

(1967) 03 MAD CK 0018
In the Madras High Court

Coimbatore District Textile Mills Staff Union (by Secretary)	APPELLANT
Vs	
State of Madras (by Secretary to Government, Industries, Labour and Co-operative Department) and Another	RESPONDENT

Date of Decision : 10-03-1967

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 12
Industrial Employment (Standing Orders) Act, 1946 — Section 5

Citation : (1967) 2 LLJ 407 : (1967) 80 LW 601

Hon'ble Judges : Kailasam, J

Bench : Single Bench

Judgement

Kailasam, J.—This petition is filed by the coimbatore District Textile Mills Staff Union for the issue of a writ of mandamus directing the

Government of Madras to refer the dispute In regard to clerical staff to an Industrial tribunal.

2. One Arogyaswami was employed as a cashier In Vijayeswari Textiles, Ltd., Puliampatti, Pollachi. Out of 23 employees in the mills four were

members of the petitioner-union. Arogyaswami in September 1964 was drawing a salary of Ra. 345 as cashier-cum-clerk. On 21 September

1964 the management dismissed Arogyaswami paying him a month's salary In lieu of notice. In the notice it was stated that on checking of

accounts there were certain shortages and that Arogyaswami was the cause of such shortages. It was farther stated that Arogyaswami confessed

having embezzled moneys and subsequently made good the embezzled moneys and gave Information regarding the balance which he had claimed

to have loaned to other staff members. It was alleged that Arogyaswami represented that he would resign from his post after a few months and that

directors agreed to such a course. But subsequently Arogyaswami changed his mind and sent a letter dated 14 September 1964 suppressing all material facts. The management felt that they could not continue Arogyaswami in service any longer and taking into consideration the admitted acts of commission and omission the management lost its confidence in him, and while they did not want to go back on the accommodation and sympathy shown by them, they terminated his services on payment of a month's salary.

3. The petitioner-union took up the matter and the labour officer submitted a failure report on 3 March 1965. The petitioner-union on 15 March

1965 requested the Government to refer the case for adjudication and thereby enable the workman to prove his innocence. On 24 April 1965 the

petitioner-union submitted a mahazar signed by 74 out of 350 employees demanding reinstatement of Arogyaswami. On 11 August 1965 the

Government declined to refer the case for adjudication on two grounds, namely:

(1) that out of 23 staff members employed by the management only four employees were members of the petitioner-union and that the union had

no representative capacity to raise the dispute; and

(2) that the services of Arogyaswami were terminated according to the standing order of the mills.

4. Sri Dolia, learned Counsel for the petitioner, submitted that that Government was in error in refusing to make a reference on the ground that the

union was not representative in character in that only four employees out of 23 staff members were members of the petitioner-union. He submitted

that the Government had failed to note that 75 out of 350 workers had also filed a petition to the Government asking for a reference of the dispute

for adjudication. Sri Narayanaswami Ayyar, learned Counsel for the management, submitted that four employees out of staff members of (sic) 75

workmen out of a total strength of 350 workmen cannot be said to be representative. Regarding the representative character of the union, it has

been held in *The Management of Indian Cable Co., Ltd., Calcutta Vs. Its Workmen*, that no hard-and-fast rule could be laid down as to the

number of workmen whose association would convert an individual into an industrial dispute and that the question must depend on the facts of

each case and the nature of the dispute and that the dispute must be one which

affected the workmen as a class. Taking Into consideration the nature of the dispute and the fact that 75 out of 350 employees signed a petition, it cannot be said that the petitioner-union Is not representative in character.

