

(2001) 09 DEL CK 0021

In the Delhi High Court

Case No : CWP No. 598 of 2001 and CM 1018 of 2001

Cimmco Birla Limited

APPELLANT

Vs

The State of Delhi and Others

RESPONDENT

Date of Decision : 28-09-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 10, 10(1), 10(3), 10(4)

Citation : (2002) 96 DLT 163

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : A. Singhvi and Rajinder Singhvi, for the Appellant; D.K. Agarwal and N.A. Sabastian, for the Respondent

Final Decision : Allowed

Judgement

Vikramajit Sen, J.—The Petitioner has challenged the legality of the Terms of Reference dated 3.1.2001 and the Order dated 5.1.2001 passed under Sub-section 3 of Section 10 of the Industrial Disputes Act, 1947. Briefly stated it is the Petitioner's contention firstly that the entire dispute between the parties ought to have been referred for industrial adjudication and secondly that the Government was not competent to pass an Order prohibiting the "lock-out" unless the question of the existence and/or legality of the Lock-out had also been referred for adjudication. The principle that jural scrutiny under Article 226 of the Constitution is permissible is now firmly entrenched in industrial jurisprudence. A Full Bench of this Court had expressed this opinion in Indian Tourism Development Corporation Vs. Delhi Administration and Others, when it quashed a Reference which did not encompass the real dispute between the parties, viz. whether there was a lock-out or closure in the establishment. The Government had assumed that there was a lock-out, while the stance of the Management was that it was a closure. The Terms of Reference were - "Whether the workmen as shown in Annexure "A" are entitled to wages for the period of lock-out w.e.f. 1.1.81 and if so, what directions are necessary in this respect?" It observed that

the Government could not reach a final decision on this question of fact, because this would normally lie within the jurisdiction of the Industrial Tribunal.

2 It was also opined by the Full Bench as follows:-

"It is settled law that the jurisdiction of the Labour Court/Industrial Tribunal in industrial disputes is limited to the points specifically referred for its adjudication and the matters incidental thereto and it is not permissible to go beyond the terms of the reference. An industrial Adjudicator constituted under the Act is not vested with any inherent power of jurisdiction. It exercises such jurisdiction and power only upon and under order of reference except for ancillary matters. Making of an order of reference is undoubtedly an administrative function but even that is amenable to judicial review in the proceedings under Article 226 under certain facts and circumstances an order of reference is open to judicial review if it is shown that the appropriate Government has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. The whole correspondence between the management and the Labour Commissioner the Union of the workmen and the Labour Commissioner and the notices displayed by the management (the substance of which had been reproduced above) were before the Secretary (Labour), Delhi Administration when it passed 27, 1981. We are of the view that the existence of lock out itself being the real dispute between the management and its workmen, the term of reference proceeds on the assumption that there was lock out with effect from January 1, 1981."

3 This decision was relied on by a Division Bench of this Court in *Shri Moolchand Kharati Ram Hospital Karamchari Union v. Labour Commissioner and others*, 1997 I AD (DELHI) 134, while upholding the quashing of the Order of Reference for the reason that the Management's case that the workers had participated in an illegal strike was not forwarded for adjudication. The decision of the Division Bench was affirmed by the Hon'ble Supreme Court in *Moolchand Kharati Ram Hospital K. Union v. Labour Commissioner & Co.*, JT 2000 (Supp.2) SC 204. The opinion of the Division Bench is clear from a reading of the following passage:-

"32. In the instant case when this principle is made applicable the inevitable conclusion would be that the State Government while drafting the reference has not taken into consideration the vital material produced by the management on record. Following vital material was not considered by the Labour Commissioner while issuing the reference in question:

- (i) Appeal, dated 11 February 1995, issued by the Jagat Ram, President of workers union;
- (ii) reply, dated 16 February 1995, sent by the management to the Assistant Labour Commissioner pursuant to his letter, dated 15 February 1995;
- (iii) letter, dated 25 February 1995, sent by the management in reply to the

letter, dated 22 February 1995, received from the Conciliation Officer.

