
(1997) 05 RAJ CK 0021
In the Rajasthan High Court
Case No : CW.P. No. 1420 of 1992

Central Arid Zone Research Institute	APPELLANT
Vs	
Arid Zone Employees Union and Another	RESPONDENT

Date of Decision : 13-05-1997

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (1998) 1 LLJ 723 : (1997) 2 RLW 1170 : (1997) 3 WLC 440 : (1997) 1 WLN 613

Hon'ble Judges : J.C. Verma, J

Bench : Single Bench

Advocate : J.P. Joshi, for the Appellant; Vijay Mehta, for the Respondent

Final Decision : Dismissed

Judgement

J.C. Verma, J.—The only argument advanced by the counsel for the petitioner, Central Arid Zone Research Institute, Jodhpur (referred to hereinafter as "the institute"), for challenging the impugned award of the Labour Court cum Industrial Disputes Tribunal, Jodhpur (hereinafter called the Industrial Tribunal) passed on April 29, 1989 vide Annex. P. 1 in Industrial Reference No. 16/1986 between the General Secretary of the Arid Zone Employees' Union, Jodhpur v. Director, Central Arid Zone Research Institute, Jodhpur, is that the State Government was not authorised to refer the demand notice containing four demands of the workers to the Industrial Tribunal for the reason that the reference could only be made by the Central Government u/s 2(a) of the Industrial Disputes Act, 1947 (called hereinafter as "the Act of 1947").

2. It is submitted by the counsel for the petitioner that the Central Government was the appropriate Government in the present case and, therefore, any reference made by the State Government was not a competent reference and the Industrial Tribunal could not have the jurisdiction to try the same. However, on merits the Decision of the Industrial Tribunal in respect of demands No. 7 and 11 in favour of the respondent Union has not been challenged by the petitioner and

rightly so.

3. The facts, as stated in the writ petition by the petitioner Institute, are that a reference was made by the State Government u/s 10(1) (c) of the Act of 1947 for adjudication of the four demands as mentioned in the Charter of Demands i.e. Demands No. 4, 7, 11, 14. The demands are enumerated as under:-

"Demand No. 4: Sweepers may be given 2 kg. of soap in a month and 2 metres cloth for duster;

Demand No. 7: Those workmen who have completed 240 days service may be made work-charged employees;

Demand No. 11 : Shri Mahendrapal Singh and Shri Ummed Singh who have become over-aged may be regularised on the basis of the age attained by them at the time of their initial appointment;

Demand No. 14 : The employees may be given paid holidays on national holidays and other festivals."

4. The Industrial Tribunal had held that demands No. 7 and 11 are justified and other demands were held to be not justified.

5. Being aggrieved by the award dated April 29, 1989, the present writ petition has been filed by the petitioner Institute.

6. The petitioner submits that the petitioner Institute was controlled and connected with the Central Government and, therefore, the appropriate Government for the purpose of reference in the present case was the Central Government and not the State Government. This objection was taken before the Industrial Tribunal as well. However, the petitioner Institute did not lead any evidence in support of its objection nor did attach any document to show that the petitioner Institute was a part of the Central Government.

7. The petitioner in this connection relies on a decision of the Supreme Court in P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, wherein while determining the status of Indian Council of Agricultural Research, the Hon'ble Supreme Court had held that the Indian Council of Agricultural Research Institute even though it is registered as a Society under the Societies Registration Act, it was wholly financed by the Government of India and its budget was voted upon as a part of the expenses incurred in the Ministry of Agriculture, was a State within the meaning of Article 12 of the Constitution of India. The petitioner has also taken an objection to the effect that the petitioner is not an industry as defined in Section 2(j) of the Act of 1947 and that the petitioner is not a juristic person and, therefore, no suit or proceedings can be initiated against it. These additional objections now being taken in the writ petition were neither taken before the Industrial Tribunal nor argued before it and, therefore, they were not determined by the Industrial Tribunal. Here in the High Court also no arguments have been addressed on these additional

objections i.e. whether the petitioner is an industry or a juristic person or not. Therefore, I may not go into these objections.

8. The respondent Union has filed a written-statement and had denied the averments made in the petition. The respondent Union states that the petitioner Institute is an industry and the award of the Industrial Tribunal is in consonance with law.

