
(1988) 10 MP CK 0005
In the Madhya Pradesh High Court
Case No : M.P. No. 3362 of 1984 (J)

Dr. (Smt.) Prem Chabra

APPELLANT

Vs

State of M.P. and Two Others

RESPONDENT

Date of Decision : 27-10-1988

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 39

Citation : (1989) MPJR 279

Hon'ble Judges : P.C. Pathak, J;B.C. Verma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.C. Varma, J.

This order shall also govern the disposal of Miscellaneous Petition No. 10 of 1986) Bhopal Motors Pvt Ltd. Bhopal v. The State of Madhya Pradesh and three others) as in both the cases identical question of law arises for consideration.

Respondent Smt. Kamla Jiwan and R. K. Kochar, (Respondent in M. P. No. 10 of 1986) were removed from service by their employers who are Petitioners in these petitions They tried to amicably settle their dispute by resort to conciliation proceedings but in vain. On failure report being submitted, the Labour Commissioner referred the dispute for adjudication in both the cases to the Labour Court. The disputes were entertained in both these cases. Parties were given opportunity to substantiate their claims.

While in Smt. Kamla Jiwan's case the proceedings are still pending before the Labour Court, in case of Shri R. K Kochar, the Labour Court has pronounced the award. As held, termination of his services is illegal. Consequently, Shri Kochar has been directed to be reinstated with all back-wages.

Shri R. K. Gupta, learned Counsel for the Petitioners in both the cases attacks the validity of the references on the ground that the Governor does not have the

power or jurisdiction to delegate his authority to make a reference u/s 10 of the Industrial Disputes Act. The argument is that the exercise of power to make a reference u/s 10 of the Industrial Disputes Act depends upon the subjective satisfaction of the authority and, therefore, such power cannot be delegated. Section 39 of the Industrial Disputes Act, 1947 permits the appropriate Government to direct that any power exercisable by it under the Act or Rules made thereunder shall be exercisable by any officer or authority subordinate to it and in case where the appropriate Government is the State Government by such officer or authority subordinate to the State Government as may be specified in the Notification. Such delegation has to be done by Notification published in the official gazette. The notification shall specify the matters in relation to which and also conditions, if any, subject to which the power is to be exercised by such authority. The legislature, thus, has clearly vested the appropriate Government with authority to delegate powers exercisable by the appropriate Government under the Act or Rules made thereunder. It is now well realised that the complexity of the problems which modern State is to face necessitates delegated legislation which has its own advantages. The Court shall lean towards upholding the delegation of powers but shall not hesitate to strike down any arbitrary power conferred on the executive in this regard to prevent abdication of legislative function. A delegated legislation is certainly open to judicial review and may be declared invalid on two grounds: (i) violation of Constitution and (ii) violation of an enabling act. In the second clause which also included cases of violation of mandatory procedure, the opinion of the authority in making delegation is to be respected and the delegation may be declared invalid on the following grounds: (1) Bad faith, i.e., when power entrusted for one purpose, are deliberately used with the design of achieving another, itself unauthorised or actually forbidden; (2) that it shows on its face a misconstruction of enabling Act or a failure to comply with the conditions which that Act has prescribed for the exercise of the powers; and (3) that it is not capable of being related to any of the purposes mentioned in the Act. At the same time one has to start with the presumption that the subordinate legislation is intra vires. Bearing these principles in mind we do not think that the learned Counsel for the Petitioner is right in assailing the validity of delegation of powers u/s 10 of the Industrial Disputes Act to make a reference to the Industrial Court or Tribunal merely because before making the reference any opinion as to existence of the industrial dispute is to be formed. This will be so even if the formation of the opinion is based upon the subjective satisfaction of the appropriate Government. Apparently, there is no violation of the Constitution in delegating the function of making the reference u/s 10 of the Industrial Disputes Act. We are also not satisfied that in permitting such delegation, any provisions of the Act itself is violated. The opinion formed by the delegatee as to the existence of any Industrial Dispute shall also be open to like challenge as may be the formation of the opinion by the appropriate Government. We have, therefore, little hesitation in saying that the delegation of powers exercisable by appropriate Government (in the present case by the State Government) to any authority u/s 10 of the Act

is not bad merely because in terms of Section 10 of the Act the formation of the opinion as to the existence of any Industrial Dispute is based upon the subjective satisfaction of the State Government.

The argument that the delegation of power u/s 10 of the Industrial Disputes Act is illegal because it is absolute and not made subject to any condition, need not detain us much. Presumably learned Counsel means to refer to the words "subject to such conditions" appearing in Section 39 of the Act when he argues that such delegation has to be conditional and not absolute. The apprehension in the mind of the learned Counsel in this regard is wholly ill-founded. It is clear from the reading of Section 39 that powers under the Act may be directed by the appropriate Government to be exercised by any officer or authority subordinate to the appropriate Government subject to such conditions, if any, as may be specified in the direction. The use of the word "if any" clearly signifies that the appropriate Government has the discretion to impose conditions while permitting exercise of power by subordinate authority. If any such condition is imposed, the power has to be exercised by the subordinate authority or officer subject to that condition. It is, however, not obligatory to impose any condition. For similar reason we reject the argument that the appropriate Government must also disclose reason for not imposing any condition subject to which the subordinate authority may be permitted to exercise the power under the Act.

It was also argued that the notification permitting exercise of the power u/s 10 of the Industrial Disputes Act by the Labour Commissioner Madhya Pradesh is invalid because it is not issued in the name of the Governor. The contention is factually incorrect as clearly appears from Annex R/1 filed with the return in M. P. No. 10 of 1986. In the Madhya Pradesh Gazette of 2nd Feb. 68 Part-I Page 239 three notifications are published. One of such notifications is the one by which the Governor has permitted exercise of power u/s 10 of the Industrial Disputes Act by the Labour Commissioner. The document shows that all the three notifications so published in the M. P. Gazette were issued by order of and in the name of the Governor of Madhya Pradesh. The notification therefore, is not open to such a challenge.

It was faintly argued that Section 10 of the Act is ultra vires. This stand was given up as soon as it was brought to the notice of the learned Counsel that for this purpose the Central Government will be required to be noticed. The learned Counsel did (sic-not) choose to make the Central Government a party and, therefore, he did not pursue the point any further. No challenge to the award passed in M. P. No 10 of 1986 was made on merits.

For the aforesaid reasons both these petitions fail and are hereby dismissed. The Respondents in both the cases i. e. Smt. Kamla Jiwan and R. K. Kochar shall get the costs from the Petitioners. Counsel fee Rs. 100/-in each of the two cases.