33. I am of the considered view that the real dispute has not been referred, because vital material produced by the management has not been taken into consideration and consequently the order of reference has to be quashed. It will be open to the Delhi Administration to make another order of reference in the light of material before it."

4 The same dispute arose in *The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others*, and the Hon''ble Apex Court opined as under:

"In the present appeal it is not the case of the respondent that the disciplinary proceedings, which resulted in his dismissal, were in any way illegal or there was even any irregularity. he availed his remedy of appeal under the rules governing his conditions of service. It could not be said that in the circumstances industrial dispute did arise or was even apprehended after lapse of about seven years of the dismissal of the respondent. Whenever a workman raises some dispute it does not become industrial dispute and appropriate Government cannot in a mechanical fashion make the reference of the alleged dispute terming as industrial dispute. Central Government lacked power to make reference both on the ground of delay in invoking the power u/s 10 of the Act and there being not industrial dispute existing or even apprehended. The purpose of reference is to keep industrial peace in an establishment. The present reference is destructive to the industrial peace and defects the very object and purposes of the Act. Bank was justified in thus moving the High Court seeking an order to quash the reference in question.

It was submitted by the respondent that once a reference has been made u/s 10 of the Act a labour Court has to decide the same and High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court. That is not a correct proposition to state. An administrative order which does not take into consideration statutory requirements or travels outside that it is certainly subject to judicial review limited though it might be. High Court can exercise its powers under Article 226 of the Constitution to consider the question of very jurisdiction of the Labour Court. In *National Engineering Industries Ltd. Vs. State of Rajasthan and Others*, this Court observed:-

"It will be thus seen that High Court has jurisdiction to entertain a writ petition when there is allegation that there is no industrial dispute and none apprehended which could be subject matter of reference for adjudication to the Industrial Tribunal u/s 10 of the Act. Here it is a question of jurisdiction of the industrial dispute, which could be examined by the High Court in its writ jurisdiction. It is the existence of the industrial tribunal which would clothe the appropriate Government with power to make the reference and the industrial Tribunal to adjudicate it. If there is no industrial dispute in existence or apprehended appropriate Government lacks power to make any reference."

5 Reliance has been placed by Learned Counsel for the Respondent Union on

Western India Match Co. Ltd. Vs. The Western India Match Co. Workers Union and Others, , but the issues that had arisen there were altogether dissimilar. The ratio is that even if the Government has earlier declined to exercise its powers of Reference it was not precluded from doing so at a later date. A Coordinate Bench of the Apex Court in The Secretary Indian Tea Association Vs. Ajit Kumar Barat and Others, was faced with a situation in which the Government had declined to make a Reference on forming the opinion that the claimant could not be considered as a workman. The Government had kept in perspective the salary and allowance drawn by the employee and the nature of work performed by him. The Apex Court observed that even though the making of a Reference was an administrative act, judicial interference was possible if extraneous or irrelevant material had been considered by the Government. The earlier decision in Sultan Singh Vs. State of Haryana and another, was followed.

6 The facts of the case in hand which are relevant for the disposal of the Petition are that by letter dated 8.12.2000 the Management had taken a decision to "refuse to continue to employ the personnel...till such time total normalcy is restored." This Notice was allegedly withdrawn the following day when the President and Director are stated to have been gheraoed by 60/70 employees. On 11.12.2000 another Notice of the Management stated, inter alia, that the persons named in the earliest letter dated 8.12.2000 would be deemed to refuse to be continued to be employed. As I see it, by this ingenious manoeuvre the Management has attempted not only to escape its liabilities for payment of lay-off or closure compensation, but has attempted to assume that the employees have abandoned work. This must not, however, colour or temper the Courts appreciation of the issues that have arisen in this Petition. Thereafter, on 14.12.2000 an Appeal was made by the Petitioner/Management which requires to be reproduced verbatim:-

December 14, 2000

AN APPEAL

"You are well aware that the Company is passing through a most difficult phase and the reasons have been made well known to all.