5. The main question that arises for consideration is whether the order of the Government declining to refer the dispute for adjudication is illegal

and whether a writ of mandamus should issue. The scope of reference of a dispute by the Government for adjudication under Sections 12(6) and

10(1) of the Industrial Disputes Act has been dealt with In several decisions of this Court and the Supreme Court. Section 12(5) of the Industrial

Disputes Act provides that, if on a consideration of the report of the conciliation officer, the Government la satisfied that there is a case for

reference to a board, labour court, tribunal or national tribunal, it may make such reference, it shall record and communicate to the parties

concerned Its reasons therefor. The power to make a reference is given in Section 10(1). A Bench of this Court in The State of Madras Vs. The

Swadesamitran Printers Labour Union and Others, , dealing with the scope of Section 12(5) of the Industrial Disputes Act, observed that the sub-

section in express and unambiguous language provided that on a consideration of the report of the conciliation officer, the Government might make

a reference or might refuse to make a reference and that the only requirement was that, If it refused to make a reference, it should record its

reasons and communicate the same to the parties concerned. The Bench also held that merely because there was an industrial dispute or there was

apprehension of an industrial dispute, it did not necessarily follow that the Government should make a reference. If that was so, the Court observed

that Section 12(5) would be meaningless, because the sub-section conferred a power on the Government to choose one of the two alternatives

either to make or not to make a reference. In State of Madras Vs. C.P. Sarathy and Another, it was held that the Government, in making a

reference u/s 10(1) of the Industrial Disputes Act, was doing an administrative act and the fact that it had to form an opinion as to the preliminary

step to the discharge of its function did not make it any less administrative in character and that the Court could not therefore canvass the order of

reference closely to see if there was any material before the Government to

support its conclusion, as If it was judicial or quasi-judicial determination. The Supreme Court further observed that, if the dispute was an industrial dispute, Its factual existence and the expediency of making a reference in the circumstances of a particular case were matters entirely for the Government to decide upon and it would not be competent for the Court to hold the reference and quash the proceedings for want of jurisdiction merely because there was, in its opinion, no material before the Government on which it could have come to an affirmative conclusion on. those matters. In *State of Bihar v. D. N. Ganguly* 1958 I L.L.J. 634 the Supreme Court observed as follows at p. 1021:

It Is not In every case where the parties allege the existence of an Industrial dispute that a reference would be made u/s 10(1). It is only where the test of subjective satisfaction of the appropriate Government is satisfied that the reference can be made. Thus It is clear that the appropriate Government is given an important voice in the matter of permitting Industrial disputes to seek adjudication by reference to the industrial tribunal.

In *State of Bombay Vs. K.P. Krishnan and Others*, the Supreme Court observed:

The order passed by the Government u/s 12(5) 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; In that sense it would be correct to say that the Court hearing a petition for mandamus is not sitting in appeal over the decision of the Government, nevertheless, if the Court is satisfied that the reasons given by tee Government for refusing to make a reference are extraneous and not germane, then the Court can issue and would be justified in issuing a writ of mandamus even in respect of such an administrative order. It may, for instance, be open to the Government in considering the question of expediency to enquire whether the dispute raises a claim which la very stale or which is opposed to the provisions of the Act, or 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.

In *Bombay Union of Journalists and Others Vs. The State of Bombay and Another*, the Supreme Court observed at p. 355 as follows:

Besides, in dealing with this contention, It is necessary to remember that in

entertaining an application for a writ of mandamus against an order made by the appropriate Government u/s 10(1) read with Section 12(5), the Court is not sitting in appeal over the order and is not entitled to consider the propriety or the satisfactory character of the reasons given by the said Government. It would be idle to suggest that in giving reasons to a party for refusing to make a reference u/s 12(5), the appropriate Government has to write an elaborate order indicating exhaustively all the reasons that weighed in its mind in refusing to make a reference ... if it appears that the reasons given show that the appropriate Government took into account a consideration which was irrelevant or foreign, that no doubt may justify the claim for a writ of mandamus.

