

(1965) 08 KL CK 0021
In the High Court Of Kerala
Case No : O.P. No. 2174 of 1964

Commonwealth Trust Limited, Calicut	Vs	APPELLANT
State of Kerala and Others		RESPONDENT

Date of Decision : 25-08-1965

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 12(5)

Citation : AIR 1966 Ker 148 : (1966) 12 FLR 445

Hon'ble Judges : V.P. Gopalan Nambiyar, J

Bench : Single Bench

Advocate : V.K.K. Menon, C.S. Padmanabha Iyer, M. Ramachandran and C.J. Balakrishnan, for the Appellant; Government Pleader for Nos. 1 to 4, M.M. Abdulkhader, for No. 5 and M.P. Menon, for No. 6, for the Respondent

Final Decision : Dismissed

Judgement

V.P. Gopalan Nambiyar, J.—This O. P. prays for the issue of

(a) A writ of mandamus or other appropriate writ order or direction directing the 1st respondent the State Government to reconsider the question of making a reference for adjudication of the issue relating to recovery of damages caused by the illegal strike, from the 5th and 6th respondents and pass orders according to law.

(b) Any other appropriate writ or direction which this Court may deem fit in the circumstances of the case"

2. The petitioner is a Company incorporated under the English Companies Act and carries on business in Tiles and Handlooms. The dispute which is the subject-matter of this petition relates to the handloom factories of the petitioner The 5th and 6th respondents are the workers represented by their Unions

3. It is unnecessary to detail the prolonged and abortive attempts at Conciliation of the disputes between the petitioner Company and its workers It is enough to

stale that on 23-6-1964, the workers commenced a strike, which according to the petitioner was illegal for two reasons, namely;

(1) because no prior notice was given of strike as required by the certified standing orders of the Company, and

(2) because references for adjudication were pending before the 4th respondent

4. On 7-7-1964, the Company wrote to the 3rd respondent (The District Labour Officer, and the Conciliation Officer Kozhikode) a letter, copy of which has been produced as Ex. P-6, demanding that the loss suffered by it, on account of the illegal strike of the workmen, should also be referred for adjudication. This was followed by a letter dated 15-7-1964 (copy produced as Ex. P-9) to the 3rd respondent with copies to the 1st respondent (the State of Kerala) and the 2nd respondent (Labour Commissioner, Trivandrum). In the said letter, the Company reiterated its demand that the loss suffered on account of the illegal strike of the workmen, should be referred for adjudication. The demand was again repeated by another letter of the Company dated 22-7-1964 (copy produced as Ex P-10) to the 1st respondent.

5. The above demands for reference by the company were disposed of by the 1st respondent by Ex P-12, the relevant part of which reads as follows:

GOVERNMENT OF KERALA No 45106/H3/64/HLD Health & Labour (H) Department. Trivandrum 24th July 1964.

From

The Secretary to Government

To

The Manager, Commonwealth Weaving Factory, Calicut The Secretary, Calicut Taluk Textile Workers' Union Calicut

The Secretary Kozhikode Handloom Factory Workers Union Kozhikode

Sir,

Sub:-- Industrial dispute--General demands of increase in wages bonus D A etc Adjudication regarding I am directed to inform you in connection with the above dispute that Government consider that the issues Numbers (2), (5) and (9) are not fit for reference to adjudication for the following reasons.

xx xx xx xx (9) Compensation for loss sustained by management. --

It is stated that the management have suffered heavy losses due to the workers going on strike without notice. Government think that this issue does not merit adjudication.

Yours faithfully. Sd/-

For Secretary to Government

Copy to :-- The Labour Commissioner"

6. Petitioner's counsel contended that he is entitled to a writ of mandamus prayed for on the ground that the Government had not disclosed any reasons for declining to make a reference as required by Section 12(5) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act); and that it was quite plain that the Government had not applied its mind to or taken into consideration the pertinent questions raised by the petitioner in Exs. P 6 P-9, P-10 etc., and which called for consideration at the hands of the Government There was no case before me of any mala fides or discriminatory treatment, as against the Government; nor was there any case that any extraneous or irrelevant consideration had induced the decision of the Government in Ex. P-12. The only question therefore for consideration is:

"Has the 1st respondent applied its mind to the question as to whether there should be a reference before it passed the order evidenced by Ex. P-12? and is the order vitiated for want of reasons?"

Section 12(6) of the Act reads as follows:

"If, on a consideration of the report referred to in Sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board. (Labour Court, Tribunal or National Tribunal), it may make such a reference Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor."

7. The learned Government Pleader argued that the satisfaction of the Government referred to in Section 12(5) of the Act is a subjective satisfaction, which having been exercised in the instant case, cannot be compelled by mandamus It is unnecessary to pursue this point, as, whether the satisfaction be subjective or objective, it has been ruled that the exercise of it can be compelled in an appropriate case-by mandamus

8. 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 the 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 After an elaborate argument on the construction of Section 12(5) was addressed to us it became clear that on this part of the case there was no serious dispute between the parties. That is why we think the

controversy as to the construction of Section 12(5) is of no more than academic importance."