In spite of best efforts the Management has regrettably not been able to meet the payment obligation of its employees towards their due remuneration such as wages/salaries, Leave travel etc. etc. During the last couple of weeks a number of staff members have opted to sever their working relationship with the Company and have accordingly submitted their resignations. The Company could not settle their account also due to non-availability of required funds. The Management is equally concerned and is putting all out efforts to mobilise adequate resources to meet such payment obligations.

All concerned are hereby informed that the Management has every intention to upholding these payment obligations and are working towards this end. However, it has been noticed that there are few persons even within the organisation who

are misguiding certain Section of employees and are engaged in effectively creating confusion/obstacle in the management's effort to achieve this goal. This needs to be stopped immediately failing which the situation may further deteriorate. We Therefore appeal to all of you to extend your fullest co-operation and to bear with the Management in order to find a satisfactory solution to the present problem at the earliest.

Sd/- B.M. VIJAY

President (Corporate Affairs)

7 By this time the Labour Officer had intervened in the matter, and has issued the letter dated 12.12.2000 to the Petitioner in which he had recited the events as they had transpired earlier, mentioning in particular that salary for the month of October and November 2000 had not been paid the petitioner was required to show cause why the lock-out declared on 8.12.2000 should not be prohibited as per Section 10(3) of the Industrial Disputes Act, 1947; a personal hearing was granted for 15.12.2000. In response the Petitioner asked for a two week adjournment but subsequently have not bothered to appear before the Labour Officer at all. Accordingly the impugned Reference u/s 10 was made on 3.1.2001, and the impugned order of prohibition of the lock-out was passed by the Government on 5.1.2001. The Terms of Reference are - "Whether the workmen Shown in Annexure "A" are entitled to wages w.e.f. 08.12.2000 onwards, If so what directions are necessary in this respect?" This petition has been filed at this juncture.

8 In the ITDC case (supra) the Full Bench had clarified that the entire dispute must be referred to industrial adjudication. In the Eagle Fashions, Delhi v. Secretary (Labour) Government of National Capital Territory of Delhi, New Delhi and Others, 1998 (1) L.L.N. 269, R.C. Lahoti J. (as his Lordship then was) speaking for the Division Bench Struck down the Reference since it presumed the employment and its termination and referred only to question of its legal propriety. In the Order of Reference dated 3.1.2001 in the present case, the Government had glossed over and/or has erroneously overlooked the show cause notice dated 12.12.2000 in which it had specifically noted the declaration of the Lock-out on 8.12.2000, which factual situation is again taken into account in the prohibitory order dated 5.1.2001 u/s 10(c) of the I.D. Act. Having done so it was mandatory for the Government to include the propriety of the Lock-out in the Reference since it would have a direct bearing on the outcome of the debate as to whether the employees were entitled to payment of wages from this very period onwards and would form the platform for the interdictory order dated 5.1.2001 u/s 10(c) of the I.D. Act. Logically, two inferences are possible on the failure to refer the issue of the Lock-out for industrial adjudication. Firstly that no Lock-out had been declared or was then in operation, which would be contrary to the material before the Government. Secondly that the Lock-out had been declared and the Government viewed it to be illegal or legal. In both events the Reference is liable to be quashed since it was only a piecemeal and not a