6. A consideration of the authorities cited above makes it clear that the High Court cannot sit as a Court of appeal on the order passed by the Government. The Government, in passing an order u/s 10(1) read with Section 12(6), is acting in an administrative character and it has the option to make a reference or not to make a reference on the facts, taking into consideration the expediency in each case; the decision is for the Government to take and not for the Courts to interfere. The Government will be justified in refusing to make a reference where the dispute is inconsistent with the agreement between the parties. But the Court will be justified in issuing a writ of mandamus if the Government did not act bona fide or base its conclusions wholly on irrelevant or extraneous materials or materials which were not germane for deciding the question whether a reference should be made or not,

7. Sri Dola, the learned Counsel for the petitioner, strongly relied on a decision of a Bench of this Court in *Government of Madras Vs. Workmen of South India, Saiva Siddhanta Works Publishing Society*, where it is stated thus at pp. 236-237:

Where therefore the union of workers takes up an individual dispute, no principle being involved therein, it will be for the Government to consider the merits of the case and decide whether it should refer the matter for adjudication u/s 10(1) or 12(6). If on the other hand, a question of principle is involved, like victimization, unfair labour practice or the punishment of a worker without even an enquiry, it will be the duty of the Government to act under those provisions....

8. It was submitted that It Is the duty of the Government to act under the provisions of 8s. 10(1) and 12(5) If a worker Is punished without an

enquiry. The decision of the Bench of this Court In Government of Madras Vs. Workmen of South India, Saiva Siddhanta Works Publishing

Society, was delivered on 22 November 1863. The decision of the Supreme Court In Bombay Union of Journalists and Others Vs. The State of

Bombay and Another, was delivered on 19 December 1963. The Supreme Court has expressed Its view that the Government is not bound to

refer an Industrial dispute even though one of the points raised In the dispute Is In regard to contravention of a mandatory provision of the Act. At

p. 358 the Supreme Court has stated:

Even if the employer retrenches the workmen contrary to the provisions of Section 25F(c), It does not follow that a dispute resulting from such a

retrenchment must necessarily be referred for industrial adjudication. The breach of Section 25F(c) is no doubt a serious matter and normally the

appropriate Government would refer a dispute of this kind for industrial adjudication, but the provisions contained In Section 10(1) read with

Section 12(5) clearly show that even where the breach of Section 25F Is alleged, the appropriate Government may have to consider the

expediency of making a reference and if after considering all the relevant facts, the appropriate Government comes to the conclusion that It would

be Inexpedient to make the reference, It would be competent to it to refuse to make such a reference. We ought to add that when we are

discussing this legal position we are necessarily assuming that the appropriate Government acts honestly and bona fide. If the appropriate

Government refuses to make a reference- for irrelevant considerations or on extraneous grounds, or acts mala fide, that of course would be

another matter; In such a case a party would be entitled to move the High Court for a writ of mandamus.

The Supreme Court has laid down that even If there is a breach of the provisions of the Industrial Disputes Act, the Government is not bound to

refer, and to this extent the observation of the Madras High Court in Government of Madras Vs. Workmen of South India, Saiva Siddhanta

Works Publishing Society, that it Is the duty of the Government to act if a worker Is punished without an enquiry may not be In accordance with

the law declared by the Supreme Court.

9. It may also be noted that the observations of the Bench of this Court In Government of Madras Vs. Workmen of South India, Saiva Siddhanta

Works Publishing Society, are in the nature of obiter dicta, as In that case the Government had not recorded its reasons for its refusal to make a

reference, and the Court held that it would be sufficient to support the writ Issued by the trial Judge.

10. It is settled law that, If a termination of the service was a colorable exercise of the power or as a result of victimization or unfair labour

practice, the Industrial tribunal would have the jurisdiction to intervene and set aside such a termination. The form of order in such a case Is not

conclusive and the tribunal can go behind the order to find the reasons which led to the order and then consider for itself whether the termination

was in colorable exercise of the power or as a result of victimization or unfair labour practice. If the tribunal came to the conclusion that the

termination was In colorable exercise of the power or as a result of victimization or unfair labour practice, It can Intervene and set aside the

termination." While the power of the tribunal to interfere In the circumstances referred to above is not disputed, the duty of the Government to

refer an industrial dispute u/s 10(1) read with Section 12(5) is based on different considerations. As the Government is acting in an administrative

capacity, the right of this Court to Issue a writ is limited. When the Government refuses to make a reference for irrelevant consideration or on

extraneous grounds or acts mala fide the Court may Interfere. The Government declined to act in this case as it was reported that the service of

Arogyaswami was terminated according to the standing orders of the mills.