In the same decision it was observed:

"It has been strenuously urged before us by the appellant and the Company that it is competent for the Government to consider whether it would be expedient to refer a dispute of this kind for adjudication, The argument is that the object of the Act is not only to make provision for investigation and settlement of industrial disputes but also to secure industrial peace so that it may lead to more production and help national economy. Co-operation between the capital labour as well as sympathetic understanding on the part of the capital and discipline on the part of labour are essential for achieving the main object of the Act, and so it would not be right to assume that the Act requires that every dispute must necessarily be referred to industrial adjudication Though considerations of expediency cannot be excluded when Government considers whether or not it should "exercise its power to make a reference, it would not be open to the Government to introduce and rely upon wholly irrelevant or extraneous considerations under the guise of expediency "

9. In *Bombay Union of Journalists v. State of Bombay*, 1964 1 Lab LJ 351: (AIR 1904 SC 1617) the Supreme Court stated:

"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 But the argument that of the pleas raised by the appellants two have been considered and not the third. Would not necessarily entitle the party to claim a writ under Article 226"

Lower down, in the same case, it was observed :

"There is one more point which ought to be mentioned before we part with this appeal, Even if we hold that Section 25F(c) constitutes a condition precedent, it would not have been easy to accept Sri Bishan Narain's contention that a writ of mandamus should be issued against respondent 1. A writ of mandamus could be validly issued in such a case if it was established that it was the duty and the obligation of respondent 1 to refer for adjudication an industrial dispute where the employee contends that the retrenchment effected by the employer contravenes the provisions of Section 25F(c) Can it be said that the appropriate Government is bound to refer an industrial dispute even though one of the points raised in the dispute is in regard to the contravention of a mandatory provision of the Act? In our opinion, the answer to this question cannot be in the affirmative. 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 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 a breach of Section 26F 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 "

10. The above decisions of the Supreme Court establish:

(1) that it is open to the Government to consider the expediency of making the reference: and

(2) even if one of the points of dispute raised is the contravention of a mandatory provision, the Government is not bound to make a reference.

11. It is in the light of the above principles laid down by the Supreme Court that the question whether the Government applied its mind to the question of making a reference in the instant case, falls for consideration. There was no argument before me that the reasons, if not recorded in the order refusing to make a reference cannot be disclosed in affidavits. Ex P-12 itself would seem to suggest that the Government declined to make a reference on considerations of expediency. That is undoubtedly a fact which it could take into account having regard to the two pronouncements of the Supreme Court noticed supra. Besides, in this O. P., a counter-affidavit has been filed on behalf of the 1st respondent which has set out in detail the circumstances under which Ex P-12 happened to be passed. In paragraph 9 of the counter affidavit it has been stated that the Government exercised its discretion taking into account the reports of the Conciliation Officer, as well as other relevant factors and circumstances of the case. In paragraph 5 of the said affidavit it has been stated that the industrial dispute, the pendency of which was alleged by the company to render the strike commenced on 23-6-1964 illegal, was referred only on 6-7-1964. It is further stated that the Cotton Textile Industry was declared a Public Utility Service for a period of 6 months from 18th December 1963, by Government notification dated 1st January 1964. The notification expired on 18-6-1964 and by a further notification dated 9-7-1964, the period of the earlier notification was extended by another six months. These averments indicate that the Government had adverted to the two important considerations on the basis of which it is claimed by the Company that the strike was illegal. The decision of the Supreme Court in *Bombay Union of Journalists and Others Vs. The State of Bombay and Another*, , noticed earlier, is clear authority that even assuming that there is a contravention of a statutory provision, or an illegality, the Government is not bound to make a reference.

12. Petitioner's counsel argued that besides the one reference mentioned in paragraph 9 of the counter affidavit, there were other references pending at the commencement of the strike. But, on the analogy of the reasoning of the Supreme Court in *Bombay Union of Journalists and Others Vs. The State of Bombay and Another*, , extracted earlier, the fact that one reference alone was

adverted to by the Government and not the others, would not necessarily entitle a party to claim a writ under Article 226 of the Constitution

13. Giving the matter my best consideration, I am not satisfied that there has been a failure on the part of the Government to apply its mind to the relevant considerations before passing Ex P-11 (Ex P-12?) Nor am I satisfied that the non-recording of reasons has either vitiated Ex P-11 (Ex. P-12?) or would warrant the issuance of a writs in the circumstances of the case.

14. Petitioner's counsel relied upon the decision of the Rajasthan High Court in *Ajmer Motor Mazdoor Union v. State of Rajasthan*, 1965 1 Lab LJ 229 (Raj) The order Ex P-8 that was sought to be quashed in the said case is worded (as can be gathered from the report) almost exactly like Ex. P-11 (P-12?) in the present case But, I find from the report that no affidavit, or reply in writing, was filed on behalf of the respondents 1 and 2 in that case. A preliminary objection to the maintainability of the writ petition was raised. The order declining to make a reference was not sought to be sustained on considerations of expediency On these grounds the decision appears to me to be distinguishable.

15. The decision of the Madras High Court in *Government of Madras Vs. Workmen of South India, Saiva Siddhanta Works Publishing Society*, was relied on by the petitioner's counsel as supporting the proposition that non-recording of reasons is sufficient to justify a writ of mandamus The proposition appears with respect, to be widely stated; and, in the context, was perhaps obiter The decision of the single Judge was sustained by the Division Bench on the merits.

16. I find no ground to issue the writ prayed for.

17. The O. P. fails and is dismissed with costs.