composite and complete Reference of the subsisting disputes between the parties. It must be mentioned, however, that it is arguable that from the material available with the Government it may have been justifiable for it to have taken the position that a lock-out had not been declared by the Management. That the Government can legitimately arrive at any conclusion based on the material before it is no longer debatable in view of the opinion expressed in Delhi Administration, Delhi Vs. Workmen of Edward Keventers and Another, , and the other pronouncements of the Hon"ble Supreme Court mentioned above. In this petition, the Management's stand initially was that its fate and future was in the hands of the BIFR and due to the unrest in its operation in Bharatpur it had not alternative but to "refuse to continue to employ the personnel....at its Okhla Office and Branch Offices." An opinion can certainly be formed that this did not constitute a lock-out. To compound the problem, it should be recalled that the Management had not taken any steps to explain its position and had on the contrary exhibited its recalcitrance by not bothering to appear before the Administration even after the expiry of the fortnight in which its concerned officer was allegedly not available. The lock-out was declared in Bharatpur and as far as the operations in Delhi were concerned the Management had veered to the position that the employees "shall deem to be refused to be continued to be employed in terms of the Company's said notice dated 8.12.2000." Was it not perhaps a case of a Lay-off or Closure in Delhi? But this is not how the Government has perceived the developments in Delhi. It has proceeded on the assumption that there was a lock-out undoubtedly evident from the impugned order dated 5.1.2001 u/s 10(3) of the I.D. Act which empowers it to prohibit the continuance of a lock-out. If the Government's perception was that the dispute pertained only to the payment of salary it ought not to have invoked Section 10(3) but allowed the provisions of Section 33 to come into play in the normal course of events. Viewed from all angles Therefore the Terms of Reference call to be quashed.

9 Mr. Agarwal has also contended that while deciding the ITDC case the Full Bench did not fully appreciate the observations of the Apex Court in The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others, . He has placed emphasis on the following passage from that judgment:

"Than, in regard to issue 2, the argument is that this issue has, in fact, been determined by the Government and nothing is left to the tribunal to consider or decide. It may be conceded that the wording of the issue is inartistic and unfortunate. As it is worded, it no doubt, prima facie, gives an impression that the enquiry on this issue has to proceed on the assumption that the conduct of the appellant amounts to a lockout, and this argument is somewhat strengthened by the ill-advised and unfortunate order passed by the State Government under S. 10(3). It is hardly necessary to emphasize that since the jurisdiction of the industrial tribunal in dealing with industrial disputes referred to it under S. 10 is limited by S. 10 (4) to the points specifically mentioned in the reference and

matters incidental thereto, the appropriate Government should frame the relevant orders of reference carefully and the questions which are intended to be tried by the industrial tribunal should be so worded as to leave not scope for ambiguity or controversy. An order of reference hastily drawn or drawn in a casual manner often gives rise to unnecessary disputes and thereby prolongs the life of industrial adjudication which must always be avoided. Even so, when the question of this kind is raised before the Courts, the Courts must attempt to construe the reference not too technically or in a pedantic manner, but fairly and reasonably. Thus construed, even the inelegant phraseology in framing the issue cannot conceal the fact that in dealing with the issue, the main point which the tribunal will have to consider is whether the strike of the respondents on 27 April 1959 was justified and whether the action of the appellant which followed the said strike is either a lockout or amounts to a closure. The respondents will contend that it is a lockout which is in the nature of an act of a reprisal on the part of the appellant, whereas the appellant will contend that it is not a lockout but a closure, genuine and bona fide. Thus, having regard to the content of the dispute covered by issue 2, it would not be right to suggest that the reference precludes the tribunal from entertaining the appellant's plea that what it did on 29 April is in fact not a lockout but a closure. The fact that the relevant action of the appellant is called a lockout does not mean that the tribunal must hold it to be a lockout. In this connection, it may be recalled that in several cases where industrial disputes are referred for industrial adjudication in respect of certain persons named as workmen, the employers raise the contention that the specified persons are not their workmen and it has never been suggested that merely because the said persons are described as workmen in the reference, the employer is precluded from disputing their status or that the tribunal has no jurisdiction dispute. Therefore, we do not think that Mr. Sastri is right in contending that issue 2 has been so worded as to exclude the jurisdiction of the tribunal to deal with the question as to whether the appellant's impugned action amounts to a closure or not."