11. The standing orders of the respondent-mills provide for termination of employment and notice thereof to be given by the employer to the

employee. Standing Order 11 of the mills reads as follows:

Subject to the provisions of any law for the time being in force, the employment of any workman may be terminated for a reasonable cause. The

reasons for the termination of service shall be recorded in writing and shall be communicated to the workman at the time of discharge.

Standing Order 13 provides for suspension or dismissal for misconduct. In the case of dismissal for misconduct the workman concerned should be

informed him of the alleged misconduct and given an opportunity to explain the circumstances against him. The standing orders of the mills are certified u/s 5(3) of the Industrial Employment (Standing Orders) Act, 1946, on 31 December 1958. The Industrial Employment (Standing Orders) Act, 1946, was enacted for requiring the employers in industrial establishment to define the conditions of employment under them. The Act provides for submission of the draft standing orders by the Industrial establishment within six months from the date on which the Act becomes applicable to the industrial establishment. The standing orders are certifiable under the Act if provision is made for every matter set out in the schedule to the Act which is applicable to the Industrial establishment and when they are in conformity with the provisions of the Act. The certifying officer is empowered under an amendment of 1956 to adjudicate upon the fairness or reasonableness of the provisions of the standing order. Item 8 of the schedule to the Industrial Employment (Standing Orders) Act, 1948, empowers providing standing orders for termination of employment and notice thereof to be given by employer and workmen. Item 9 relates to suspension or dismissal for misconduct and acts or omissions which constitute misconduct. Model standing orders have been framed by the Central Government and by the Madras Government. Rule 13 of the Industrial Employment (Standing Orders) Central Rules, 1946, framed by the Central Government provides for terminating the employment of a permanent workman on giving the prescribed notice and Rule 14 provides for taking disciplinary action for misconduct. Rule 17 of the Madras Industrial Employment (Standing Orders) Rules, 1947, provides for termination of the employment of any permanent workman on giving the prescribed notice, while Rule 20 provides for suspension or dismissal of a workman. It will thus be seen that provision is made under the Industrial Employment (Standing Orders) Act for the framing of standing orders for industrial establishments and for certification of them by the certifying authorities. The model standing orders provide for termination of the service of a workman on giving the prescribed notice, and provision in the standing orders of the Industrial establishments cannot be said to be violative of the principles of Industrial law. Provision for terminating the service of an employee is found in other enactments such as Section 41 of the Madras Shops and Establishments Act and Section 19 of the Madras

Catering Establishments Act, 1958.

12. The industrial tribunal is empowered to interfere with the order of termination when the termination is not bona fide or is as a result of

victimization or unfair labour practice. But the duty of the Government under Sections 10(1) and 12(5) of the Act to refer the matter for

adjudication is administrative in character and if the Government declines to refer the dispute, the Court can only interfere when the Government

had taken into account totally irrelevant or extraneous matters or acted mala fide. It was contended by the learned Counsel for the petitioner that

the termination of the service of Arogyaswami was in the nature of punishment for certain offences without enquiry and not termination under the

standing orders. Whether the termination in a particular case was proper or whether it amounted to punishment without proper enquiry can be

gone into by the tribunal. But so far as the Government is concerned, it has a discretion to refer or not to refer for adjudication after taking into

consideration all the circumstances of the case. If the Government was satisfied that the service of Arogyaswami was terminated under the standing

orders and declines to refer the dispute for adjudication as the claim is inconsistent with the agreement between the parties this Court cannot

interfere, unless the refusal to refer the dispute is due to want of bona fides or due to taking into consideration irrelevant and extraneous matters.

In this case there is nothing on record to show that the refusal by the Government to refer the dispute for adjudication was due to taking into

account totally irrelevant or extraneous matters.

13. In the result, I hold that the petitioner has not made out a case for the issue of a writ of mandamus. The writ petition fails and is dismissed. No

order as to costs.