
(2014) 02 P&H CK 0177
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 17270 of 2012

Deep Narain

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 07-02-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10(1), 12(5), 2(k), 25FFF

Citation : (2014) 175 PLR 723

Hon'ble Judges : Gurmeet Singh Sandhawalia, J

Bench : Single Bench

Advocate : P.S. Bhangu, Advocate for the Appellant; Kshitij Sharma, AAG, D.P. Sharma and A.P. Setia for U.T. Chandigarh, Advocate for the Respondent

Final Decision : Allowed

Judgement

G.S. Sandhawalia, J.—The present petition has been filed for quashing the order dated 03.11.2011 (Annexure P12) whereby respondent No. 1 has declined to refer the industrial dispute raised by the demand notice dated 25.09.2007 to the Labour Court for adjudication. Further prayer has been made that respondent No. 1 be directed to refer the demand notice for adjudication u/s 10 of the Industrial Disputes Act, 1947 (for short, the "Act") inter alia apart from the prayer for payment of compensation on account of closure of the unit. A perusal of the paper-book would go on to show that an initial demand notice was sent by the workmen, who are 6 in number, on 28.08.2007 (Annexure P2), which is alleged not to have been served upon respondent No. 5. Thereafter, notice of closure dated 19.09.2007 (Annexure P3), was pasted on the notice board that the manufacturing activities were closed down, with immediate effect, and the services of 17 workmen were not required on the next day. The petitioner-workmen, on 25.09.2007, again sent a demand notice against the illegal closure which was replied by the respondent-Industry (Annexure P5). Thereafter, on 05.08.2008, the Deputy Labour Commissioner, Ambala addressed a letter to the Labour Commissioner, Haryana, informing that the unit had been closed and that

the Management had paid all the dues to the workmen, giving the details of payment made to 17 workmen. Thereafter, it seems that the impugned order dated 03.11.2011 was passed on the ground that the said industry had been closed which had been verified and the dues had been paid to the workmen before the Deputy Labour Commissioner on 16.08.2008 and accordingly, the demand notice was filed. The impugned order reads as under:

"Regarding above said subject I have been directed to inform you that the government do not think it fit to send any demand mentioned in your demand notice dated 25.9.2007 for adjudication in the Labour Court because it has been enquired by visiting in person in Management's institution and has been found that the establishment by the name of M/s. Hindustan Tailing, Plot No. 231, Phase No. 1, Panchkula has been closed, the verification of which has been done by the owner Sh. S.K. Sethi, Manager M/s. Hind Auto Clutches, 230, Industrial Area Phase-I, Panchkula who is owner of Hindustan Tooling Plot No. 230, Phase No. 1, Panchkula and has given in writing regarding this. Management is clear about the situation regarding dues of workmen that they have got their dues in the presence of their representative before the Deputy Labour Commissioner, Ambala on 16.8.2008. So on the ground mentioned above your demand notice is filed."

2. Counsel for the petitioner has contended that u/s 25FFF of the Act, if an industry is closed down, the workman is entitled for his dues, as per the provisions of the said section and therefore, the dispute was rightly raised and it was not an administrative function, which the State Government could take over and the same was a judicial function of the Labour Court.

3. Counsel for respondent No. 5, on the other hand, vehemently contended that the workmen had received their dues and the Government had, after verification, found that the claim was fully satisfied and the unit stood closed, which was confirmed and verified and therefore, the order dated 03.11.2011 was justified.

4. After hearing counsel for the parties, this Court is of the opinion that the impugned order is not justifiable. It is, now, settled position of law that the Government cannot make its own assessment to decide the reasonableness of the demands on merits. A three Judge Bench of the Apex Court in *The M.P. Irrigation Karamchari Sangh Vs. State of M.P. and Another*, held that it is within the domain of the appropriate Tribunals to decide an adjudicatory process and it is not within the domain of the Government which has only to prima facie see the demand. The Government should be very slow to attempt an examination of the demand and decline the same and the Courts should always be vigilant when the Government attempts to usurp the powers of the Court. Relevant observations read as under:

"6. Same is the case with the conclusion arrived at by the High Court accepting the stand of the State Government that the employees were not entitled to the Chambal allowance as the same was included in the consolidated pay. This

question, in fact, relates to the conditions of service of the employees. What exactly are the conditions of service of the employees and in what manner their conditions of service could be improved are matters which are the special preserve of the appropriate Tribunals to be decided in adjudicatory processes and are not ones to be decided by the Government on a prima facie examination of the demand. This demand again can never be said to be either perverse or frivolous.

7. There may be exceptional cases in which the State Government may, on a proper examination of the demand, come to a conclusion that the demands are either perverse or frivolous and do not merit a reference. Government should be very slow to attempt an examination of the demand with a view to decline reference and Courts will always be vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of valid disputes. To allow the Government to do so would be to render Section 10 and Section 12(5) of the Industrial Disputes Act nugatory.

8. We have no hesitation to hold that in this case, the Government had exceeded its jurisdiction in refusing to refer the dispute to the Tribunal by making its own assessment unilaterally of the reasonableness of the demands on merits. The High Court erred in accepting the plea of the Government that refusal to refer the demands in this case was justified. The demands raised in this case have necessarily to be decided by the appropriate Tribunal on merits."