10 However, in the present case the grievance of the Petitioner is not directed towards the "inelegant phraseology" of Reference, nor is it advocating that the Reference should be construed technically or pedantically. Mr. Agarwal reiterates that the claim of the workmen was for payment of wages and the defense of the Management is that because of events in Bharatpur, operations in Delhi had to be closed. What the Administration has done is to prohibit a lock-out without referring either its existence or legality for consideration and adjudication. Therefore however meaningfully, broadly or forgivingly the subject Reference is read, it cannot be construed as having forwarded the aspect of the lock-out and this is not the understanding even of Mr. Agarwal since he continues to adhere to the position that the Management had brought about a closure and/or failure to give work to the workmen. Applying the ratio of the Western India Watch co. Case (supra) it may have been open to the Administration to subsequently refer the controversy of the lock-out, but this has not been done.

11 But there is another compelling aspect of the matter. In *Edward Keventers*" case (supra) the Apex Court has succinctly and perspicuously explained the legal position, which is reproduced for facility of easy reference:

"A very short question as to the scope of Section 10(3) of the Industrial Disputes Act, 1947, arises for consideration in this appeal by special leave. The appellant, Delhi Administration, was faced with the question of referring several dispute, 16 in number, for adjudication u/s 10(1) of the Act. The workmen had raised all these disputes although many of them were perhaps covered by an earlier settlement. We are not concerned with the facts of this particular case which have been set out at some length by the High Court in its judgment, but with a narrow issue as to when the power to prohibit a strike with which the State/appropriate Government is armed u/s 10(3) of the Act can be put into operation. This turns on a reasonable construction of the provision itself and the best beginning is to quote the section itself. Section 10(3) runs thus:

"Where an industrial dispute has been referred to a Board, (Labour Court, Tribunal or National Tribunal) under this Section, the appropriate Government may by order prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference.

A plain reading of the Sub-section leaves no room for doubt in our minds that the High Court has correctly interpreted it. Indeed, the Learned Judges have gone into details, although we in this affirming judgment desire to express ourselves only briefly. Two conditions are necessary to make Section 10(3) applicable. There must be an industrial dispute existing and such existing dispute must have been referred to a Board, Labour Court, Tribunal or National Tribunal under this Section, namely, Section 10(1). Section 10 stands as a self-contained code as it were so far as this subject-matter is concerned. The prohibitory power springs into existence only when such dispute has been made the subject of reference u/s 10(1). What then is such dispute? The suchness of the dispute is abundantly brought out in the preceding portion of the Sub-section. Clearly, there must be an industrial dispute in existence. Secondly, such dispute must have been already referred for adjudication. Then, and then along, the power to prohibit in respect of such referred dispute can be exercised.

If Government feels that it should prohibit a strike u/s 10(3) it must give scope for the merits of such a dispute or demand being gone into by some other adjudicatory body by making a reference of all those demands u/s 10(1) as disputes. In regard to such disputes as are not referred u/s 10(1), Section 10(3) cannot operate. This stands to reason and justice and a demand which is suppressed by a prohibitory order and is not allowed to be ventilated for adjudication before a Tribunal will explode into industrial unrest and run contrary to the policy of industrial jurisprudence.

12 In view of this authoritative decision it would suffice only to mention that a similar conclusion was arrived at by a Single Judge of the High Court of Madras in

Metal Box India Ltd. and Anr. v. State of Tamil Nadu & Ors. , 1996 (1) L.L.J. 763, where Edward Keventer's case was not even considered. For this reason also the impugned order dated 5.1.2001 cannot be sustained for the reason that the prohibition of the lock-out has been ordered in circumstances where the question of the existence or propriety of the lock-out has not been referred for adjudication.

13 The Petition is accordingly allowed and the Order of Reference as well as the prohibitory order dated 5.1.2001 are quashed.