to the Industrial Tribunal for adjudication. In this regard reference may be made to the decision of the Hon'ble Supreme Court in the case of Sindhu Resettlement Corporation Ltd. v. Industrial Tribunal of Gujarat and Ors. (supra), wherein it was held as follows:

...If no dispute at all was raised by the respondent with the management, any request sent by them to the Government would be a demand by them and not an industrial dispute between them and their employer. An industrial dispute, as defined, must be a dispute between employers and employees, employers 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. Consequently, the material before the Tribunal clearly showed that no such industrial dispute, as was purported to be referred by the State

Government to the Tribunal, had ever existed between the appellant Corporation and the respondents and the State Government, in making a reference, obviously, committed an error in basing its opinion on material which was not relevant to the formation of opinion. The Government had to come to an opinion that an industrial dispute did exist that that opinion would only be formed on the basis that there was a dispute between the appellant and the respondents relating to reinstatement. Such material could not possibly exist when, as early as March and July, 1958, respondent No. 3 and respondent No. 2 respectively had confined their demand to the management to retrenchment compensation only and did not make any demand for reinstatement. On these facts, it is clear that the reference made by the Government was not competent. The only reference that the Government would have made had to be related to payment of retrenchment compensation which was the only subject-matter of dispute between the appellant and the respondents.

39. The aforesaid decision of the Hon'ble Supreme Court clearly lays down that the Government cannot make any reference to the Tribunal without any dispute being raised by the workman with the employer.

40. Here, this Court finds that the Government made the said reference without any dispute being raised by the workman with the employer and further without considering the locus of the union to raise such a dispute representing the concerned workman.

41. This Court, however, does not find any substance in the submission of Mr. Mazumdar to the effect that the appropriate Government had no duty to consider the locus of the union at the time of making such reference.

42. In my view since such a dispute was raised before the appropriate Government, the appropriate Government ought to have decided the same before making such reference inasmuch as the jurisdiction of the appropriate Government to make such reference depends upon the resolution of such a dispute.

43. Under such circumstances, this Court holds that though a dispute regarding transfer of a workman when being raised by the union, may be referred to the Labour Court and/or Industrial Tribunal for adjudication, inasmuch as such a dispute falls under the residuary item No. 6 of the Second Schedule to the said Act but still then this Court is unable to maintain the said order of reference for the reasons as aforesaid.

44. The order of reference, thus, stands quashed.

45. There will be, however, no order as to costs.

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