

(1963) 10 AHC CK 0017
In the Allahabad High Court
Case No : Special Appeal No. 634 of 1963

Champion Cycle Industries	Vs	APPELLANT
State of Uttar Pradesh and Others		RESPONDENT

Date of Decision : 24-10-1963

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Industrial Disputes Act, 1947 — Section 4K

Citation : AIR 1964 All 328 : (1963) 7 FLR 423 : (1964) 1 LLJ 724

Hon'ble Judges : M.C. Desai, C.J;R.S. Pathak, J

Bench : Division Bench

Advocate : M.C. Aggarwal, for the Appellant;

Final Decision : Dismissed

Judgement

Desai, C.J.—This is an appeal from a judgment of our brother Dwivedi refusing to issue a writ of prohibition restraining the Presiding Officer of a Labour Court from adjudicating an industrial dispute referred to the Court by the State Government u/s 4K of the U. P. Industrial Disputes Act. A dispute arose between the appellant, the employer, and its workmen relating to 31 workmen. The State Government referred the dispute relating to only three of the workmen to the Labour Court and refused to refer the dispute relating to the remaining 28 workmen on the ground that it did not consider it fit to refer it. The dispute relating to three workmen that was referred to the Labour Court ended in a compromise before the Labour Court and thereafter the State Government referred the dispute relating to 21 out of the remaining 28 workmen to the Labour Court. The appellant's contention is that the State Government had no power left to refer the dispute to the Labour Court after having previously refused to refer it. Our learned brother refused to issue prohibition on the ground that the appellant could raise this question before the Labour Court itself.

2. The question was of the jurisdiction, not of the Labour Court but of the State Government, to refer the dispute to it. The jurisdiction of the Labour Court over

the dispute, is not contested at all. If the State Government had no power to refer the dispute and still referred it, the Labour Court should have refused to assume jurisdiction over it. So it was for it to decide whether the State Government had the power to refer it, i. e. the! State Government's power was a matter to be raised before it, and our learned brother was right in saying that the appellant should question the State Government power to refer the dispute before the Labour Court itself. When this remedy was open to it, it was not entitled to ask for a writ of prohibition from this Court. It might be a different matter if the Labour Court's jurisdiction itself were questioned; it might be argued in that case that its assumption of jurisdiction amounted to its decision that it had jurisdiction and so a petition for prohibition lay. Here the Labour Court had to be informed of certain facts and invited to decide whether they did not deprive the State Government of the power of reference.

3. u/s 4K "where the State Government is of opinion that any industrial dispute exists or is apprehended, it may at any time refer the dispute to a Labour Court". When an industrial dispute exists the State Government has absolute discretion in the matter whether to refer it to a Labour Court or not; in order to enable it to refer it to a Labour Court nothing more than the mere existence of an industrial dispute is required. It is not required to decide anything (except whether an industrial dispute exists or not.) When, therefore, an industrial dispute exists and it does not refer it at once it is not debarred from referring it at a later stage. The words "at any time" in Section 4K make it clear that it is open to the State Government to refer an industrial dispute long after it has come to exist (provided it continues to exist). If it can refer an industrial dispute today even though it did not refer it yesterday it can refer it today even though it deliberately refused to refer it yesterday; its saying yesterday that it would not refer it does not bar its referring it today. Its refusal yesterday to refer it does not amount to its deciding anything which may operate as *res judicata* or as *estoppel*. No reasons are required for referring an industrial dispute and, therefore, a refusal on any ground does not bar reference on a subsequent date. The State Government, therefore, could refer the industrial dispute to the Labour Court in spite of its having refused to do so on a previous day.

4. We dismiss the special appeal summarily.