9. It has been held by the Rajasthan High Court in *Union of India v. Mahaveer Prasad* 1981 WLN 12 that the petitioner Institute is an industry under the Industrial Disputes Act, 1947 and, therefore, even though it had neither been argued before the Industrial Tribunal nor before this Court, it has been authoritatively settled by this Court that the petitioner Institute is an industry u/s 2(j) of the Act of 1947.

10. Section 2(a) of the Act of 1947 defines the appropriate Government for the purposes of referring the disputes to the Tribunal which reads as under:

"2. Definitions. - In this Act unless there is anything repugnant in the subject or context

(a) "appropriate Government" Means -

(i) in relation to any Industrial Dispute concerning any industry carried on by or under the authority of the Central Government or by a Railway Company or concerning any such controlled industry as may be specified in this behalf by the Central Government or in relation to an Industrial Dispute concerning a Dock Labour Board established u/s 5A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), or the Industrial Finance Corporation of India established u/s 3 of the Industrial Finance Corporation Act, 1948 (15 of 1948), or the Employees' State Insurance Corporation established u/s 3 of the Employees' State Insurance Act, 1948 (34 of 1948), or the Board of Trustees constituted u/s 3A of the Coal Mines Provident Funds and Miscellaneous Provisions Act, 1948 (46 of 1948), or the Central Board of Trustees and the State Board of Trustees constituted u/s 5A and Section 5B, respectively, of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), or the "Indian Airlines" and "Air India" Corporations established u/s 3 of the Air Corporations Act, 1953 (27 of 1953), or the Life Insurance Corporation Act, 1956 (31 of 1956), or the Oil and Natural Gas Commission Act, 1959 (43 of 1959), or the Deposit Insurance and Credit Guarantee Corporation established u/s 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961), or the Central Warehousing Corporation established u/s 3 of the Warehousing Corporations Act, 1962 (58 of 1962), or the Unit Trust of India established u/s 3 of the Unit Trust of India Act, 1963 (52 of 1963), or the Food Corporation of India established u/s 3, or a Board of Management established for two or more contiguous States u/s 16 of the Food Corporation Act, 1964 (37 of 1964), or the International Airports Authority of India constituted u/s 3 of the International Airports Authority of India Act, 1971 (43 of 1971), or a Regional

Rural Bank established u/s 3 of the Regional Rural Banks Act, 1976 (21 of 1976), or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Bank of India, or the Banking Service Commission established u/s 3 of the Banking Service Commission Act, 1975 or a banking or an insurance company, a mine, an oil-field, a Cantonment Board for a major port, the Central Government, and

(ii) in relation to any other industrial dispute, the State Government."

11. It is apparent from the definition above that all those industries carried on by or under the authority of the Central Government or in, relation to an industrial dispute concerning the Industrial Finance Corporation of India, the Employees' State Insurance Corporation, the Indian Airlines, the Air India Corporation, the Life Insurance Corporation, the Agricultural. Refinance Corporation, the Deposit Insurance Corporation, the Unit Trust of India, the Food Corporation of India, Regional Rural Bank, or the Banking Service Commission or a Banking or an Insurance Company, a mine, an oil field, or a Cantonment Board, or a major port, the Central Government would be the appropriate Government. In respect of other industrial disputes it would be the State Government. It would be seen from the above definition that unless the institute came within the purview of the words "any industry carried on by or under the authority of the Central Government or being a controlled industry as may be specified in this behalf by the Central Government." The other Corporation or bodies mentioned in Section 2(a)(i) did not include the present institute and, therefore, in this case, the Central Government would not be the appropriate Government.

12. Even though the petitioner Institute ought to have established its averments by leading some evidence before the Tribunal below or atleast should have attached any document with the writ petition to substantiate its argument, but no such thing has been done by the petitioner. But still to attract tile provisions of Section 2 (a)(i) a notification by the Central Government specifying it as a controlled industry is necessary. It has been held by the Hon''ble Supreme Court in Management of Vishnu Sugar Mills Limited, Harkhua, District Saran, Bihar Vs. Their Workmen Represented by Chini Mill Mazdoor Union, Harkhua, Dist. Saran, Bihar, that for the purpose of attracting the provisions of Section 2(a)(i) with reference to that industry would not be the Central Government unless there is a notification by the Central Government in that behalf for the purposes of Section 2(a)(i). The Supreme Court has observed as under :-