5. The celebrated judgment of the Apex Court in *Telco Convey Drivers Mazdoor Sangh and Another Vs. State of Bihar and Others*, also examined the said issue and came to the conclusion that it is an administrative function of the appropriate Government and while exercising powers u/s 10(1), the function of the appropriate Government is an administrative function and not a judicial or quasi-judicial. In the said case, the dispute was as to whether the convey drivers were employees or workmen of TELCO and the Government had denied the reference on the ground that there was no relationship of employer and employee. Accordingly, the appeal filed by the Union was allowed and a direction was issued to make a reference u/s 10(1) of the Act to the Administrative Tribunal, within one month. Relevant observations read as under:

"11. It is true that in considering the question of making a reference u/s 10(1), the Government is entitled to form an opinion as to whether an industrial dispute "exists or is apprehended", as urged by Mr. Shanti Bhusan. The formation of opinion as to whether an industrial dispute "exists or is apprehended" is not the same thing as to adjudicate the dispute itself on its merits. In the instant case, as already stated, the dispute is as to whether the convey drivers are employees or workmen of TELCO, that is to say, whether there is relationship of employer and employees between TELCO and the convey drivers. In considering the question whether a refer, should be made or not, the Deputy Labour Commissioner and/or the Government have held that the convey drivers are not workmen and, accordingly, no reference can be made. Thus, the dispute has

been decided by the Government which is undoubtedly, not permissible.

12. It is, however, submitted on behalf of TELCO that unless there is relationship of employer and employees or, in other words, unless those who are raising the disputes are work-men, there cannot be any existence of industrial dispute within the meaning of the term as defined in section 2(k) of the Act. It is urged that in order to form an opinion as to whether an industrial dispute exists or is apprehended, one of the factors that has to be considered by the Government is whether the persons who are raising the disputes are workmen or not within the meaning of the definition as contained in section 2(k) of the Act.

13. Attractive though the contention is, we regret, we are unable to accept the same. It is now well settled that, while exercising power u/s 10(1) of the Act, the function of the appropriate Government is an administrative function and not a judicial or quasi judicial function, and that in performing this administrative function the Government cannot delve into the merits of the dispute and take upon itself the determination of the lis, which would certainly be in excess of the power conferred on it by section 10 of the Act. See *Ram Avtar Sharma and Others Vs. State of Haryana and Another*, *M.P. Irrigation Karamchari Sangh Vs. State of M.P. and Another*, and *Shambu Nath Goyal Vs. Bank of Baroda*,

14. Applying the principle laid down by this Court in the above decisions, there can be no doubt that the Government was not justified in deciding the dispute. Where, as in the instant case, the dispute is whether the person raising the dispute are workmen or not, the same cannot be decided by the Government in exercise of its administrative function u/s 10(1) of the Act. As has been held in *M.P. Irrigation Karamchari Sangh's case (supra)*, there may be exceptional cases in which the State Government may, on a proper examination of the demand, come to a conclusion that the demands are either perverse or frivolous and do not merit a reference. Further, the Government should be very slow to attempt an examination of the demand with a view to declining reference and Courts will always be vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of valid disputes, and that to allow the Government to do so would be to render section 10 and section 12(5) of the Act nugatory.

15. We are, therefore, of the view that the State Government, which is the appropriate Government, was not justified in adjudicating the dispute, namely, whether the convoy drivers are workmen or employees of TELCO or not and, accordingly, the impugned orders of the Deputy Labour Commissioner acting on behalf of the Government and that of the Government itself cannot be sustained.

16. It has been already stated that we had given one more chance to the Government to reconsider the matter and the Government after reconsideration has come to the same conclusion that the convoy drivers are not workmen of TELCO thereby adjudicating the dispute itself. After having considered the facts and circumstances of the case and having given our best consideration in the matter, we are of the view that the dispute should be adjudicated by the

Industrial Tribunal and, as the Government has persistently declined to make a reference u/s 10(1) of the Act, we think we should direct the Government to make such a reference. In several instances this Court had to direct the Government to make a reference u/s 10(1) when the Government had declined to make such a reference and this Court was of the view that such a reference should have been made. See Sankari Cement Alai Thozhilalar Munnetra Sangam, Tamil Nadu Vs. Government of Tamil Nadu and Another, Ram Avtar Sharma and Others Vs. State of Haryana and Another, M.P. Irrigation Karamchari Sangh Vs. State of M.P. and Another, and Nirmal Singh Vs. State of Punjab and Others,

17. In the circumstances, we direct the State of Bihar to make a reference u/s 10(1) of the Act of the dispute raised by the Telco Convoy Drivers Mazdoor Sangh by its letter dated October 16, 1986 addressed to the General Manager TELCO (Annexure R-4/1 to the Special Leave Petition), to an appropriate Industrial Tribunal within one month from today."

6. Keeping in view the settled position of law, this Court is of the opinion that the Government took over the judicial functions of the Labour Court and has adjudicated upon the factual aspect as to whether the workmen had been paid their dues, as per the requirements of the Act, which was not within its domain. Accordingly, this Court has no hesitation in quashing the order dated 03.11.2011 (Annexure P12) as being without jurisdiction. Further, a writ of mandamus is issued to respondent No. 1 to make a reference of the dispute raised by the workmen regarding the demand notice dated 25.09.2007 (Annexure P4) u/s 10 of the Act and refer the same to an appropriate Industrial Tribunal, within a period of one month from the receipt of certified copy of this order. Writ petition is allowed with the abovesaid observations.