"Though sugar is a controlled industry under the Schedule to the Industries (Development and Regulation) Act (65 of 1951) the Appropriate Government for the purposes of Section2(a)(i), Industrial Disputes Act with reference to that industry would not be the Central Government unless there is a notification by the Central Government in that behalf for purposes of Section2(a)(i). In order that the Appropriate Government u/s 2(a)(i) may be the Central Government for a controlled industry, it is necessary that such controlled industry should be specified by the Central Government for the purposes of Section2(a)(i). It is not

enough that an industry should be controlled industry to attract this provision of Section 2(a)(i)."

13. Yet in another case i.e. in *Bijay Cotton Mills Ltd. Vs. Their Workmen and Another*, their Lordships of the Supreme Court have observed as under at pp. 265-266:

"(12) The last contention urged is that the reference is invalid inasmuch as the Chief Commissioner of Ajmer was not competent to refer the present dispute for adjudication u/s 10(1) read with Section 12(5) of the Act. The argument is that the Textile Industry has been included at serial No. 23 in the First Schedule to the Industrial (Development and Regulation) Act, 1951 (Act 65 of 1951) and as such the Chief Commissioner of Ajmer was not the appropriate Government u/s 2(a)(i) of the Act. It is urged that the present dispute could have been validly referred for adjudication to the Industrial Tribunal only by the Central Government. Section 2(a)(i) inter alia defines the appropriate Government as meaning, in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government or by a railway company or concerning any such controlled industry as may be specified in this behalf by the Central Government, the Central Government. The question which arises is: has the textile industry been specified as controlled industry in this behalf by the Central Government? It is true that the textile industry is controlled by the provisions of the Act 65 of 1951 and in that sense it is controlled industry, but that would not be enough to attract the application of Section 2(a)(i) of the Act. What this latter provision requires is that the Central Government must specify "in this behalf" that the industry in question is a controlled industry; in other words the specification must be made by the Central Government by reference to, and for the purpose of, the provisions of the Act in order that the Central Government may itself become the appropriate Government qua such industry u/s 2(a)(i) of the Act."

14. Reliance has also been placed on a Single Bench judgment of the Allahabad High Court in *Indian Institute of Petroleum, Dehradun v. State of Uttar Pradesh and Ors.* reported in 1985 (3) SLR 241 wherein while dealing with the case of the petitioner which is a part of Central Scientific and Industrial Research, the Court had held that the Central Government is not the appropriate Government for the purposes of making reference u/s 2(a)(i) of the Act but it is the State Government which can make the reference.

15. The Delhi High Court in the case of *Central Warehousing Corporation v. Delhi Administration etc.* reported in 1983 (3) SLR 131 had held as under :

"(27) Applying the text of agency, I cannot say that this Corporation is the agent of the Central Government and is carrying on business "under the authority of the Central Government. " It will be illegitimate to hold that a Corporation carries on industry under the authority of the Central Government though an incorporated company such as Heavy Engineering is not carrying on business

under the authority of the Central Government. If a company incorporated under the Companies Act is an independent entity, a new person, as the Supreme Court has said, the same principle will apply with greater force of logic to these commercial Corporations which are the creations of the Acts of the legislature and perform their functions and duties within the framework of the Statute. If the Central Government has a dominant role to play in connection with these Corporations it is because such is the will of the legislature. It is not the will of the Central Government. The Central Government merely obeys the command of the legislature. So these Corporations carry on business under the authority of the acts of the legislature which created them. It is not possible, therefore, to accept the argument that the Central Government is the master of this Corporation and that this Corporation carries on industry "under the authority of the Central Government." After the decision of Denning L.J. *Tamlin v. Hannaford*, 1950 1 KB 18 and the Supreme Court in *Heavy Engineering* (1969 II LLJ 548) the theory that these corporations act under the authority of the Central Government no longer holds the field."

16. It is not shown by way of any evidence as to how the petitioner Institute is part of the Central Government or is carried on by the Central Government or whether any notification has been issued for bringing the petitioner Institute into the scope of Section 2(a)(i) of the Act for the purposes of making reference by the Central Government.

17. In view of the above discussion, there is no merit in the writ petition and the same is dismissed with costs which is assessed at Rs. 2000/-.